

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

CR (DV) Case No.369/2018

Musstt Mofida Khatun
W/O-Md. Mastufa Ali
Vill-Silphukuri
P.S-Mikirbheta
District-Morigaon, Assam

.....Applicant

Vs.

1. Md. Mastufa Ali,
S/o-Md. Jagat Ali,
 2. Md. Jagat Ali
S/o- Unknown,
 3. Md. Musstt. Asma Khatun
W/o- Md. Jagat Ali
 4. Musstt. Minara Khatun
D/o. Md. Jagat Ali
 5. Musstt. Farjin Sultana
D/o- Md. Jagat Ali
- All are residents of Vill- Nagabandha
(Nigam)P.S-Laharighat,
District-Morigaon, Assam

.....Respondents

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

For the applicant: Miss R. Saikia, Md. I. Ahmed & Md. Z. Islam, Advocates

For the respondents: Md. K. Islam, Advocate

Application u/s 12 of PWDV Act, 2005 filed on: 6-10-2018

Evidence recorded on: 18-2-2019

Argument heard on: 18-2-2019

Final order delivered on: 2-3-2019

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 (iii) monetary relief of maintenance at the rate of Rs.8000/-, per month, for the applicant, and Rs.6000/-, per month for the minor daughter of the applicant, under section 20 of the Act, (iv) compensation of Rs.3,00,000/- under section 22 of the Act and (v) Rs.4,000/- as interim maintenance and cost of proceeding under section 23 of the Act from the respondents.

2. On receipt of notice of the application, the respondent No.2, 3 and 4 appeared in court but the other two respondents refused or neglected to appear before the court in spite of receipt of notice of the application. Subsequently; however, on failure of the aforementioned three respondents also to submit written statement on time, the case proceeded ex-parte against them. In other words, the case proceeded ex-parte against all the respondents.

3. In her application, the first party has stated that her marriage with the respondent no.1 i.e. Md. Mastufa Ali was solemnized around three years prior to lodging of the case as per Islamic rites after fixing Mohr amount of Rs.1,00,000/-. At the time of her marriage, dowry articles of Rs.80,000/- were given. After the marriage, though the applicant led her conjugal life in the house of her husband as a dutiful wife; however, her husband, at the instigation of other respondents, who are the family members of her husband, subjected her to physical and mental harassment day and night in connection with demand of dowry, money and other articles. Though she went on tolerating such harassment; however, her husband, at the instigation of the other respondents, in order to solemnize second marriage, increased the harassment on the applicant. In spite of such harassment, she conceived and later gave birth to a daughter. At the time of filing of this application, her daughter was aged about 1½ years and she was named as Musstt. Mehdi Sultana. After the birth of her daughter, the respondents, in connection with demand of money, harassed her for which the applicant brought Rs.60,000/- from her parents and gave the same to her husband to establish a tea shop with the said amount of money. However, the harassment on the applicant increased thereafter also. When she brought the matter to the notice of her father, her father, on 13-9-2018, rescued the applicant with the help of police of Borchala police out post from the clutch of the respondents, provided her medical treatment and healed her. The applicant, after recuperation, started residing in a rented

house and earned her livelihood by day labour. It is further stated that the applicant and her daughter have been facing severe hardship in day to day life. However, her husband, with the money given to him from the parents of the applicant, established a tea shop and led a luxurious life. According to the applicant, her husband is a rich healthy man having landed properties as well business. But the applicant's father is a very poor person. 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 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 Rs.6000/-, per month, for the minor daughter of the applicant, from the respondents under section 20 of the Act?
- iv. Whether the applicant is entitled for relief of compensation of Rs. 3,00,000/- under section 22 of the Act?
- v. Whether the applicant is entitled for relief of Rs. 4000/- 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 first party has adduced written evidence of affidavit of her own as PW-1. In her evidence, she has reiterated the statement made by her in her applicant. 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.

7. In view of willful neglect of the respondents to contest the application, the evidence of the PW remained intact and unchallenged. It, however, is noticed that the applicant has indicated in her application that she was subjected to domestic violence primarily by her husband i.e. the respondent no.1. The allegation against the other respondents is that they instigated such violence. There is no specific allegation against the respondents of committing any overt act as part of domestic violence. In her written evidence on affidavit also the allegation of harassment is made specifically against her husband. Therefore, it appears that only the husband i.e. the respondent No.1 caused domestic violence to the applicant. No sufficient materials against the other respondents have been found to conclude that they also caused domestic violence against the applicant.

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 respondent no.1 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 her husband. It appears that her husband has almost abandoned her. The fact that her husband did not care to appear in court even after receipt of notice goes to show that he is least concerned regarding the present plight of his wife and daughter.

10. Though the applicant has stated in her evidence that the respondent no.1 i.e. her husband has landed property and business the same appears to be a guess work. It is not even indicated what business her husband is in. No document is also submitted to support any 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.

11. 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.

12. Accordingly, it is ordered as follows:

i. Protection order, under Section 18 of the Act, is passed in favour of the applicant Musstt Mofida Khatun and the respondent no.1 Md. Mastufa Ali is: (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 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 and Rs.300/- (Rupees three hundred), per month, to the minor daughter of the applicant, for their maintenance 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 respondent no.1 is also directed, under section 22 of the Act, to pay a compensation of Rupees 5000/- (Rupees five thousand) 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, Mikirbheta police station, Morigaon and to the O/C, Laharighat police station, Morigaon, to assist the applicant in the implementation of the order. The applicant shall take steps.

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

15. This final order passed ex parte and pronounced in open court and given under my hand and seal on this 2nd day of March, 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 Mofida Khatun

(F) DEFENCE WITNESSES:

None

(G) COURT WITNESSES:

None

Chief Judicial Magistrate, Morigaon