

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

CR (DV) Case No.106/2019

**Musstt Marfuja Khatun
W/O-Md. Ikbal Hussain
D/O-Md. Riyaz Uddin
Vill-Goroimari
P.S-Laharighat
District-Morigaon, Assam**

..... Applicant

Vs.

**1. Md. Ikbal Hussain,
S/O-Md. Abdul Jabbar,
2. Musstt. Hasnara Begum
W/O- Md. Abdul Jabbar,
3. Md. Abdul Jabbar
S/O- Late Amsor Ali
4. Md. Mojibur Rahman
S/O. Md. Abdul Jabbar
5. Musstt. Tahida Khatun
W/O- Md. Mojibur Rahman
All are residents of Vill- Hahchoragaon
P.S-Bhelowguri,
District-Morigaon, Assam**

..... Respondents

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon, Assam

For the applicant: Md. N.I. Talukdar, Musstt. T. Shirajee, Advocates

For the respondents: Md. H. Rahman, Advocate

Application u/s 12 of PWDV Act, 2005 filed on: 19-3-2019

Evidence recorded on: 23-7-2019 & 27-8-2019

Argument heard on: 10-10-2019

Final order delivered on: 25-10-2019

Final Order (ex parte)

1. This final order disposes of the application filed by the applicant above named, against the respondents above named, under section 12 of the Protection

of Women from Domestic Violence Act, 2005 (herein after 'the Act') seeking reliefs of (i) protection order under section 18 of the Act, (ii) residence order or alternatively house rent at the rate of Rs.5000/-, per month, under section 19 of the Act, (iii) monetary relief of maintenance at the rate of Rs.8000/-, per month, for the applicant and for her minor daughter, under section 20 of the Act, (iv) compensation of Rs.5,00,000/- under section 22 of the Act and (v) Rs.5,000/- as interim maintenance and cost of proceeding under section 23 of the Act.

2. On receipt of notice of the applicant, the respondent No.2, 3 and 4 obtained time, through their learned engaged counsel to submit written statement which was allowed. In spite of receipt of notice respondent No.1 & 5 failed to appear before the court. Subsequently; however, respondents No.2, 3, and 4 also neglected or refused to appear before the court for which, vide order dated 21-6-2019, it was decided to proceed ex-parte against all the respondents.

3. In her application, the applicant has stated that respondent No.1 Md. Iqbal Hussain is her husband and the remaining respondents are the family members of her husband. Her marriage was solemnized with the respondent No.1 as per Islamic rites around four years prior to filing of the case. After the marriage, she resided in the house of her husband. Out of the wedlock a daughter was born. She was named Musst. Irfana Begum and was aged about three years at the time of filing of the application. After the birth of the daughter, her husband, with the assistance and ill advice of the remaining respondents, demanded dowry from the applicant and in connection with the said demand subjected her to physical and mental harassment. Having no other alternative, she brought Rs.20,000/- from her poor parents and paid the same to her husband. However, the respondents demanded more dowry and subjected her to inhuman torture. Prior to approximately two months of filing of the application, on 25-8-2018, her husband, with the remaining respondents, abused the applicant with obscene language and asked her to bring dowry from her parents. When the applicant refused to meet their demand, they beat the applicant and drove her out of the matrimonial house along with her daughter. Having no other alternative, she, along with her daughter, took shelter in the house of her poor parents. Since the day the applicant was driven out of the matrimonial house, the respondents neither

inquired about her nor about her daughter. Due to the action of the respondents, the applicant suffered irreparable damage. According to the applicant, the respondents are rich people having landed property. The respondent No.1 is a rich businessman but the applicant has no income source of her own. Therefore, the applicant has prayed for the reliefs aforementioned.

4. The domestic incident report has also been received from the Protection Officer, Morigaon and the same has been considered.

5. As laid down in Rule 6 (5) of the Protection of Women from Domestic Violence Rules, 2006 the procedure enumerated for deciding a case under section 125 CrPC is required to be followed to decide an application under section 12 of the Act and for that reason section 354(6) CrPC is applicable with respect to disposal of the application. Therefore, the following points are formulated for determination:

- i. Whether the applicant is entitled for relief of protection order under section 18 of the Act?
- ii. Whether the applicant is entitled for relief of residence order or Rs.5000/- as house rent, per month, under section 19 of the Act?
- iii. Whether the applicant is entitled for monetary relief of maintenance at the rate of Rs.8000/-, per month, for the applicant and for her minor daughter under section 20 of the Act?
- iv. Whether the applicant is entitled for relief of compensation of Rs.5,00,000/- under section 22 of the Act?
- v. Whether the applicant is entitled for relief of Rs.5000/- as interim maintenance and cost of proceeding under section 23 of the Act?

