

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE :::::::::: BONGAIGAON.

CR CASE NO.59/2012.

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

Musstt. Elima Begum.

.....Complainant.

-Vs-

1. Md. Siddique Ali

2. Md. Majibor SK

3. Md. Aktar Ali

4. Md. Afjar Ali

.....Respondents.

Present: Sri A. U. Ahmed, AJS
Chief Judicial Magistrate,
Bongaigaon.

Advocates appeared:

For the Complainant: ***Mr. Hanif Ali.***

For the respondent No.1: ***Miss Monalisa Roy***

For the rest respondents: ***Mr. Pankaj Baidya.***

Argument heard on: ***26.04.2013.***

Judgment delivered on: ***30.04.2013.***

J U D G M E N T

1. The case of the complainant in brief is that she is the married wife of the respondent No.1 Md. Siddique Ali. From the wedlock a female child named Sirina Begum was born to them who is at present 2 years old. The respondent No.1 with advice of the rest respondent pressurized her to bring a sum of Rs 10, 000/- along with

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furnitures from her parents' house. Respondent No.1 did not provide sufficient food, clothes and medicine to her for herself and her daughter. The respondents tortured her mentally and physically for non-fulfillment of demand of as stated above. About 2 years and one month back the respondents drove her along with her child from her matrimonial home. Hence, she has come up with an application U/S.12 of the Protection of Women from Domestic Violence Act for obtaining reliefs laid down U/Ss.18, 19, 20 & 22. Hence, the prosecution case has come up.

2. On receipt of notice, the respondent No1 appeared before the Court and contested the case by filing written statement denying all allegations made therein with a legal plea that there is no cause of action for filing of this case. Similarly the rest respondents appeared and contested the case by filing joint written statement denying all allegations with a legal plea that there is no cause of action.

3. The case of the respondents as appeared in brief is that the complainant is the married wife of one Samsul Haque and from said husband she has a female child named Shamina Begum

who is at present 6 years old. The complaint has also a son from her earlier husband named Shahabuddin Sheikh. During her marriage

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with Samsul Haque she was in Barpeta for few months and she came to Mongaldoi where she was for 4 months. There after the complainant came back with pregnancy. The complainant is not wife of the respondent No.1. The respondent No.1 was not with the complainant as husband and wife and from their wedlock no child was born to them. The respondents have/had no domestic relation with the complainant. The complainant is not entitled to get any relief from the respondents under the provisions of DV Act 2005. Hence the case is liable to be dismissed.

4. During the trial, complainant has examined as many as 3(two) witnesses including herself in support of her case. On the other hand, respondent No.1 only has examined himself in support of his case. The rest respondents have examined none in support of their case.

5. : **POINT FOR DETERMINATION** :

(a) Whether the complainant was /is subjected to domestic violence caused by the respondents?

(b) Whether the complainant is entitled to get the benefits laid down under section 18 of the Act?

- (c) Whether the complainant is entitled to get benefits laid under section 19 of the Act?*
- (d) Whether the complainant is entitled to get benefits laid down section 20 of the Act from the Respondents?*
- (e) Whether the complainant is entitled to get benefits laid down under section 22 of the Act from the respondents?*

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6. : **DECISION AND REASONS THEREOF** :

I have very carefully gone through the marathon threadbare arguments duly advanced by the Ld. Advocate of the both sides as well as evidence on record. For convenient of discussion I would like to discuss point wise.

