

DISTRICT: GOALPARA

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

PWDV CASE NO. 1575/2015

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

Rokia KhatunAggrieved Person.

VS.

1. Surut Zaman
2. Hafezuddin
3. Lalbhanu
4. Shahjamal HoqueRespondents.

PRESENT: JYOTI RUPA HALOI, AJS

ADVOCATE FOR THE PETITIONER: Atowar Rahman, Learned Advocate.

ADVOCATE FOR THE OPPOSITE PARTY: Hassan Mahmud Ashraf Uddin
Mollah, Learned Advocate.

EVIDENCE RECORDED ON: 15.12.2017, 26.03.2018, 25.07.2018.

ARGUMENT HEARD ON: 15.05.2019, 23.05.2019

FINAL ORDER ON: 06.06.2019

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 no. 1 was solemnized on 30.04.2015 according to Islamic Shariat by executing Kabin Nama. Their married life went well for about one month. After one month the respondent no. 1 started abusing the aggrieved person and started physical and mental torture upon the aggrieved person. The respondent no. 1 did not show any care, love and affection towards the aggrieved person. The other respondents instigated the respondent no. 1 to commit atrocities to the aggrieved person. The respondent no. 1 along with the other respondents demanded Rs. 2, 00, 000/- from the aggrieved person and her parents. But, as the aggrieved person refused to fulfill the demand therefore, the respondents threatened the aggrieved person to divorce her and finally the respondents jointly caused torture and drove her out from her matrimonial house about five months ago. The aggrieved person and her parents tried for a peaceful and happy conjugal life, but, unfortunately the respondents refused to listen anything and outrightly rejected the request of the aggrieved person and her family members. The respondents insulted and made defamatory statements and proclaimed that they have no place for the aggrieved person in their house and the aggrieved person cannot be allowed to live in their house in any circumstances. The aggrieved person has suffered a lot of humiliation, physical and mental cruelty, agony, emotional distress at the hands of the respondents due to their acts of domestic violence and atrocities committed upon her in the house of the respondents.
- 3.** It is further stated by the aggrieved person that the respondent no. 1 is a Businessman and a contractor and also a cultivator having sufficient landed property and he earns Rs. 30,000/- per month. On the other hand, the aggrieved person has no source of income of her own. So, she has prayed for following reliefs : -

(a) A protection order u/s 18 of the PWDV Act in favour of the aggrieved person directing the respondents from committing any kind of violence and also prohibiting the respondents from making any kind of defamatory statement which causes mental agony to the aggrieved person.

(b) A maintenance order u/s 20(1)(d) of the PWDV Act in favour of the aggrieved person directing the respondent no. 1 to pay Rs. 10,000/- only per month as monthly maintenance.

(c) A residence order u/s 19(1) (f) by way of directing the respondents to provide and pay Rs. 5,000/- only per month for rented accommodation as per the status of the aggrieved person.

(d) An order u/s 22 of the PWDV Act directing the respondents to pay a compensation of Rs. 1,00,000/- only for the injuries, physical and mental cruelty, emotional distress, suffered by the aggrieved person due to the domestic violence committed by the respondents.

4. The respondents entered appearance and filed the written statement contending that there is no cause of action against respondents. It is admitted by the respondents that that the marriage between the respondent no.1 and the aggrieved person was solemnized on 30.04.2015. But, on the next day of their marriage the parents of the aggrieved person took her back because the aggrieved person was suffering from some kind of mensuration problem. The respondent no. 1 is neither a Businessmen nor a cultivator as he has no landed property and he does not earn Rs. 30,000/- per month. Further he has no source of income. He further stated that the aggrieved person stayed at the house of the respondents for only one day i.e. on the day of marriage and thereafter, she never came back to the house of the respondents. The respondents tried to get the aggrieved person back to lead conjugal life with the respondent no. 1 but, she refused to come back. The respondents send some prominent persons of their village such as Abdul Sukur, Zakir Hussain and Musaraf, etc., to the house of the parents of the aggrieved person but, she refused to lead conjugal life with the respondents. The respondents never did any illegal activities to the aggrieved person. The other respondents never instigated the respondent no. 1 rather they always tried to make their conjugal life happy. The respondents never demanded any sort of money from the aggrieved person. He further stated that the parents of the aggrieved

- person and the aggrieved person herself are not interested for continuing the conjugal life with the respondent no. 1. The respondents tried their best to lead conjugal life but, the parents of the aggrieved person unfortunately insulted the respondents and refused listen anything and out rightly rejected their request.
5. The aggrieved side has adduced three witnesses while the respondents adduced two witnesses. I have heard arguments put forward by the learned counsels for both sides.
6. **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:

7. **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.
8. **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 respondents 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.

