

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

PRESENT: SYEDA FARIDA AFZAL ZINNAT

CASE NO: 24/2012

AJIRAN KHATUN

AGGRIEVED PERSON

VERSUS

INSAN ALI & OTHERS

RESPONDENTS

***U/S 12 of THE PROTECTION OF WOMEN from DOMESTIC
VIOLENCE ACT, 2005***

FOR THE FIRST PARTY: MR. P.BAIDYA, ADVOCATE

FOR THE SECOND PARTY: MR.G. BISWAS, ADVOCATE

EVIDENCE RECORDED ON: 17/12/12, 2/1/13, 12/2/13, 23/4/13

ARGUMENTS HEARD ON: 8/5/13, 22/5/13, 5/6/13

JUDGMENT DELIVERED ON: 17/6/13

FINAL ORDER

1. Msst. Ajiran Khatun (aggrieved person) filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act') seeking reliefs of protection order under section 18 of the Act, residence orders

under section 19 and monetary relief under section 20 against her husband Insan Ali (respondent No.1), father-in-law Wahab Ali (respondent No. 2), mother-in-law Isatan Nessa (Respondent No.3) and brother-in-law Innus Ali (Respondent No.4) .

2. The applicant narrated inter alia in her application that about 8 years ago she got married to Insan Ali (respondent No. 1) according to Muslim Shariat and after their marriage she started her conjugal life with her in laws in their joint family. At the time of marriage silver and gold ornaments, apparels and furniture were given to her by her guardians and out of the wedlock a male child was born who is about 4 years now. After about 2 years of peaceful cohabitation, the father of the aggrieved person built a house on his own land as per the demand of the respondent No. 1 and three years ago the respondent No. 1 demanded Rs. 10,000/- from the father of the aggrieved person and on refusal he tortured her physically. It is stated in the petition that the respondent No. 1 tortured the aggrieved person physically on several occasions. On 5/9/2009 at about 2 pm the respondent No. 1 again demanded Rs. 10,000/- from her and on refusal, he kept her minor son and threw her out of the house. She alleged that this was done at the instruction of the other respondents. She lodged an ejahar at Dhaligaon P.S and police recovered the child and gave custody of the child to her. The Hon'ble Court of Addl. C.J.M , Bongaigaon awarded Rs. 500/- per month to the aggrieved person and Rs. 400/- per month to the minor child w.e.f 28/7/2010 in Misc Case 13/2009 filed by the aggrieved person but the respondent No. 1 did not pay any maintenance to her and her son. She further stated that the respondent away No. 1 with the aid of the other respondents broke the house upon the land of the aggrieved person's father and took away all the building materials and they also sent the respondent No. 1 to some unknown place in the state of Kerala for avoiding the payment of monthly maintenance to the aggrieved person.

3. Domestic Incident Report was called for in which the Protection Officer has reported that the aggrieved person and her child are not getting any maintenance.
4. Respondent No.1 never appeared in spite of service of notice on his parents and the case proceeded ex parte against him. The Respondents No 2, 3 and 4 filed written statement in which they denied all the allegations of the aggrieved person. According to the respondents No. 2, 3 and 4, the aggrieved person and Respondent No. 1 never stayed with them in their house in the joint family rather they stayed in a house constructed by the father of the aggrieved person in his own land. They also stated that the aggrieved person initiated a criminal case against the respondents u/s 498-A/34 I.P.C in which they were acquitted by the Hon'ble Additional C.J.M, Bongaigaon vide judgment and order dated 9/4/2010. They also stated that Respondent No.2 and 4 are masons and Respondent No.3 is a house wife and the aggrieved person filed this case only to harass them.
5. In view of Section 28 of the Act, Rule 6(5) of the Protection of Women from Domestic Violence Rules, 2006, Section 126(2) and Section 254 (1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C) summons procedure was followed and the parties were directed to adduce evidences in support of their case.
6. The applicant and the respondents adduced the evidences of three witnesses each. I have heard arguments of both sides, perused the case record and considered the evidences adduced by both the sides.
7. As laid down in Rule 6(5) of the Protection of Women from Domestic Violence Rules, 2006, the procedure enumerated for deciding a case under section 125 Cr.P.C is to be followed while deciding an application under Section 12 of the Act and for that reason Section 354 (6) Cr.P.C would be applicable. Therefore the following points are taken up for consideration:

8. A. Whether the applicant is entitled to the relief of Protection order under Section 18 of the Act against the Respondents?

B. Whether the applicant is entitled to the relief of Residence order under Section 19 of the Act against the Respondents?