Point (a)

7. The respondents have stated in their written statement that the complainant is wife of one Samsul Haque. They also have denied all allegations made in the application filed under section 12 of DV Act. The complainant marked as PW1 has stated in her testimony that about 3 years back there was a love affair between her and the respondent No.1 and during love affair sexual intercourse between them took place as a she became pregnant. While after 4 months pregnancy, the respondent No.1 refused to knot nuptial tie with her, she brought a criminal case. There after the respondent No.1 got marriage contract with her performed by a Maulabi and led conjugal life with her for six months. There after

the respondent No.1 started pressurizing her to bring a sum of Rs. 10000/- from her parents' house and for non-fulfillment of the demand the respondent No.1 left the house. PW2 is Md Askar Ali who is a neighbourer of the complainant. He has stated in his testimony that he saw the

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respondent Md. Siddique Ali sometimes coming to house of the complainant and staying there in the night. He has stated that he heard from the people that the complainant was got married to the respondent Siddique Ali. PW3 is Md. Anchar Ali who has stated in his testimony that he saw the respondent Siddique Ali sometimes coming to the house of the complainant. His evidence is silent regarding marriage between the complainant and the respondent No.1. It is revealed from Cross-examination of PW2 and PW3 that the respondent No.1 is the cousin of the husband of the complainant and that during time of occurrence her husband was not in the house. PW1 has admitted in her cross-examination her husband Samsul Haque left her and now he became untraced. The written statements filed by the respondents are silent about the baby named Sirina who is stated to be daughter of the respondent No.1. DW1 is the respondent No.1 Md. Siddique Ali whose evidence is silent that from somewhere the complainant came back under pregnant. The evidence of PW2 that he saw the respondent Siddique Ali coming to

the house of the complainant and spending night there is found to be reliable. The evidence of PW3 also shows that he saw the respondent Siddique Ali coming to the house of the complainant.

It is evident that the complainant became pregnant of the child named Sirina Begum while her husband Samsul Haque

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was away from her. The written statements also show that the aforesaid child was not from Samsul Haque. Now let us see whether the relation between the complainant and respondents falls in purview of domestic relation as defined under section 2(f) of the DV Act. "Domestic relationship" means 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; Can the relationship between the complainant and the respondent Siddique Ali be termed as a relationship in the nature of marriage? There is no strict proof that a marriage between the complainant and the respondent Siddique Ali was solemnized. I feel hesitation to discard the evidence of the complainant that the respondent Siddique Ali share her bed in her house as a husband as a result they were blessed with child named Sirina Begum. The concept and meaning of "a relationship in nature of the marriage" has been discussed in the Judgement of *D. Velusamy v. D. Patchaimmal* reported in "MANU/SC/0872?2010" and relevant paras are reproduced below:-

“ 33. In our opinion a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married:

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

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(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

(see 'Common Law Marriage' in Wikipedia on Google)

In our opinion a 'relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a 'shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'.

34. In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'

35. No doubt the view we are taking would exclude many women who have had a live in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression 'relationship in the nature of marriage' and not 'live in relationship'. The Court in the grab of interpretation cannot change the language of the statute.

36. In feudal society sexual relationship between man and woman outside marriage was totally taboo and regarded with disgust and horror, as depicted in Leo Tolstoy's novel 'Anna Karenina', Gustave Flaubert's novel 'Madame Bovary' and the novels of the great Bengali writer Sharat Chandra Chattopadhyaya.

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37. However, Indian society is changing, and this change has been reflected and recognized by Parliament by enacting The Protection of Women from Domestic Violence Act, 2005.”

It has been submitted by the Ld. Lawyer appearing on behalf of the respondent No 1 that once a woman is found to be wife of one person and during subsistence of the marriage, a couple cannot be married to other person reliance upon the decision made in the Judgment-Ratneswar Saikia Vrs Smt Kalpana Saikia reported in “2011(5) GLJ 734”. In the instant case the complainant and the respondent No are governed by Mahmmedan Law. The submission in question is applicable if the parties are governed by Hindu Law. Considering all aspects I find no force in the submission.

I feel hesitation to act upon ExtA as it has not been proved as per the provisions of Evidence Act. It is evident that both the complainant and the respondent Siddique Ali are sufficiently major and for sufficient time they lived as husband and wife. In view of the observations in aforesaid Judgment the relationship between the complainant and the respondent Siddique Ali may be termed as “a relationship in the nature of marriage”. It is also evident that the complainant and the respondent lived together in the household owned by the complainant in a domestic relationship.

