

DISTRICT: GOALPARA

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

PWDV CASE NO.170/2017

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

Mellini A.Sangma.....Aggrieved Person.

VS.

Shri Meckline Momin.....Respondent.

PRESENT: JYOTI RUPA HALOI, AJS

ADVOCATE FOR THE PETITIONER: Arun Ch.Ghose, Ld. Advocate.

ADVOCATE FOR THE OPPOSITE PARTY: A.Zaman E.Akram, Ld. Advocate.

EVIDENCE RECORDED ON: 24.09.2018

ARGUMENT HEARD ON: 18.04.2019, 28.05.2019

EX-PARTE FINAL ORDER ON: 04.06.2019.

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 marriage between the aggrieved person and the respondent is solemnized on 23.09.1994 as per Garo customary rites and rituals in social manner. Both of them Garos and they are governed as per Christian Religious customs and rites. The aggrieved person got married to Macline Momin as his second wife that means after the death of his 1st wife who is the elder sister of the aggrieved person. After the marriage the aggrieved person and the respondent lead a happy conjugal life as husband and wife for about 10/12 years and during their wedlock the aggrieved person gave birth to one son and one daughter. They are Maksat Sangma and Sanesilla Sangma respectively. The respondent caused inhuman physical and mental torture upon the aggrieved person and neglected to provide maintenance to aggrieved person. The respondent is a regular service holder in Eastern Frontier Rifles, First Battalion at Salua, Paschim Medinipur, West Bengal and now he is retired. During continuation of his service and during subsistence of the marriage between them, the respondent fell under illicit love affairs with one Sewani Momin. While that illicit love affair was disclosed by aggrieved person, the respondent became ferocious and assaulted aggrieved person. Subsequently, the respondent remarried the said woman and started to live with her as married couple depriving aggrieved person from legitimate benefits and till date Sewani Momin is living with the respondent. In the family pension the name of Sewani Momin has been entered as wife of the respondent. Despite that Sewani Momin is enjoying the family pension depriving the aggrieved person. Since last 03.01.2016 the aggrieved person is living separately from the respondent. But, the respondent has not visited the aggrieved person. The aggrieved person with minor children are living at Rangsapara.
3. It further appears that the aggrieved person has no source of income of her own and she is passing her life with her two minor children in a very panic situation requiring minimum Rs. 20,000/- per month for basic needs of livelihood. On the other hand, the respondent is a regular government

pensioner. He also has landed property with own rented house and from all his sources he earns Rs. 50,000/- per month. The life of the aggrieved person has become miserable without the monetary help of her husband. Therefore, the aggrieved person prays for certain reliefs and those are...

- (1) Protection Order u/s 18 of PWDV Act prohibiting the respondent from committing any act of domestic violence.
- (2) Order u/s 19(3) of PWDV Act directing the respondent to execute a Bond valued at Rs. 1,00,000/- or with surety of like amount.
- (3) Order u/s 20 of PWDV Act directing the respondent to pay @ Rs. 10,000/- for the aggrieved person and @ Rs. 5,000/- to each of her two minor children i.e. totalling Rs. 20,000/- per month as maintenance.
- (4) Order u/s 22 of PWDV Act directing the respondent to pay Rs. 20,0000/- to the aggrieved person for physical and mental torture and emotional distress.
- (5) Order u/s 19(1)(f) of PWDV Act directing the respondent to pay Rs. 5,00,000/- to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared house.

- 4.** The respondent denied the contention in the petition filed by the aggrieved person. The respondent has stated that he is residing permanently at Salua, Mednipur, West Bengal. After the death of his first wife, Ronila Sangma, he came to Bhalukdubi, Goalpara and married the aggrieved person on 23.09.1994. After marriage, he desired to take his second wife the aggrieved person along with him at Salua since he had been serving as L/NK under Eastern Frontier Rifle over there at Salua, West Bengal but, the aggrieved person denied to come along with him and decided to stay permanently at Bhalukdubi, Goalpara. Due to this altercation since the day of marriage, there is no cohabitation between him and the aggrieved person and hence, having no other way, he went for his workplace at Salua without his wife, the aggrieved person. He further stated that the two children namely Makset Sangma and Sanesilla Sangma were not born out of the wedlock of him and the aggrieved person, but, they were born out of the wedlock of him and his first wife Ronila Sangma and now they are aged about 27 years and 23 years respectively. It is further stated that the daughter Sanesilla Sangma already got married to one Lepindro Marak and out of their wedlock two children were born they are Terina Sangma aged about 5 years and Silikame Sangma aged about 3.6 years. As and when he came from Salua to Goalpara, the aggrieved person never met him. Hence, the question of assault to aggrieved person and threat to kill her, does not

arise at all. He further stated that Sewani Momin is an old lady aged about 73 years of age is the wife of his elder brother named Chaleston Momin(since deceased). After death of Chaleston Momin, his wife Sewani Momin has been residing permanently along with her son and daughter at Salua, West Bengal and now, she is getting Family Pension etc, for the service of her deceased husband Chaleston Momin. He again stated that it was about 23 years back i.e. after a few days of marriage, the aggrieved person deserted her husband from her life and since then, she has been living her life freely and separately without following marital obligation etc. He further stated that both his son and daughter have been living happily in their respective village along with their respective family members.

