

Misc Case No. 623 of 2022Order dated 23.10.2024

Today is fixed for order.

Both parties filed hazira.

On perusal it appears that the aggrieved person stated in her petition that the petitioner /aggrieved Person is Hindu by religion and the respondent no. 1 / opposite Party No. 1 is Hindu by religion and their marriage was solemnized as per Hindu Rites and customs on 11.06.2013 in presence of friends and family members of both the parties and the same was duly registered vide Serial No:-1156 at Panda Dharmaraksharini Sabha, Baidyanathdham, Devghar, Jharkhand on 11.06.2013. Their marriage is outcome of arrangement done by their relatives and family members and after solemnized of their marriage, the petitioner's family members accepted their relation but the respondent No. 1's family members did not accepted their relation because the petitioner had brought less amount of Dowry and other House-Hold articles at her matrimonial house. After solemnization of their marriage, they stayed together as husband and wife at the respondents' residence - Village- Kasba, P.O.:- Kasba, VTC:- Shambhuganj, District:-Banka, State :- Bihar-813211. That within few days of her marriage, the Petitioner realized that she was not acceptable by the respondents and the respondents have started to physically and mentally torture upon the petitioner for demand of dowry because they were not happy that the Petitioner came to their house with less amount of dowry articles. The respondent No. 2 is Elder Sister of the respondent No. 1, who is a house wife and The respondent No. 3 is the Sister-in-Law i.e.:-Bhavi of the Respondent No. 1 who is house wife. The respondent No. 2 and 3 are not dependent upon the respondent No.1. The respondent No. 2 is very jealous person and she has finding different ways to torture the petitioner, in fact she has badly bitten and assaulted the petitioner many time. That after the petitioner's parents accept their marriage and they were compelled to give cash of Rs. 11,00,000/- Rupees Eleven Lac) Only and some dowry articles like Motor Cycle of Discover 100 CC, 1 gold chain, 1 gold ring, gold bangles, gold earring, gold nose pin, utensils and cloths etc. to the respondents and the respondents have received the said dowry articles. That the respondent No. 1 is a businessman and he earns Rs.50,000/- to 60,000/- only per month from his business of interior designing and False Ceiling Business. That after her marriage, the Petitioner has found that her husband and other in-laws i.e. the Respondents are very greedy and stingy persons. The respondents have not appointed any maid servant for domestic work; in fact the respondent No. 3 never helps the petitioner for doing domestic work. The Respondents used to force the petitioner to work from early morning to late night like servant and on minor fault the respondents used to

assault the petitioner and they did not provide proper food, clothes and medicine to the Petitioner and on raising protest the respondent No. 1 supported by the other Respondents used to asked the Petitioner to bring cash of Rs. 5,00,000/- (Five Lac) only from her parents. The petitioner belongs to lower middle class family. The petitioner realized that it is not possible for her parents to fulfill unreasonable and illogical demand of the Respondents and when the Petitioner has protested against their demand then the petitioner was mercilessly and inhumanly torture by them. That after few days of her marriage, the petitioner noticed that the respondent No.1 had a bad habit to consumed alcohol at night and abusing the petitioner by filthy languages which is very unfortunate to the Petitioner being wife and it is too tough to digest. During the staying at her matrimonial house, the petitioner on several occasion made protest against the said activities of the respondent No. 1 and as a result of which the respondent No. 1 with help of other respondents never hesitated to do physical and mental torture, assaulted the Petitioner in repeated occasion. The petitioner being wife always tried at her label best to explain the Respondent No. 1 that he is doing wrong but the respondent No. 1 never understand the petitioner's feelings which was creating mental cruelty upon the petitioner. The petitioner has tried to lead a normal matrimonial life with her husband but the respondent No.1 never co-operate with the petitioner. That after the petitioner became pregnant and she gave birth a male child namely Priyanshu Jha on 14.08.2014 and the Petitioner's father bore all expenses of delivery and Further upbringing till date of male child of the petitioner. The petitioner's father has also been bore all expenses of rice ceremony of the petitioner's son and also gave some gold ornament like gold necklace. gold baby bala, gold ring etc. to the petitioner's son (presently all gold ornaments are under the respondents custody). That the respondents are unhappy and on 16.09.2014 they insulted the petitioner in different ways and again started physical and mental torture upon the petitioner for further demand of Dowry amount of Rs. 5,00,000/-(Five Lac) Only, Being mother it is impossible for petitioner to digest which created mental agony upon the petitioner. In fact, the respondent No.1 is a person of immoral character and having extra marital affair with the respondent No. 3, except seizing money from the Petitioner's parents his futile brain has no gesture. The respondent No. 1 has no interest, love, affection with the Petitioner and her minor son which is very unfortunate for the petitioner. The petitioner never had any colourful days throughout her matrimonial life; at the time of marriage the petitioner had no knowledge about the original character of the respondents. The petitioner always hides the respondents behavior upon her from her parents. Due to prestige of the petitioner and her parents, she had tolerated all torture of the Respondents and never lodges any complaint against the respondents.