9. Aggrieved side's evidence:

PW1 Rokia Khatun deposed that respondent Surat Zaman is her husband. Respondent Hafezuddin is her father-in-law and Lal Bhanu is her mother-in-law. Shah Jamal is her brother-in-law. She got married to Surat Zamal in the year of 2015. Their married life went well for five months. After that her in laws demanded Rs. 2,00,000/- as dowry. As she was not able to fulfill the demand, therefore her husband tortured her. The respondents drove her out of the house. She filed a case at Jaleswar Out post. But, the respondents did not come to take her back. Her husband has business. He earns Rs. 2,000/- per month. She has prayed for Rs. 10,000/- as maintenance and Rs. 1,00,000/- as compensation from her husband.

In cross-examination she has deposed that after the marriage she went to the house of her husband. He brother took her back from the house of her husband after one week of the marriage. She does not have any illness. She denied the suggestion that her brother took her back as she has some illness of mensuration. She denied the suggestion that she did not come with the respondents though they went to bring her back. She lodged a case at Jaleswar Police Station as she was beaten by the respondents. That case is still pending at Jaleswar P.S. There are eight members at the family of her husband. The family is a joint one. She denied the suggestion that her husband does not have cloth store. She denied the suggestion that her husband is a Tailor and he does not have a shop. She denied the suggestion that her husband and her father-in-law jointly run the family. She does not remember when she was beaten by her husband. She has not submitted any document of the property of her husband. She denied the suggestion that her husband does not beaten her.

PW2 Haider Ali deposed that the aggrieved person and the respondent no. 1 got married about three years ago. Their married life went well for about one and half month. After that the respondent no. 1 demanded Rs. 2,00,000/- from the aggrieved person and they tortured her physically. The aggrieved person lodged the ejahar at the Jaleswar Outpost.

In cross-examination he has deposed that the aggrieved person got married with Surat Zamal in the year of 2015. Their married life went well for six months. On the next day of their marriage the aggrieved person was brought by their family members to their home. He denied the

suggestion that they brought the aggrieved person from the house of her husband and did not allow her to go back. The respondents demanded Rs. 2,00,000/- after 5-6 days of marriage. He has not mentioned what amount of money is earned by the respondent no. 1. One case is pending at Jaleswar Out post. He denied the suggestion that the respondents did not torture the aggrieved person and did not drove her out of the house.

PW3 Anowar Hussain deposed that the aggrieved person and the respondent no. 1 got married about three years ago. Their married life went well for about one and half month. After that the respondent no. 1 demanded Rs. 2,00,000/- from the aggrieved person and they tortured her physically. The aggrieved person lodged the ejahar at the Jaleswar Outpost.

In cross-examination he has deposed that he does not remember the date of marriage of the aggrieved person. He cannot say on which date the aggrieved person was brought from the house of her husband. He cannot say on which date the aggrieved person was demanded money. He heard that the the Respondent no.1 demanded Rs. 2, 00,000/- from the aggrieved person. He cannot say on which date the respondent no. 1 tortured the aggrieved person. The respondent no. 1 works as a Tailor. He has income on monthly basis.

10. Defence side's evidence:

DW1 Surat Jamal deposed that the aggrieved person is his wife. They got married about two years ago. On the night of marriage the aggrieved person was having severe bleeding. She called her mother. Next day she was taken back to their house. His family members Sukur Ali, Musharaf, Jakir Hussain and his father Hafiz Uddin went to bring her back but, she did not come back. The family members of the aggrieved person misbehaved with his parents. He works as a Tailor. He has not tortured the aggrieved person,

In cross-examination he denied the suggestion that he tortured his wife. His wife filed a case against him and that case is pending in another court. He cannot remember on which date his family members went to the house of the aggrieved person. He cannot say for how many days the aggrieved person is at the house of her parents. He denied the suggestion that he earns Rs.30,000 per month. He works at the shop of his father.

DW2 Hafizuddin deposed that about 2½ years ago his son married Rokia. On the very night of marriage Rokia was having the problem of bleeding. When he informed to the parents of the aggrieved person they

took her back. When he went to the house of the aggrieved person to bring her back, then the family members of the aggrieved person misbehaved them. He denied the suggestion that they tortured the aggrieved person by demanding money. Surat Zamal does not have any income.

In cross-examination he has deposed that the marriage was solemnized socially. He is father of Surat Zamal. He denied the suggestion that they have tortured the aggrieved person by demanding money. He denied the suggestion that they have driven out the aggrieved person after torturing her. He does not remember on which date he went to bring back Rukia.

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

From the materials on record it is found that the respondent has admitted that the aggrieved is his wife and he married her on 30.04.2015.

Now, it is important to see whether the evidences on record makes out the allegations of domestic violence against the aggrieved at the hands of the respondents.

PW1 deposed that she got married to Surat Zamal in the year of 2015. Their married life went well for five months. After that her in laws demanded Rs. 2,00,000/- as dowry. As she was not able to fulfill the demand, therefore her husband tortured her. The respondents drove her out of the house. She filed a case at Jaleswar Out post. But, the respondents did not come to take her back.

