
IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BAKSA

C.R. Case No. 29 of 2022

Under Section 12 of Protection of Women from Domestic
Violence Act, 2005

Maina Khatun

.....Aggrieved party

Vs.

Afzal Hussain Khan

.....Respondent

Present: Pragyashree Chetia, AJS.
Judicial Magistrate First Class, Baksa

Evidence filed on : 26.05.2022

Arguments heard on : 26.05.2022

Ex-parte final order delivered on : 08.06.2022

Appearing for the First Party : Smt. Ritamoni Das

Appearing for the Second Party : None

EX PARTE FINAL ORDER

The aggrieved party Smt. Maina Khatun filed a petition under Section 12 Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act') seeking protection order u/S 18, residence order u/s 19, monthly maintenance order u/S 20, compensation order u/S 22 as well as interim maintenance order u/S 23 of the Act from the respondent Sri Afzal Hussain Khan.

BRIEF FACTS

- 1. Aggrieved party's case in brief-** The case of the first party in brief is that the aggrieved party got married to the respondent through Islamic rituals around 12 years ago and they started cohabiting together. On 25.08.2015 one son namely Sahin Khan and on 28.12.2017 one daughter were born to them. After some days of the marriage, the second party started physically harassing her and also demanded dowry from her as she could not bring any stridhan articles to their house at the time of marriage. They also verbally abused her that she was illiterate. However, the aggrieved party tolerated for the sake of her marriage. The respondent used to consume liquor and beat her up. He also used to put a machete on her throat and threatened to kill her. Unable to bear the torture, she went to her father's house but the respondent promised not to torture her anymore and brought her back to his house. On 28.12.2021, the

respondent pulled her hair, hit her and pressed her throat in the Chalikanda bazaar chowk on trivial matter. At that time some people saved her and she fled with her children to her father's house. It is also alleged by the aggrieved party that on 30.01.2022, the respondent eloped with her sister Fazila Khatun and she learnt that he married her and were staying at Rangia. On 16.02.2022, at about 6 P.M. the respondent was taking certain household items like cylinder, gas stove, home theatre, T.V. from his house to the rented house in Rangia. When the aggrieved party tried to prevent it, he kicked on her stomach and pulled her hair and also hit her with the home theatre box. It is submitted by the aggrieved party that the respondent has not made any contacts to her or their daughter and has not provided them with any maintenance to them. It is also alleged that the respondent is working in Guwakuchi LP School as a Head teacher and gets a monthly salary of Rs. 50,000/- and also has eight rented shops in Chalikanda chowk and his father has a pharmacy in his name and earns around Rs. 1,00,000/- from all sources. Hence, the aggrieved party prays for the aforementioned reliefs.

- 2.** Thereafter, notice was issued to the respondent but he failed to tender his appearance, therefore, the case proceeded ex parte against him.

3. Thereafter, aggrieved party adduced evidence in affidavit of two witnesses including herself in support of her case.
4. I have heard the arguments advanced by the learned counsel of the aggrieved party.

POINTS FOR DETERMINATION

5. Upon perusal of the case record and considering the grounds of dispute, the following points for determination have been framed:
 - 1) Whether the aggrieved party and the respondent were in a domestic relationship?
 - 2) Whether the respondent subjected the aggrieved party to acts of domestic violence?
 - 3) Whether the aggrieved party is entitled to the reliefs as claimed for?

APPRECIATION OF EVIDENCE AND DECISION

Point No. 1- Whether the aggrieved party and the respondent were in a domestic relationship?

- 6.** The aggrieved person examined herself as P.W.1. She deposed that she married the respondent around twelve years ago according to Islamic rites and rituals and both of them started living as husband and wife. On 25.08.2015 one son namely Sahin Khan and on 28.12.2017 one daughter, namely Anjuma Khatun were born to them. PW.2 who is the brother of PW1 also corroborated the statement of PW.1.

- 7.** Section 2(f) of the PWDV Act defines 'domestic relationship' 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.' In the present case, it can be seen from the evidences that the aggrieved party was married to the respondent and had been living along with respondent and as a culmination of their marriage two children were born to them. Therefore, this point is determined in favour of the

aggrieved person by holding that the aggrieved person and respondent were in a domestic relationship.

Point No. 2- Whether the respondent subjected the aggrieved party to acts of domestic violence?

8. The aggrieved party in her pleadings stated that the respondent committed domestic violence on her. Both she and PW.2 stated during their examination that after some days of the marriage, the respondent started physically harassing the aggrieved party and also demanded dowry from her as she could not bring any stridhan to their house at the time of marriage. The respondent and his family members also verbally abused her that she was illiterate. However, the aggrieved party tolerated for the sake of her marriage. It is further stated by PW.1 and PW.2 that the respondent used to consume liquor and beat her up. He also used to put a machete on her throat and threatened to kill her. When she was not able to bear the torture, she went to her father's house but the respondent promised not to torture her anymore and brought her back to his house. However, again on 28.12.2021, the respondent pulled her hair, hit her and pressed her throat in the Chalikanda bazaar

chowk on trivial matter. At that time some people saved her and she fled with her children to her father's house.

9. It is also alleged by the witnesses that on 30.01.2022, the respondent eloped with the aggrieved party's sister Fazila Khatun and they learnt that he married her and were staying at Rangia. On 16.02.2022, at about 6 P.M. the respondent was taking certain household items like cylinder, gas stove, home theatre, T.V. from his house to the rented house in Rangia. When the aggrieved party tried to prevent it, he kicked on her stomach and pulled her hair and also hit her with the home theatre box.