C. Whether the applicant is entitled to monetary relief under Section 20 of the Act against the Respondents?

9. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

10. All the points are taken up together as they are interrelated. A protection order under section 18 of the Act and Residence Order under Section 19 of the Act can be passed on being satisfied that domestic violence has taken place or is likely to take place. The Magistrate is empowered by the Act, while disposing off an application under Section 12 of the Act, to pass order under Section 20 of the Act. In addition to other reliefs, the Magistrate is empowered by the Act, to pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

11. PW1 (Ajiran Khatun) stated that she started her conjugal life in the joint family of her in laws and she has a son out of the wedlock. According to her Insan Ali, her husband tortured her in demand of Rs. 10,000/- and all of her in laws assaulted her physically and drove her out and kept her son. She lodged ejahar in Dhaligaon P.S and police recovered the child and gave custody to her. She also stated that her husband did not pay any maintenance to her even after order of court

12. PW1 was cross examined at length by the learned counsel for the Respondent. During cross examination PW1 denied having stayed at her sister-in law and uncle-in-law Shorab Ali's house after marriage. She even denied having stayed at the house constructed by her father for her and her husband. She affirmed in her cross examination that she lived in her father-in-law's house from where her in laws drove her out.
13. PW2 (Abbash Ali) stated that his daughter Ajiran got married to Insan Ali about 7/8 years ago and he gave gold and silver ornaments and other necessary things to his daughter in marriage. According to him his daughter stayed in her husband's house for about 5/6 months and after that Insan Ali requested him to buy land and construct a house for him and Ajiran because of the tortures meted out to Ajiran by her in laws. At this he bought land and constructed a house for his daughter and son in law where they lived for about a year. He stated that after that the family members of his son in law started visiting and again started to torture his daughter. He stated that they demanded Rs. 10,000/- from him and when he could not fulfil their demand they kept her 7 month old son and drove her out of the house and since then his daughter is staying in his house. Further he stated that his son in law does not provide any maintenance to his daughter and grandson. During cross examination PW2 stated that his daughter and Insan Ali got married in Basugaon in one Akkash Ali's house and that the respondents were acquitted from the case U/S 498-A/34 I.P.C initiated by his daughter.
14. PW3 (Motleb Ali) stated that after marriage Respondent No. 1 took Ajiran to his joint family and they stayed there for about 2 years with the other respondents. After that Ajiran's father constructed a house for them where they lived together for about 2 years and Ajiran gave birth to a son in that house. In the next two years, according to the PW3, the respondents started torturing Ajiran in demand of dowry and on 5/9/2009 respondent No.1 drove

Ajiran out of the house and kept the baby with him. Later on police recovered the baby and gave custody to Ajiran. He further stated that Respondent No.1 does not give any maintenance to Ajiran and her son and the respondents have taken away all the materials of the house constructed by the father of Ajiran and she has no place to stay. **During cross examination PW3 stated that after marriage Insan Ali took Ajiran to his sister's house and from there they went to Shorab Ali's house.** He denied the suggestion that Ajiran never stayed in the joint family with the other respondents.

15. The respondents adduced the evidences of three witnesses. DW1 (Md. Wahab Ali) admitted the fact of marriage but he stated that his son Insan Ali never came home after he married Ajiran. According to him after marriage Insan took Ajiran to his sister's house at Bilaspur and from there his brother Shorab Ali took them to his house where they stayed for about six months. After that they started to live at the house constructed by Ajiran's father. He denied ever visiting that house. He further stated that they were acquitted in the case filed by Ajiran u/s 498-A/34 I.P.C.
16. DW2 (Atowar Rahman) stated that Ajiran and Insan never stayed in the joint family of the respondents. DW3(Md. Samat Ali) also corroborated DW1 and stated that Ajiran and Insan stayed at their sister's house and uncle's house after marriage but never stayed in the joint family of the respondents.
17. The learned counsel for the aggrieved person Mr. P. Baidya contended that the applicant was tortured mentally and physically by the respondents. He further contended that the applicant has been able to prove that domestic violence was committed on her by the respondents and the respondent No. 1 has not provided her with any maintenance and so she is entitled to the relief as prayed for.
18. Countering the arguments of the learned counsel for the applicant Mr. G. Biswas, learned counsel for the respondents

contended that the respondents did not commit any act of domestic violence and that since the applicant lived separately in a different house and the same does not fall within the purview of shared household as described in the Act, the applicant is not entitled to the relief of Residence Order under section 19 of the Act.

