

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

CR (DV) Case No.180/2019

**Musstt Jubeda Khatun
W/O-Md. Ikbal Hussain
D/O-Md. Abdul Jabbar
Vill-Mikirgaon
P.S-Mikirbheta
District-Morigaon, Assam**

.....Applicant

Vs.

- 1. Md. Ikbal Hussain,
S/O-Md. Jiaruddin,**
- 2. Md. Jiaruddin
S/O- Not known,**
- 3. Musstt. Sudeja Begum
W/O- Jiaruddin
All are residents of Vill- Sarupathar
Sahinpur, P.S-Kampur,
District-Nagaon, Assam**

.....Respondents

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

For the applicant: Md. A. Hannan, Smti. M. Rajbongshi, Advocates

For the respondents: Sri M. Mudoj, Advocate

Application u/s 12 of PWDV Act, 2005 filed on: 17-5-2019
Evidence recorded on: 2-9-2019
Argument heard on: 27-9-2019
Final order delivered on: 11-10-2019

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) alternative residence or house rent at the rate of Rs.8000/- per month under section 19 of the Act, (iii) monetary relief of maintenance at the rate of Rs.10000/-, for the applicant, per

month, under section 20 of the Act, (iv) compensation of Rs.500000/- under section 22 of the Act and (v) Rs.10000/- 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 obtained time on two occasions for filing written statement. Subsequently, on failure of the aforesaid three respondents to appear or to submit written statement before the court, the case proceeded ex-parte against them vide order dated 25-7-2019.

3. In her application, the applicant has stated that around eight months prior to filing of the application, her marriage was solemnized as per Islamic rites with the respondent no.1 Md. Iqbal Hussain. Though she spent two months peacefully after the marriage; however, soon thereafter, the respondents in connection with demand of Rs.1,00,000/-, one motorcycle and other dowry articles, subjected her to various physical and mental harassment. When such harassment became intolerable, her father borrowed Rs.30,000/- from "Bandhan Got" and paid the said amount to the respondents. Even after payment of the said amount, the respondents again demanded Rs.1,00,000/- as well as other articles and in connection with such demand deprived the applicant of food, forced her to stay out of the house, beat her by tying her hands and feet and made the parents of the applicant to hear the sound of such beating. The respondents also threatened that if the demanded articles and money are not given, they would kill the applicant and solemnize marriage of Md. Iqbal Hussain with other girl.

4. When such harassment committed by the respondents became unbearable, the parents of the applicant again bought dowry articles of Rs.20,000/- and gave those articles to the respondents. Thereafter, on 23-3-2019, the respondents subjected the applicant to various physical and mental harassment and took her to the house of her parents and left her there. After leaving her at the house of her parents, the respondents, while returning, told the parents of the applicant that they would take the applicant back only when the dowry money and motorcycle are given by her parents, otherwise, they would solemnize marriage of Md. Iqbal Hussain with other girl. Since then, the respondents have not inquired about the applicant. Even if the family members of

the applicant informs the respondents that the applicant would be taken to the house of the respondents, the respondents threatened to kill her if she returns without the demanded articles and money. At the time of filing of the application, the respondent No.1 Md. Ikbal Hussain already married another girl and was leading conjugal life with her. At the time of filing of the application, the applicant was carrying three months pregnancy. It is also stated by the applicant that she has been taking shelter in the house of her poor parents while carrying pregnancy. The father of the applicant is a poor day labourer; however, the respondents are rich persons having landed property. According to her, the respondent No.1 Md. Ikbal Hussain is a driver and also owns grocery shop and he earns Rs.30,000/- per months.

5. The Domestic Incident Report was not received from the Protection Officer, Morigaon and therefore, the same could not be 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 alternative residence or Rs.8000/-, 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.10000/-, per month, 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.10000/- 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 applicant 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 parents. At present she has been carrying seven months pregnancy. She has no source of income of her own and her father is a poor day labourer. The respondents never inquired about her. It is also clear from her evidence that the respondent no.1 has not paid any maintenance to the applicant, as, primarily, it is the duty of the husband to provide for his wife.

8. In view of willful neglect of the respondents to contest the application, the evidence of the PW-1 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 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 three months pregnancy is an example of extreme form of domestic violence. The second marriage of her husband also indicates that he is not interested to restore the conjugal life with the applicant.

9. 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.

10. 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 parents, 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.

11. Though the applicant has stated in her evidence that the respondent no.1 i.e. her husband has landed property, a grocery shop as well as works as a driver and earns Rs.30000/-, 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.

12. 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.

13. Accordingly, it is ordered as follows:

i. Protection order, under Section 18 of the Act, is passed in favour of the applicant Musstt Jubeda Khatun and the respondents Md. Ikbal Hussain, Md. Jiaruddin and Musstt Sudeja Begum 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. Md. Ikbal Hussain is also directed, so far as reliefs under sections 19 and 20 of the Act are concerned, to pay a consolidated sum of Rupees 1500/-(Rupees one thousand five hundred), per month, for the maintenance of the applicant w.e.f. the date of this order.

iii. All the three respondents are also directed, under section 22 of the Act, to pay a compensation of Rupees 6000/-(Rupees six thousand) to the applicant for the domestic violence caused to her.

14. In terms of section 24 of the Act, send one copy each of this order to the O/C, Mikirbheta police station and to the O/C, Kampur police station of Nagaon, to assist the applicant in the implementation of the order.

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

16. This final order passed ex parte and pronounced in open court and given under my hand and seal on this 11th 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 Jubeda Khatun

(F) DEFENCE WITNESSES:

None

(G) COURT WITNESSES:

None

Chief Judicial Magistrate, Morigaon