In cross examination she denied the suggestion that her brother took her back as she has some illness of mensuration. She denied the suggestion that she did not come with the respondents though they went to bring her back.

PW2 deposed that the respondents demanded Rs. 2,00,000/- from the aggrieved person and they tortured her physically.

PW3 deposed that their married life went well for about one and half month. After that the respondent no. 1 demanded Rs. 2, 00,000/- from the aggrieved person and they tortured her physically. The aggrieved person lodged the ejahar at the Jaleswar Outpost.

While being cross examined by the respondent side the PWs remained consistent in their testimony and therefore the respondent side has failed elicit anything worthwhile that could corrode the evidentiary value of the testimonies of the PWs. The PWs have stoutly denied the suggestions made by the respondents.

Though the respondents have put the suggestion that the aggrieved person had to leave the matrimonial home due to her gynaecological disease but it is denied by the aggrieved person and in absence of any substantive medical proof this speculation does not perturb the validity of the testimonies on record.

Now, while perusing the evidence on record of the DWs it is seen that DW1, the respondent no.1 deposed that he and the other respondents did not drive the aggrieved person out of their house. DW1 deposed that the aggrieved person called her mother as she was having the problem of bleeding. Next day she was taken back to their house. His family members Sukur Ali, Musharaf, Jakir Hussain and his father Hafiz Uddin went to bring her back but, she did not come back. The family members of the aggrieved person misbehaved with his parents.

The other DWs has also deposed in the same tune and have denied that they have made any demand of dowry and subjected the aggrieved person to domestic violence. However, it is pertinent to mention here that mere denial on the part of the respondent does not disprove the allegations brought by the aggrieved person.

From the evidence on record it has been perceived that the aggrieved person has filed a case against the respondent no.1 at Jaleswar Out Post for the torture made to her and after filing of the charge sheet that case is pending at the stage of trial in Court.

Though the DWs have deposed in their testimonies that the aggrieved person did not come when they went to bring her back, but this assertion made by the respondent side is not sufficient to rebut the submission made by the aggrieved person that she was subjected to domestic violence by the respondents.

On the other hand from the coherent testimonies of the aggrieved side it is seen that the aggrieved person is able to prove the allegations of domestic violence against the respondents.

Hence the respondents are held liable for domestic violence.

Accordingly, point (a) is decided in favour of the aggrieved person.

Point no. (b) Whether the aggrieved person is entitled to the relief prayed for?

It has been stated by the aggrieved person that the respondent no. 1 is a Businessman and a contractor and also a cultivator having sufficient landed property and he earns Rs. 30,000/- per month.

On the other hand the respondent no.1 denied and stated that he has no such income as mentioned by the aggrieved person.

However, there is nothing on the evidence on record which shows that the Respondent no.1 is not a able bodied person.

Having held such, following reliefs are decided for the aggrieved person.

Relief under Section 18 of the Act: The aggrieved person has sought relief under section 18 of the Act. Accordingly the respondents are hereby prohibited from committing any further acts of the domestic violence upon the aggrieved person.

Relief under Section 19(1)(f) of the Act: As the aggrieved person is in a state of helplessness after being driven out of the house by the respondents, hence, it is directed that the respondent no.1 has to make payment of Rs.1000 per month for the rental accommodation of the aggrieved person.

Relief under Section 22 of the Act: The aggrieved person has prayed for Rs.1,00,000/(One Lacs)- for physical torture and emotional distress suffered by her for the act of domestic violence. However, the aggrieved person has not brought on record any such fact which shows that she was subjected to domestic violence to such an extent that she be granted compensation of Rs.1,00,000. However, considering the standard of living and the also considering the fact that she has been made to prosecute this case and has not been financially supported by her husband she is granted compensation of Rs.40,000(Rupees Forty Thousand) to be paid by the respondent no.1.

Relief under Section 20 of the Act: 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.

ORDER

9. In view of the above discussion and findings, it is hereby ordered that
- (i) Respondents are hereby prohibited from committing any further acts of domestic violence upon the aggrieved person.
 - (ii) 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.
 - (iii) Respondent no.1 has to make payment of Rs.1,500 (One Thousand Five Hundred) per month as maintenance to the aggrieved person payable from the date of this order.
 - (iv) Respondent no.1 is further directed to make payment of Rs.40,000 (Rupees Forty Thousand only) as compensation to the aggrieved person.
10. The reliefs given shall be effective 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.
11. A copy of this final order is to be furnished to the parties to this case and to the officer-in-charge of the Police station within the local limits of whose jurisdiction the parties reside and work, for information and necessary action.

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

APPENDIX

1. **Petitioner Witnesses:** PW1 Rokia Khatun
PW2 Haider Ali
PW3 Anowar Hussain
2. **Opposite Party Witnesses:** DW1 Surat Jamal
DW2 Hafijuddin
3. **Petitioner Exhibits:** None
4. **Opposite Party Exhibits:** None.

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