

DISTRICT: GOALPARA

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
GOALPARA**

PWDV CASE NO.46/2017

U/S 12 of the Protection of Women from Domestic Violence Act, 2005

Nazira Khatun.....Aggrieved Person.

VS.

Zakir Hussain.....Respondent.

PRESENT: JYOTI RUPA HALOI, AJS

ADVOCATE FOR THE PETITIONER: Moynal Hoque, Learned Advocate.

ADVOCATE FOR THE OPPOSITE PARTY: Taslim-UI-Hoque, Ld. Advocate.

EVIDENCE RECORDED ON: 20.08.2018

ARGUMENT HEARD ON: 22.05.2019

EX-PARTE FINAL ORDER ON: 03.06.2019.

EX-Parte Final Order

1. The instant proceeding has emanated from an application filed under section 12 of the Protection of Women from Domestic Violence Act, 2005, herein after called the "Act" by the aggrieved person against the respondents.
2. The aggrieved person's case as revealed from the materials on record is summarised in brief as follows. The brief facts as revealed from the petition is that the marriage between the aggrieved person and the respondent no. 1 was solemnized on 28.09.2016 as per Muslim Shariat by executing Kabin Nama. After the marriage the aggrieved person went to the house of the respondent no. 1 and started to lead their conjugal life. After one month of their marriage the respondent no. 1 at the instigation of other respondents demanded Rs. 70,000/- from the poor parents of the aggrieved person as Dowry. As the parents of the aggrieved person are very poor, so, she refused to fulfill the demand of the respondents and as such, the respondents started extreme oppression and tyranny and caused physical and mental torture upon the aggrieved person. But, the aggrieved person beard all those tortures and continued her conjugal life. After that one month ago one night at about 11.30 p.m, the respondent no. 1 at the instigation of other respondent assaulted the aggrieved person with bamboo stick and as a result of which the aggrieved person got grievous injuries in various parts of her body.
3. It further appears that the aggrieved person is a house wife and she has no source of income of her own. On the other hand, the respondent no. 1 is a Businessmen by profession. Moreover, he has landed properties and from all this sources, the respondent no. 1 earns Rs. 25/30 thousand per month.
4. The aggrieved person has sought for following reliefs :
 - (1) A protection order U/S 18 prohibiting the respondent from committing any act of Domestic Violence.
 - (2) Residence order U/S 19(1) (f) to pay an amount of Rs. 5,000/- only per month for house rent for staying in a rental house.
 - (3) Order U/S 19(3) of the PWDV Act directing the respondent to execute a bond with or without sureties not to commit any act of Domestic Violence.
 - (4) Order U/S 20 of the PWDV act directing the respondent to pay an amount of Rs. 8,000/- only per month for maintenance of the aggrieved person.

(5) Order U/S 22 of the PWDV act directing the respondent to pay an amount of Rs. 5,00,000/- only to the aggrieved person for physical torture and emotional distress suffered by the aggrieved person for the act of cruelty for a long period of time from the respondent.

5. The respondent denied the contention in the petition filed by the aggrieved person. The respondent denied all the contentions made by the aggrieved person. Denying all contentions he stated that he married the aggrieved person on 28.09.2016 as per Muslim Shariat. He further stated even after the marriage the aggrieved person wanted to live at the house of her parents and also forced the Respondent no.1 to live with her. He further stated that he neither made any dowry demand nor the aggrieved person was subjected to torture in any manner by the respondents during the conjugal life. The respondents have never driven out the aggrieved person from the matrimonial house. When the respondent returned from his work place after a long interval in the house of the aggrieved person, the aggrieved person and her family members forcefully snatched away all his money and kept all his earning under their custody. So, the question of demanding dowry of Rs. 70,000/- only and causing physical and mental tortures upon the aggrieved person does not arise at all. He further stated that the he was a wage labourer of coal mine of Nangle, Meghalaya but, after passing the order of the Hon'ble National Green Tribunal, mining of coal at all coal mines of Meghalaya are closed till date. So, presently, the respondent has no source of income. So, the question of earning an amount of Rs. 25-30 thousand per month does not arise.
6. This case proceeded ex-parte vide order dated 30.11.2018 as the Respondent failed to appear before this court without any step.
7. The aggrieved side has adduced her evidence as PW1 in support of its case.
8. **POINTS FOR DETERMINATION:**
 - (a) Whether the respondents subjected the aggrieved petitioner to domestic violence?
 - (b) Whether the aggrieved person is entitled to the relief prayed for?

DISCUSSION, DECISION AND REASON THEREOF:

9. Evidences for the aggrieved person:

PW1 Nazira Khatun deposed that the marriage between her and the respondent no. 1 was solemnized on 28.09.2016 as per Muslim Shariat by executing Kabin Nama. After the marriage she went to the house of the respondent no. 1 and started to lead her conjugal life. After one month of their marriage the respondent no. 1 at the instigation of other respondents demanded Rs. 70,000/- from her poor parents as Dowry. As her parents are very poor, so, she refused to fulfill the demand of the respondents and as such, the respondents started extreme oppression and torture upon her. But, she beared all those tortures and continued her conjugal life. Respondent no. 1 beat her with bamboo stick and as a result of which she got grievous injuries in various parts of her body. It is further stated that she is a house wife and she has no source of income of her own. On the other hand, the respondent no. 1 is a Businessmen by profession. Moreover, he has landed properties and from all this sources, the respondent no. 1 earns Rs. 25/30 thousand per month. But, the respondent no. 1 never visited her and has not provided any maintenance to her since the day she has left her matrimonial house.

