

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

CR (DV) Case No.108/2019

**Musstt Kamala Khatun
W/O-Md. Majibur Rahman
D/O-Md. Suruj Ali
Vill-Charaihagi
P.S-Morigaon
District-Morigaon, Assam**

.....Applicant

Vs.

- 1. Md. Majibur Rahman,
S/O-Late Liyakat Ali,**
- 2. Musstt. Jahera Khatun
S/O- Late Liyakat Ali,**
- 3. Md. Nobi Hussain
S/O- Late Budya Sheikh
All are residents of Vill- No. 1 Solmari
P.S-Morigaon,
District-Morigaon, Assam**

.....Respondents

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

For the applicant: Ms. L. Das, Ms. M. Phukan, Advocates

For the respondents: Md. H. Rahman, Advocate

Application u/s 12 of PWDV Act, 2005 filed on: 19-3-2019
Evidence recorded on: 9-9-2019
Argument heard on: 25-9-2019
Final order delivered on: 10-10-2019

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 under

section 19 of the Act in the form of house rent at the rate of Rs.3000/- per month (iii) monetary relief of maintenance at the rate of Rs.6000/-, for the applicant and Rs.2000/- for each of her two children i.e. total Rs.10,000/- , per month, under section 20 of the Act, (iv) compensation of Rs.200000/- under section 22 of the Act and (v) Rs.5000/- as interim maintenance and cost of proceeding under section 23 of the Act from the respondents.

2. On receipt of the notice of the application, the respondents No.1 and 2 namely Md. Majibur Rahman and Musstt. Jahera Khatun appeared in court. The other respondent Md. Nobil Hussain, in spite of receipt of notice, failed to appear before the court. Subsequently, on failure of the aforesaid three respondents to appear before the court, the case proceeded ex-parte against him vide order dated 21-5-2019.

3. In her application, the applicant has stated that the respondent No.1 Md. Majibur Rahman is her husband and her marriage was solemnized with him around eight years prior to filing of the application as per Islamic rites on fixing Mohr amount of Rs.50,000/-. At the time of the marriage, dowry articles were given to her husband. Out of the wedlock a son namely Md. Shoriful Islam, presently aged about 7 years and Musstt. Maria Bibi, presently aged about 5 months, were born. After one year of the marriage, at the instigation of the other respondents, her husband demanded more dowry and Rs.1,00,000/- from her father. On failure to meet the demand of her husband, the applicant was subjected to physical and mental harassment. The matter was informed to her father. Because of her failure to meet the demand of her husband, she had to take shelter in her father's house for a few days. Subsequently, the matter was settled and she again went to the house of the respondents. Such harassment and settlements were repeated on several occasions. Subsequently, while the applicant was carrying five months pregnancy, her husband again demanded Rs.1,00,000/- from her and subjected her to harassment and coerced her to bring the said amount from her father and also suggested that her father should bring the said amount by taking loan from Self Help Group. However, on her failure to meet the said demand, her husband in order to kill the applicant administered poison to her by mixing the same with rice. As a result, the applicant vomited and was subsequently taken to hospital by the

respondents and their neighbours. After some days of the said incident, the respondent Musstt. Jahera Khatun again administered poison with rice which the applicant refused to consume.

4. Thereafter, on 8-7-2018, the respondents beat the applicant and drove her out of the matrimonial house along with her children. At that time she was carrying seven months pregnancy and she took shelter in the house of her father. However, after some days, the respondents amicably settled the matter and took her to their house. However, as the respondents did not get Rs.1,00,000/-, as demanded by them, they drove the applicant and her two children out of the matrimonial house on 20-2-2019. Since that day, the applicant has been residing in the house of her father. The applicant has no means of livelihood and she has been facing severe hardship along with her two children while residing in the house of her father. The respondent No.1 neither inquired about her and her children nor he paid any maintenance to them. According to the applicant, her husband is a healthy male having landed property as well as business of clothes wherefrom he earns Rs.30,000/- to Rs.40,000/- per month. Therefore, she has prayed for reliefs as aforementioned.

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

6. 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 Rs.3000/-, per month, as rent under section 19 of the Act?
- iii. Whether the applicant is entitled for monetary relief of maintenance at the rate of Rs.6000/- for her and Rs.2000/- each for her two children, per month, under section 20 of the Act?

- iv. Whether the applicant is entitled for relief of compensation of Rs. 2,00,000/- 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?

7. For convenience, all the points for determination are taken up together for discussion. In support of her application, the first party has submitted written evidence on affidavit of her own as PW-1. In her evidence she reiterated her statements made by her in her application. According to the applicant, she has been residing in the house of her father along with her two children namely Md. Shoriful Islam and Musstt. Maria Bibi. It may be mentioned here that at the time of filing the application she was carrying five months pregnancy. She has no source of income of her own. The respondents never inquired about her and her minor children. It is also clear from her evidence that the respondent no.1 has not paid any maintenance to the applicant or her minor children as, primarily, it is the duty of the husband and father to provide for his wife and children.

8. In view of willful neglect of the respondents to contest the application, the evidence of the PW i.e. applicant remained intact and unchallenged. Refusal to maintain one's own wife is a form of a domestic violence. The fact that the applicant was forced to reside in her father's house along with her minor children makes it clear that there has not been any attempt on the part of the respondent no.1 to bring her back to the matrimonial house. The fact that the applicant was driven out of the matrimonial house while she was carrying five months pregnancy is an example of extreme form of domestic violence.

9. It is also noticed in the domestic incident report received from the Protection Officer, Morigaon that, at page two of the said domestic incident report, against serial number 4, in the table, against the column 'Person who caused domestic violence' it is indicated that all the three respondents caused her mental and physical violence. Therefore, the domestic incident report also corroborates the application. Therefore, it appears that all the respondents caused domestic violence to the applicant.

10. 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.

11. 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, along with her two children, is ample proof of the fact that she was driven out of the matrimonial house by her husband. It appears that her husband has 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.

12. Though the applicant has stated in her evidence that the respondent no.1 i.e. her husband has landed property, business and earns Rs.30000/- to Rs.40000/-, per month, the same appears to be a guess work. No document is also submitted to support the earnings. Moreover, it does not seem probable that her husband with such income would insist on demanding Rs.100000/- from the applicant. 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.

13. For the aforesaid reasons and discussion the points for determination, except the point for determination no.v, are answered in favour of the first party, 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.

14. Accordingly, it is ordered as follows:

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

ii. The respondent no.1 Md. Majibur Rahman is also directed, so far as reliefs under sections 19 and 20 of the Act is concerned, to pay a consolidated sum of Rupees 1000/-(Rupees one thousand), per month, to the applicant for her maintenance. He is also directed to pay Rs.500/- to each of the two children, per month, for their maintenance w.e.f. the date of this order.

iii. The respondents are also directed, under section 22 of the Act, to pay a compensation of Rupees 6000/-(Rupees six thousand), at the rate of Rs.2000/- each, to the applicant for the domestic violence caused to her.

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

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

17. This final order passed ex parte and pronounced in open court and given under my hand and seal on this 10th 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 Kamala Khatun

(F) DEFENCE WITNESSES:

None

(G) COURT WITNESSES:

None

Chief Judicial Magistrate, Morigaon