10. On perusal of the evidence of the aggrieved party, it is found that the respondent subjected the aggrieved party to 'physical and mental abuse' by physically harassing her in her matrimonial home and in the Chalikanda bazaar chow on various occasions. The respondent also subjected her to further 'mental abuse' by eloping with the sister of the aggrieved party and getting married to her as it is unbearable for a woman to know that her husband is staying and having relation with another woman. It is all the more unfortunate that the other woman is her own sister. It is also seen from the evidence of the aggrieved party that the

respondent subjected her to 'economic abuse' as well as he stopped contacting her and providing maintenance to her and her children. He also took away the household articles of her matrimonial house where she was staying and took them to the rented house in Rangia.

11. Moreover, during the argument, it has come to light that the respondent chased the aggrieved party from her matrimonial house and brought her sister to the matrimonial house. The respondent did not appear before the court to counter the allegations of the aggrieved party. In absence of any denial from the respondent, the aggrieved party by adducing the evidence of both the witnesses has duly proved her case of domestic violence by the respondent which remained unrebutted. Hence, in view of the above discussion, this point is decided in affirmative in favour of the aggrieved party.

Point No. 3- Whether the aggrieved party is entitled to the reliefs as claimed for?

12. Now, the aggrieved party has sought the following reliefs:

- i. Protection order u/S 18 of the Act
- ii. Residence order u/S 19 of the Act

iii. Monetary relief u/S 20 of the Act

iv. Compensation order u/S 22 of the Act

v. Interim Maintenance u/S 23 of the Act

13. i. Protection Order- From the evidence, it has become crystal clear that the respondent subjected the aggrieved party to domestic violence after their marriage held twelve years ago. He physically, mentally and economically abused her in the span of twelve years of their marriage. After eloping with the sister of the aggrieved party he came to his house and again physically assaulted her while taking away the household articles. As it is already mentioned in foregoing paragraphs that the respondent chased the aggrieved party out of the matrimonial home and brought his sister to the house. Hence, it is becomes very clear that there is every likelihood that the respondent might commit harassment and torture to the aggrieved party in the future. Therefore, the respondent is prohibited from committing, aiding or abetting any kind of domestic violence such as physical abuse, mental, economic, verbal or emotional, sexual abuse on the aggrieved party.

14. ii. Residence order- Considering the above discussion, the respondent is also directed to provide a separate rented house of the same level as enjoyed by her in the shared household, to the aggrieved party and her children and to bear the rent of the same.

15. iii. Monetary relief - It is claimed the aggrieved party that the respondent is a head teacher in Guwakuchi L.P. School around Rs. 50,000/- per month as his salary. It is also claimed by the aggrieved party that the respondent has eight shops in Chalikanda Chowk from which he earns rent and his father also has a pharmacy in his name and as such the respondent has a monthly income of Rs. 1 lakh per month. The aggrieved party has also exhibited a salary slip of the respondent for the month of January, 2022 as Exhibit A wherein the net and gross salary of the respondent is shown to be Rs. 37, 438/- and Rs. 41, 721/- respectively. The aggrieved party is a housewife and does not have any income. She has two children to look after and is having to depend upon her parents for survival. The respondent has not contacted her and has not paid any maintenance to her.

16. It is incumbent upon every able bodied person to maintain his legally married wife and his children and to

provide them with basic necessities for sustaining a dignified life. Hence, it is found that the respondent has sufficient income having regard to the fact that he is a head teacher in Guwakuchi LP School.

17. Therefore, in view of the growing market prices of essential and basic goods, medical expenses of the aggrieved party and her children, education expenses of the children, it is my considered opinion that the aggrieved party and her children are entitled to maintenance amount of Rs. 11,000/- from the respondent.

18. iv. Compensation order- In addition, the respondent is also directed to pay a one time compensation amount of Rs. 50,000/- to the aggrieved party for subjecting her to mental and physical torture and emotional distress caused by his acts of domestic violence.

19. v. Interim maintenance order- The proceeding has already reached its final stage, hence, this prayer is rejected.

ORDER

Hence, considering the above discussion, the petition of the aggrieved party Maina Khatun is allowed and the following reliefs are allowed to her:

i. The respondent is prohibited from committing, aiding or abetting any acts of domestic violence upon the aggrieved party.

ii. Further, the respondent is directed to provide a separate rented house of the same level as enjoyed by her in the shared household, to the aggrieved party and her children and to bear the rent of the same.

iii. The respondent is also directed to pay a monthly maintenance allowance of Rs. 11,000/- (Rupees eleven thousand) only to the aggrieved party and her children from the date of filing of the application.

iv. Finally, the respondent is directed to pay an amount of Rs. 50,000/-(Rupees fifteen thousand) only as one time compensation and damages to the aggrieved party for the mental torture and emotional stress caused to her for his acts within six months of the date of this order.

The respondent shall comply with this order within two months of the date of this order.

Furnish a copy of the ex parte final order to the aggrieved party free of cost and also forward the copies to

the respondent, Officer in Charge of the respective police stations of both the parties and to the Protection Officer, Baksa for implementation of this order.

The ex parte final order is delivered and pronounced by me today in the open court given under my hand and seal of this Court on this 08th day of June, 2022.

The entire judgment is typed by me.

Pragyashree Chetia
JMFC, Baksa, Mushalpur.

APPENDIX

PROSECUTION WITNESSES:

1. P.W.1: Maina Khatun
2. P.W.2: Rahim Ali

DEFENCE WITNESSES:

None

PROSECUTION EXHIBITS:

1. Exhibit A: Salary slip of respondent

DEFENCE EXHIBITS:

None

MATERIAL EXHIBITS:

None

Pragyashree Chetia
JMFC, Baksa, Mushalpur