5. This case proceeded ex-parte vide order dated 28.12.2018 as the Respondent failed to appear before this court without any step.
6. The aggrieved side has adduced her evidence as PW1 in support of its case.

7. 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:

8. Evidences for the aggrieved person:

PW1 deposed that her marriage with the respondent was solemnized on 23.09.1994 as per the Garo Customary rites and rituals, after the death of the first wife of the respondent, who was her elder sister. After marriage she and her husband lived together as husband and wife. During their wedlock one son and one daughter were born namely Maksat Sangma and Sanesilla Sangma who are minor and are under her care and custody. She further stated that the respondent married a widow namely Sewani Momin without her consent and started living with her. During the time of subsisting of their marital life, the respondent fell under illicit love affair with Sewani Momin and when she protested against the illicit relationship, the respondent became highly ferocious and started inhuman physical torture on her and threatened to kill her. The respondent very confidentially removed her name from his pension book and entered the name of his

illicit wife. From last 03.01.2016 she along with her two minor child are passing her days in acute hardship and living separately. But, her husband neither visited her nor provided any maintenance to her. She is residing at Rangapara along with her two minor child. On the other hand, the respondent along with his illicit wife are living at Salur, Midnapur, West Bengal enjoying luxurious life with monthly pension. She has further stated that she does not have any source of income of her own. On the other hand, the respondent is a Government pensioner, and he earns Rs. 30,000/- per month. The respondent also has rented house and landed property of agriculture and stock business, etc. From all this sources he is earning Rs. 50,000/- per month. But, he is wilfully neglecting to give her any maintenance. She has stated that her life with two minor child has become miserable without the monetary help of her husband. So, she has prayed for Rs. 20,000/- per month from the respondent as maintenance.

9. 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.

10. 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.

Now, in the present case it is stated by the aggrieved person that her marriage with the respondent is solemnized on 23.09.1994 as per Garo customary rites and rituals and in social manner. The Respondent in his written statement admitted that he married the aggrieved person on 23.09.1994.

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 her marriage with the respondent was solemnized on 23.09.1994 as per the Garo Customary rites and rituals. After marriage she and her husband lived together as husband and wife. During their wedlock one son and one daughter were born namely Maksat Sangma and Sanesilla Sangma who are minor and are under her care and custody. She further stated that the respondent married a widow namely Sewani Momin without her consent and started living with her. During the time of subsisting of their marital life, the respondent fell under illicit love affair with Sewani Momin and when she protested against the illicit relationship, the respondent became highly ferocious and started inhuman physical torture on her and threatened to kill her. The respondent very confidentially removed her name from his pension book and entered the name of his illicit wife. From last 03.01.2016 she along with her two minor child are passing her days in acute hardship and living separately. But, her husband neither visited her nor provided any maintenance to her.

So, in the present case it has been stated by the aggrieved person that she was subjected to inhuman physical torture and the respondent had illicit relation with some other woman and she has not been provided with any maintenance. Thus, she is subjected to domestic violence.

Though the respondent in his written statement stated that the aggrieved was not willing to live with him 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.

11. 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 earning on monthly basis.

Supporting the contention in the pleading PW1 deposed that the respondent is a regular government pensioner. He also has landed property and from all his sources he earns Rs. 50,000/- per month. The life of the aggrieved person has become miserable without the monetary help of her husband.

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 is a retired Govt. Servant and he has pension on monthly basis.

- 12.** 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 his income, I am of the opinion that the respondent has to make payment of Rs.3,000 (Rupees Three Thousand) per month for the aggrieved person u/s 20 (1) (d) of the Act
- 13.** The respondent is hereby prohibited from committing any further acts of the domestic violence upon the aggrieved person.
- 14.** The Respondent has to make payment of Rs.2000 (Rupees Two thousand) per month towards the aggrieved person as rent allowance from the date of order u/s 19(1) (f) of the Act.
- 15.** With regard to compensation for physical and mental torture the respondent no.1 has to make payment of Rs.50, 000 (Rupees Fifty Thousand) to the aggrieved person u/s 22 of the Act.

ORDER

- 16.** 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.
- 17.** The Respondents are hereby prohibited from committing any further acts of the domestic violence upon the aggrieved person.
- 18.** The Respondent no.1 has to make payment of Rs.2000 (Rupees Two thousand) per month towards the aggrieved person as rent allowance from the date of order u/s 19(1) (f) of the Act.

- 19.** The respondent no.1 is directed to make payment of Rs.3, 000 (Rupees Three Thousand) per month to the aggrieved person u/s 20(1) (d) of the Act.
- 20.** The respondent no.1 is directed to pay compensation of Rs.50, 000 (Rupees Fifty Thousand) only for causing physical, mental and emotional abuse by the respondent to the aggrieved person u/s 22 of the Act.
- 21.** 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.
- 22.** 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.
- 23.** Given under the hand and seal of this Court on 04th day of June, 2019 at Goalpara.

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

APPENDIX

1. **Petitioner Witnesses:** PW1 Meckline Momin.
2. **Opposite Party Witnesses:** None.
3. **Petitioner Exhibits:** None
4. **Opposite Party Exhibits:** None.

Smt. Jyoti Rupa Haloi.

Judicial Magistrate First Class, Goalpara.