The complainant marked as PW1 has stated in her testimony that the respondent pressurized her to bring a sum of Rs 10, 000/ as dowry from her parents' house and while she failed to

fulfill the demand he left the house leaving her there. She also has stated in her testimony that the rest respondents assaulted her on three days. It is also found that domestic violence inflicted towards

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the complainant by only the respondent Siddique Ali. It has been stated in both application filed under section 12 of the DV Act and Domestic Incident Report that the respondents demanded a sum of Rs 10, 000/- from the complainant as dowry. The complainant has stated in her testimony that while she could not fulfill the demand, the respondent No1 left her house leaving her and her daughter there.

Point (b)

8. Considering nature of the case, I am of the opinion that the complainant is entitled to getting some protection orders as laid down under section 18 of the DV Act, 2005.

Point(c)

9. In both Domestic Incident Report and Application of the complainant, reliefs as laid down under section 19 of the DV Act are prayed for to be passed. In my considered opinion in the instant case, any relief as laid down under section 19 of the DV Act does not warrant to be passed.

Point (d)

10. In the Domestic Incident Report and the application of the complainant, monetary relief as laid down under section 20 of the DV Act is prayed for to be passed. There is no evidence on

record showing that at present the complainant is unable to maintain herself

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and her minor daughter Sirina Begum. There is also no evidence on record showing that how much the respondent No.1 earns in a month. It is an admitted fact that the respondent No.1 is not providing any maintenance to the complainant for herself and her aforesaid daughter. There is no evidence showing that the respondent No.1 is unable to earn due to illness or physical weakness. It is also evident that Respondent No.1 is an unmarried young man. In view discussion made above I am of the opinion that the complainant is entitled to getting monthly maintenance from the respondent No.1 for her minor daughter Sirina Begum.

Point (e)

- 11.** It is prayed in the Domestic Incident Report as well as in the application of the complainant that an order be passed directing the respondents to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the to the complainant. Considering nature of the case, I am of the opinion that the complainant is entitled to getting compensation from the respondent No.1.

O R D E R

12. In the result, the respondents are prohibited from-

(a) committing any act of domestic violence;

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(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) causing violence to the dependents, other relatives or any person who give the aggrieved person assistance from domestic violence;

(f) committing any other act as specified in the protection order

The respondent No.1 is hereby directed to pay a sum of Rs. 2000/-(Rupees Two Thousand) to the complainant for the child named Sirina Begum as monthly maintenance till further order with effect from 01-01-2013.

The respondent No.1 Siddique Ali is also directed to pay a sum of Rs. 5000/-(Rupees Five Thousand) as compensation and Rs. 500/-(Rupees Five Hundred) as cost to the complainant. Let a copy of the Judgment be supplied to the

District Social Welfare Officer, Bongaigaon. Let a copy of the Judgment be supplied to the complainant at free of cost. The System Officer, Bongaigaon is asked to up-load the Judgment in the official website. Accordingly this case is disposed of on contest with a cost as stated above.

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13. The Judgment is pronounced and delivered in the open Court on this 30th April, 2013 under my hand and seal of this Court.

(A. U. Ahmed)
**Chief Judicial Magistrate,
BONGAIGAON.**

Dictated & corrected by me.....

(Sri A. U. Ahmed)
**Chief Judicial Magistrate,
BONGAIGAON.**

: APPENDIX :

The Prosecution examined:

- a) **PW1** – Musstt. Elima Begum.
- b) **PW2** – Md. Askar Ali.
- c) **PW3**- Md. Anchar Ali

The Prosecution exhibited: Nil.

The Defence examined:

- a) **DW1** – Md. Siddique Ali.

The Defence exhibited:

- a) **Ext A**-Certificate.

(A. U. Ahmed)
Chief Judicial Magistrate,
BONGAIGAON.