19. I have considered the rival submissions made on behalf of the parties. From the discussions and reasons made above I find that the evidences of the PWs contradict each other. PW3 stated during his cross that Ajiran and Insan went to the house of Insan's sister and from there they went to the house of Shorab Ali, the uncle of Insan Ali. Again from the evidences of the DWs it is seen that Ajiran and Insan did not live in the joint family of the respondents. Be that as it may, it is a fact that the respondent No.1 and the aggrieved person are no more living together as husband and wife and there has been a criminal proceeding against the respondents. Had there been cordial relationship between the respondents and the aggrieved person there would not have been a number of cases pending in the courts of law. But the aggrieved person could not establish that the respondents No.2, 3 and 4 committed domestic violence on her. She also could not prove that the respondents No.2, 3 and 4 were in a domestic relationship with her. But the fact that the respondent No. 1 has deserted the aggrieved person and his son clearly establishes that there had been instances of domestic violence for which the aggrieved person had to claim maintenance from the respondent No. 1 and also initiate criminal proceeding against the respondents. There is every possibility that the applicant may be subjected to domestic violence in the future by her husband. The conduct of the respondent No.1 clearly constitutes domestic violence within the purview of section 3 of this Act.

The question that remains to be answered now is that whether the applicant is entitled to the relief of residence orders

under section 19 of the Act? To answer this question we have to refer to the definition of shared household as provided in section 2 (s) of the Act.

“Section 2 (s) states:

“Shared household" means 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 includes 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 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 the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

The definition is clear that a shared household includes any household where the aggrieved person resided in a domestic relationship either jointly or singly, which household is either owned or tenanted by the respondent. Shared household also includes a household which may belong to the joint family of which the respondent is a member, irrespective of whether the aggrieved person or the respondent has any right, title or interest in the shared household. In (2007)3 SCC 169 S.R.Batra and Anr. VS. Smt. Taruna Batra it was held by the Hon'ble Supreme Court of India that ***"Wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean house belonging to or taken on rent by husband, or house which belongs to joint family of which husband is a member.***

In the present case the applicant never stayed in the joint family with the respondents. She has claimed a residence order against the respondents. But the aggrieved person and her witnesses could not prove that at any point of time she resided in the joint family with

the respondents. PW3 who is the uncle of the aggrieved person stated that after marriage they stayed at the house of the sister of Insan Ali and after that at Shorab Ali's house. On the other hand the respondents could prove with corroborating evidence that Ajiran and Insan never stayed in the joint family with the respondents. As she never resided in the house in question, which is a finding of facts arrived at after scrutinizing the witnesses of both sides, I am of the considered opinion that a residence order cannot be passed against the respondents No. 2,3 and 4 in respect of the joint family property. The same does not come under the purview of shared household as envisaged under section 2 (s) of the Act.

Further it was also observed by the Hon'ble Supreme Court in (2007)3 SCC 169 S.R.Batra and Anr. VS. Smt. Taruna Batra that, the claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives. . If at all the aggrieved person is entitled to a residence order in a shared household it would be the house constructed by the father of the aggrieved person for her and her husband.

25. For the discussions and reasons aforesaid it is found that the applicant is entitled to a protection order under section 18, residence order under section 19 and monetary relief under section 20 of the Act only against the respondent No.1 with whom she was in a domestic relationship and not against the other respondents. Accordingly it is ordered as follows:

26. Protection Order under section 18 of this Act is passed in favour of the applicant Ajiran Khatun and the respondent No.1 Insan Ali is prohibited from (i) committing any act of domestic violence, (ii) aiding or abetting in the commission of acts of domestic violence; (iii) alienating the assets of the applicant/ aggrieved person including her stridhan; (iv) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence; (v) causing violence to the

applicant in any manner, either by physical abuse or verbal abuse.

27. Residence Order under section 19 of the Act is also passed in favour of the applicant and it is hereby ordered that (i) the respondent No.1 is restrained from dispossessing or in any manner disturbing the possession of the aggrieved person from the shared house hold; (ii) the respondent No.1 is also restrained from entering any portion of the shared household in which the aggrieved person resides; (iii) the respondent No.1 is also directed to secure the same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household if the circumstances so require.

28. In compliance with section 19 (3) of the Act, the respondent No.1 is hereby required to execute a bond of Rs. 20,000/- with two local sureties of like amount, for preventing the commission of domestic violence. Also the Officer –in- Charge of concerned P.S. is ordered to provide protection to the aggrieved person and to assist her in the implementation of the order.

29. The respondent No. 1 is directed under section 20 of the Act to pay a sum of Rs. 2000/- per month to the applicant and a sum of Rs. 1000/- to her minor son w.e.f the date of this order. The amount shall be paid on or before the 7th of every month starting from 7.7.2013.

Furnish free copies of the final order to all concerned including Officer-in-Charge of the concerned P.S. Given under the hand and seal of this court on this the 17th day of June, 2013.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON

