

Misc (DV) 1/19
Marjina Khatun
vs
Md. Sanidul Haque & Others

IN THE COURT OF JUDICIAL MAGISTRATE 1st CLASS, NALBARI

MISC CASE (DV) No. 1/2019

**u/s 12 of THE PROTECTION OF WOMEN FROM DOMESTIC
VIOLENCE ACT 2005**

MARJINA KHATUN

.....Aggrieved Person

-Vs-

Md. SANIDUL HAQUE

Must. REHENA KHATUN

Md. JURMAL ALI

Must.ASHMANI BEGUM

.....Respondent Person

Present: RUBINA YASMIN, A. J. S.

Advocates appeared:

Mr Abed Ali.....for the aggrieved.

Nonefor the respondent.

Date of argument – 10.06.19

Date of judgment – 24.06.19

FINAL ORDER

1. This instant case has been initiated from an application filed under section 12 of the Protection of Woman from Domestic Violence Act 2005, herein after called as DV Act, by the aggrieved person, Mrs Marjina Khatun against the respondents Sanidul Haque, Rehena Khatun, Jurmal Ali, Ashmani Begum.

2. The case of the aggrieved person in brief is that the aggrieved person got married to respondent Sanidul Haque according to Muslim rites and rituals and out of their wedlock a son is

Judgment delivered on 24/6/19

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born to them. She stated that after their marriage her parents provided her stridhan articles and post 6 months of their marriage all the respondents started torturing her physically and mentally and demanded Rs 40,000/- from her but she could not fulfil his demand as her parents are poor. She further stated that in Aug 2017 respondent no. 1 got married to another girl who is respondent no. 2 and after the marriage all respondents used abusive language and began to assault her in trifling issues and finally on 20.12.18 she was physically attacked by them and was driven out of her matrimonial home. Later her father begged the respondents to keep her with them to which they demanded Rs. 40,000/- and threatened that they would kill the aggrieved person if left without money. Since then she has been living with her parents.

3. Hence she has prayed for

- protection order u/s 18
- Residence order u/s 19
- monetary relief u/s 20 amounting for medical expense and maintenance of her and her son amounting to Rs. 10000 each
- compensation order for Rs. 1000000 u/s 22

1. The respondents did not appear even after receiving summons and hence the case proceeded ex parte.

2. The aggrieved side adduced 3 witnesses.

3. I have heard the arguments put forward by the Learned Counsel for the aggrieved person. No one appeared for the respondents.

Points for Determination

- Whether the respondent subjected the aggrieved person to domestic violence?
- Whether the aggrieved woman is entitled to the reliefs as prayed for?

Evidence on Record

1. Notwithstanding the fact that the respondent did not appear for adducing evidence the burden to prove the case lies upon the aggrieved person. From the materials placed before me it is seen that the aggrieved person has lived as husband and wife with the respondent and also a son was born out of their wedlock. As respondents did not appear to contest the case hence it is deemed that they have accepted the averment of the aggrieved person. Thus it is clear that both had a domestic relationship and lived in a shared household.

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2. Now let me analyse if the evidence on record makes out the allegations of domestic violence against the aggrieved by the respondent.

3. In her evidence, the aggrieved as PW 1 reiterated the allegations made by her in the application under section 12 of DV Act. PW 2 and Pw 3 also corroborated the same as Pw 1. Moreover, the respondent side did not contest the case and has not even bothered to adduce evidence on his behalf.

4. Thus the evidence on record gives a clear picture that the respondent indeed subject the aggrieved to domestic violence. There is nothing to disbelieve the credibility of the aggrieved's evidence. Thus the aggrieved side has been able to establish the domestic violence committed upon her by the respondents.

Thus the point no. 1 is decided in favor of the aggrieved person.

5. The aggrieved person has sought relief u/s 18, 19, 20, 20(3), 22 and 23

6. Accordingly in view of sec 18 the respondents are hereby restrained from committing any further acts of domestic violence upon the aggrieved person.

7. Coming to the relief u/s 19 the aggrieved stated that she has been staying with her son in her parent's house as she was driven out of her matrimonial home. Therefore, the respondents are under the obligation to find an appropriate place for the aggrieved person and her child to live in. Hence the respondent no.1 is directed to secure an alternate residence for the aggrieved and his son Makibul Haque or pay Rs. 1500/- as rent allowance towards the aggrieved and the son. The respondents are further restrained from alienating any property of the aggrieved person remaining in the house of the respondents.

8. Aggrieved person has also prayed for monetary relief u/s 20 of the Act claiming Rs 4lacs for loss of earning, mental peace and happiness and medical expenses for her and child and loss for physical and mental injury. Nothing in the record suggests that she has lost her earning. However as she had suffered a lot of pain in taking care of her son alone and that she was subjected to torture therefore, prayer for monetary relief is allowed. The respondents are directed to pay Rs. 5000/- as monetary relief.

9. The aggrieved party has also prayed for maintenance of Rs 10,000/- for the her and rs 5000/- for her son. He stated that respondent no. 1 earns rs 45,000/- form all sources. As in this case the aggrieved party is unable to maintain herself and the respondent being an able bodied person he is under obligation to maintain his wife and his son. As the respondent did not contest the case therefore the amount mentioned by aggrieved person is considered the final. Therefore the respondent no. 1 is directed to pay maintenance of Rs. 3000/ each per month for aggrieved and her son.

10. Lastly, the aggrieved has also prayed for compensation of Rs. 20,000,00. However the

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aggrieved person has not brought on record any such fact which shows that she was subjected to domestic violence of such kind that she should be granted compensation of Rs. 20,000,00/- However considering the fact that she has been made to prosecute the case and has not been financially supported by respondent no. 1, she is granted compensation of Rs. 10,000/- to be paid by the respondent no. 1. The same shall be paid in installments of Rs. 2000/- if aggrieved agrees the same.

Order

11. In view of the discussion made above following are the findings made by this court:

- Respondents are prohibited from committing any further acts of domestic violence upon the aggrieved
 - Respondent no.1 is directed to secure an alternate residence for the aggrieved and his son Makibul Haque or pay Rs. 1500/- as rent allowance towards the aggrieved and the son. Respondents are restrained from alienating any property of the aggrieved person remaining in the house of the respondents.
 - The respondents are directed to pay Rs. 5000/- as monetary relief to the aggrieved person for having suffered pain and for medical expenses.
 - Respondent no. 1 is directed to pay maintenance of Rs. 3000/ each per month for aggrieved and her son.
 - Respondents are directed to pay the compensation of Rs. 10,000/- to the aggrieved. The same shall be paid in installments of Rs. 2000/- per month if aggrieved agrees the same.
1. Let a copy of this judgment be furnished to the parties forthwith and to the officer in charge of the Police station within the local limits of whose jurisdiction the parties reside or work as well as to the Protection Officer for their information and necessary action.
 2. This Judgment is pronounced before the Open court and Given under my hand and seal of this Court on this 24th day of June 2019

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Rubina Yasmin
JMFC Nalbari

Appendix

Aggrieved Person's witness

PW 1 – Marjina Khatun

PW 2 – Basiruddin

PW 3 – Pasan Ali

Respondents' Witness

None

Aggrieved Person's Exhibits

Nil

Respondent's Exhibits

Nil

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Rubina Yasmin
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