That on 06.07.2022 at about 7:30 P.M the respondent No. 1 told the petitioner that he is not satisfied with the petitioner and he want to divorce from her and also told the Petitioner to left her matrimonial residence immediately but the petitioner have made protest against the respondent No. 1 decision and as a result of which tremendous torture and/or cruelty started upon the petitioner and he also tried to kill the petitioner by pressing her throat and when she tried to shout, then pressing towel on her mouth and after that incident, the petitioner on 06.07.2022 at about 7.30 P.M ran away from the house of the husband/Respondent No.1 and finding no other alternative, the Petitioner went to her parental house. The respondents came to the Petitioner's parental home on 19/08/2022 and threatens the Petitioner that the respondents would beat the Petitioner even more if the petitioner father did not provide excess amount of Dowry of Rs. 5,00,000/-(Rupees Five lac) only and informed that incident to police station. The Petitioner went on 21/08/2022 to her matrimonial home for collection of her personal belongings and phone called the respondent No.1 for keys of the door again the respondent No.1 threatened the petitioner with dire consequences if again the petitioner comes to here matrimonial house, so finding no other alternative the petitioner went to Golabari Police Station and lodges a written complaint against the respondent No. 1 which was recorded as G. D. Entry No. 1517 dated 21/08/2022 and after that the petitioner went to her parental house and started to live there. That on 21/08/2022 to till today, the petitioner along with her son stay at her parental house and during this period the respondent No.1 never provides any money to the petitioner and her son. Such continuous barbarism, torture both physical and mental cruelty as organized by the respondents, the petitioner's livelihood, status and prestige is being totally jeopardized.

Whereas, the respondents denied all the allegations made by the aggrieved person and stated in his written objection that the respondent no. 1 is not physically fit as the respondent met with a dangerous accident in the year 2016 and since then the respondent is under treatment till now. It is true that now he more or less fit but his treatment is still continuing. The respondent No. 1 doesn't earn Rs. 50,000/-to 60,000/- only per month. The respondent No. 1 is a daily labour so spending his money to lead luxurious life style by disobeying and depriving the Petitioner and her minor son is totally false and concocted. The Respondent do not make any comment regarding the income of the Petitioner but it is a fact that her wife is an educated person and she might income a healthy amount. The Respondent does not any idea regarding whether at present, the petitioner's father has no sufficient income to maintain the petitioner and her minor son expenses. It is false to say that the petitioner apprehend that if somehow the petitioner will enter into the matrimonial

house, then the respondents will kill her and for that reason your petitioner prays for direction for providing rent of Rs. 6.000/-only per month for residence of alterative suitable accommodation of same level because the respondents. That on 8th December' 2022, at about 9pm, while the respondent no.1 returned his house from his work, he found that the main door of his room was under lock and key. Initially the respondent thought that his wife may went to market or any other place. Thereafter, the respondent unlocked his room. He waited for his wife and minor son till late night but they did not return back, meanwhile, the respondent tried to contact his wife through but he found her mobile was switched off. It is pertinent to mention that one Surendar Shaw is living just adjacent to the respondent no. 1's room and from few months the respondent noticed that said Surendar Shaw tried to influence her wife and on the other hand the petitioner was also allowing him. Primarily, the respondent no. 1 ignored it, thereafter observing said Surendar Shaw's ill motive, restrained her wife but on that day while he found his wife and his minor son was not coming till late night then the respondent went to Surendar Shaw's room and found he was also missing. Then everything was clear to the Respondent. He understands said Surendar Shaw eloped his wife and kidnapped his minor son. The petitioner along with Surendar Shaw left matrimonial house taking her minor son forcefully and without informing the respondent. Thereafter, the respondent searched them in various places and in the end, he found that her wife and her minor son are now living with Surendar Shaw in another mess. He the respondent no. 1 visited his matrimonial home and tried to resolve the matter but the Aggrieved Person/Petitioner/Wife denied every time and clearly said she do not want to carry forward her conjugal life with the aggrieved person/petitioner and also told that she is happily living with Surendar Shaw. She will not come back to her matrimonial house anymore. Thereafter, the respondent no. 1, went to Golabari Police Station and submitted a written complaint against Surendar Shaw and Monika Jha, and the Police Personnel of Golabari Police Station made a G. D. Entry, being no. 578, dated 07.12.2023.