Domestic Relation is defined u/s 2(f) of the Act as a relationship between two persons who live or have, at any point of time lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

Section 2(s) of the Act defines the shared household as a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and such a household whether owned or tenanted either jointly by the aggrieved person and the respondent or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which respondent is a member, irrespective of whether the

respondent or the aggrieved person has any right, title or interest in the shared household.

Point no. (a) Whether the respondents subjected the aggrieved petitioner to domestic violence?

The aggrieved person in her pleading stated that the respondent committed domestic violence upon her. To substantiate the plea aggrieved person has examined herself as PW1.

PW1 deposed that after the marriage she went to the house of the respondent no. 1 and started to lead her conjugal life. After one month of their marriage the respondent no. 1 at the instigation of other respondents demanded Rs. 70,000/- from her poor parents as Dowry. As her parents are very poor, so, she refused to fulfill the demand of the respondents and as such, the respondents started extreme oppression and torture upon her. But, she beared all those tortures and continued her conjugal life. Respondent no. 1 beat her with stick bamboo stick and as a result of which the she got grievous injuries in various parts of her body.

So, in the present case it has been stated by the aggrieved person that she was subjected to inhuman physical torture in demand of dowry. Thus, she is subjected to domestic violence.

Though the respondent in his written statement stated that he did not make any demand of dowry and he did not cause any torture to her. But he has not supported his contention by leading any evidence.

On perusal of the evidences on record it is seen that by adducing her evidence as PW1 the aggrieved person has duly proved that the respondent inflicted violence upon her. The failure on the part of the respondent to cross examine the PW1 and abstaining to adduce any evidence in defence only fortify the claim of the aggrieved person that she is subjected to domestic violence by the respondent.

Therefore relying on the unrebutted evidence of the aggrieved person, I am of the opinion that the aggrieved person is subjected to domestic violence as defined in the act.

This point is decided in affirmative in favour of the aggrieved person.

10. Point no.2 Whether the aggrieved person is entitled to the relief prayed for?

It is stated that the aggrieved person has no source of income of her own. On the other hand the respondent no.1 is able bodied person and he has income on monthly basis.

Regarding the quantum of monetary relief, I have scrutinised the evidence of the PW. The aggrieved person has not adduced any

documentary proof of the income and property of the respondent no.1. However, the evidence of the aggrieved side has remained un rebutted. There is no embellishment on the evidences on record that the respondent no.1 has income on monthly basis.

- 11.** Therefore, considering the social fabric of the parties, present prices of the essential commodities and keeping in view the responsibilities and liabilities of the respondent and the income of the respondent no.1, I am of the opinion that the respondent no.1 has to make payment of Rs.1,500 (Rupees One Thousand Five Hundred)per month for the aggrieved person u/s 20 (1) (d) of the Act
- 12.** The respondents are hereby prohibited from committing any further acts of the domestic violence upon the aggrieved person.
- 13.** The Respondent no.1 has to pay Rs. 1,000/- only per month for house rent U/S 19(1) (f) for staying in a rental house.
- 14.** With regard to compensation for physical and mental torture the respondent no.1 has to make payment of Rs.35,000 (Rupees Thirty Five Thousand) to the aggrieved person u/s 22 of the Act.

ORDER

- 15.** In result the petition filed by the aggrieved person is allowed ex-parte. In view of the discussion made above and the decisions arrived at, it is held that the aggrieved person is entitled to the reliefs u/s 18,19,20 and 22 of the Protection of Women from Domestic Violence Act,2005.
- 16.** The Respondents are hereby prohibited from committing any further acts of the domestic violence upon the aggrieved person.
- 17.** The Respondent no.1 has to make payment of Rs.1000 (Rupees One thousand) per month towards the aggrieved person as rent allowance from the date of order u/s 19(1) (f) of the Act.
- 18.** The respondent no.1 is directed to make payment of Rs.1,500 (Rupees One Thousand Five Hundred) per month to the aggrieved person u/s 20(1) (d) of the Act.
- 19.** The respondent no.1 is directed to pay compensation of Rs.35,000 (Rupees Thirty Five Thousand) only for causing physical, mental and emotional abuse by the respondent to the aggrieved person u/s 22 of the Act.

- 20.** The reliefs given shall come into force from the date of the order. In the end the petition u/s 12 of the Protection of Women from Domestic Violence Act is allowed.
- 21.** Copy of ex-parte order is to be given to the aggrieved person free of cost and also be sent to the O.C of the concerned Police Station for information and necessary action.
- 22.** Given under the hand and seal of this Court on 3rd day of June, 2019 at Goalpara.

Smt. Jyoti Rupa Haloi
Judicial Magistrate First Class, Goalpara.

APPENDIX

1. **Petitioner Witnesses:** PW1 Nazira Khatun
2. **Opposite Party Witnesses:** None.
3. **Petitioner Exhibits:** None
4. **Opposite Party Exhibits:** None.

Smt. Jyoti Rupa Haloi.
Judicial Magistrate First Class, Goalpara.