6. For convenience, all the points for determination are taken up together for discussion. In support of her application, the applicant has adduced written evidence of affidavit of her own as PW-1 and written evidence on affidavit of Md. Abdul Subhan and Md. Abdul Goni, who are her grandfathers, as PW-2 and PW-3, respectively. In their evidence, all the PWs have reiterated the statements made by the applicant in her application. She does not have any income of her own. She has been facing financial hardship as her husband neither enquired about her nor

paid any maintenance to her. The domestic incident report also lent support to the evidence led by the three PWs.

7. In view of willful neglect of the respondents to contest the application, the evidence of the PWs remained intact and unchallenged. The allegation of physical and mental harassment leveled against the respondents by the applicant in her application is supported and corroborated by the evidence of the three PWs.

8. The provisions of the Act is a social measure enacted keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

9. It is proved from the evidence that the respondents caused domestic violence to the applicant. The fact that the applicant had to take shelter in the house of her father is ample proof of the fact that she was driven out of the matrimonial house by them. It appears that the respondents have almost abandoned her. The fact that the respondents, including her husband, did not care to appear in court even after receipt of notice goes to show that they are least concerned regarding the present plight of the applicant.

10. Though the applicant has stated in her evidence that the respondent no.1 i.e. her husband has landed property and business, it is not even indicated what business her husband is in. No document is also submitted to support the earnings. Therefore, the exact earnings of her husband is not available on record. However, even a day labourer earns approximately Rupees six thousand to seven thousand five hundred per month, if we treat his earning at the rate of Rupees three hundred per day, after treating five to ten days as no work days. In that view of the matter also her husband is liable to pay maintenance to the applicant and her minor daughter, as primarily, it is the duty of the husband and father to maintain his wife and the child.

11. For the aforesaid reasons and discussion the points for determination, except the point for determination no.v, are answered in favour of the applicant and her minor daughter, to the extent indicated above. The point for

determination no. v is answered in the negative as the case has already reached its final stage.

12. Accordingly, it is ordered as follows:

i. Protection order, under Section 18 of the Act, is passed in favour of the applicant Musstt Marfuja Khatun and the respondents are: (a) prohibited from committing any act of domestic violence to her (b) prohibited from causing violence to the other relatives or any other persons who give the aggrieved woman assistance from domestic violence.

ii. The respondent no.1 Md. Ikbal Hussain is also directed, so far as reliefs under sections 19 and 20 of the Act is concerned, to pay a consolidated sum of Rupees 1500/- (Rupees one thousand five hundred), per month, to the applicant for her maintenance and Rs.500/- (Rupees five hundred), per month, to the minor daughter of the applicant namely Musstt Irfana Begum @ Irfana Khatun, w.e.f. the date of this order. In view of the domestic violence caused to the applicant, it would not be appropriate, in view of this court, to arrange separate alternative accommodation for the applicant in the residence of the respondents.

iii. The respondents are also directed, under section 22 of the Act, to pay compensation of Rupees 10000/- (Rupees ten thousand), at the rate of Rs.2000/- each, to the applicant for the domestic violence caused to her.

13. In terms of section 24 of the Act, send one copy each of this order to the O/C, Laharighat police station, Morigaon and to the O/C, Bhelowguri police station Morigaon, to assist the applicant in the implementation of the order.

14. Furnish free copies of this final order to the parties concerned.

15. This final order is passed ex parte and pronounced in open court and given under my hand and seal on this 25th day of October, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

(A) PROSECUTION EXHIBITS:

None

(B) DEFENCE EXHIBITS:

None

(C) EXHIBITS PRODUCED BY WITNESSES:

None

(D) COURT EXHIBITS:

None

(E) PROSECUTION WITNESSES:

P.W.-1: Musstt Marfuja Khatun

P.W.-2: Md. Abdul Subhan

P.W.-3: Md. Abdul Goni

(F) DEFENCE WITNESSES:

None

(G) COURT WITNESSES:

None

Chief Judicial Magistrate, Morigaon