On perusal it appears that the marriage was solemnized on 11.06.2013 and the date of separation is 06.07.2022. The petitioner is presently staying at her parental home and has claimed monthly expenses of Rs. 10,000/- for herself and Rs. 10,000/- for her minor son as interim relief.

The definition of domestic violence as jotted in section 3 of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act) is very wide in its scope. It takes within its fold different acts including physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. Under Sec. 23, Magistrate may pass such interim order as he/she deems just and proper for any proceeding before him/her

under this Act. If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he/she may grant an order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

The plain reading of the provision goes to show that the magistrate has to satisfy himself/herself as regards the existence of a prima-facie case in the factual set-up projected by the aggrieved party on the basis of an affidavit. In its literal sense, 'prima facie' means on the face of it. The expression 'prima facie' is often used in common parlance to mean 'on first blush' or 'on first impression', without deriving a conclusive meaning. Therefore, if the allegations depicted in the application make out a case that falls among any of the category mentioned under section 3 of the Act, the court would then have to pass an order keeping in mind the object for which the Act was enacted.

It is apparent that the aggrieved party is staying at her parental home with her minor child. The aggrieved person submitted that she was subjected to physical and mental cruelty and due to that she had to leave her matrimonial home though the entire picture is not clear before this court at this moment but it is certain that there was some untoward incident and because of that she was forced to leave her matrimonial house. No wife who is leading a happy conjugal life, voluntarily leaves her matrimonial house with her minor child and stays at her parental house. The OP has submitted that the petitioner has eloped with another person and voluntarily residing with him along with his child though the same fact is not appearing on a prima facie basis but it is certain that there was enough family drama. The respondents has submitted that he is daily labour and has a monthly income of Rs. 10,000/- which this court believes is a misleading fact as because no daily laborer can manage a residence at Uma Das Lane, Park street nor can ever effort the treatment gone through by the respondent No. 1.

The tangled factual questions that have surfaced in the instant case from the pleadings of the contending parties would be dealt with according to the evidence led by the parties during trial. But, the legislative mandate as reflected under section 23 should be honored by the court so far as the interim relief is concerned.

In the instant case while appreciating the materials apparent on record, this court has reason to believe that a prima facie case has been made out in favour of the aggrieved party/wife her entitlement as to interim maintenance allowance. On perusal of the entire materials on record, it appears that the aggrieved party has a fair question raising the existence of the right and can satisfy the court regarding

the same in their favour, at the time of final hearing. And in the meantime, the right of the aggrieved party must be preserved and she must be protected from any kind of physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.

Accordingly, the prayer under section 23 is considered and allowed in part in respect of monetary relief & protection order only as the other relief prayed by the aggrieved person are to be decided after consideration of the evidence. The respondent no.1 is directed to make payment of Rs. 10,000 /- [Ten Thousand only] per month for the aggrieved party and Rs. 5000/- [Five Thousand only] per month for the child in total Rs. 15,000 /- [Fifteen Thousand only] per month till disposal of this case as monetary relief by the 10th day of every succeeding month from the date of filing of the case [15.09.2022] under section 23 of the Act. Be it mentioned here that the amount received by the aggrieved party in this case shall be adjustable with any other monetary relief accepted by the AP under any provision of law and by order of any Ld. Court. The respondents are also directed not to do any kind of domestic violence towards the aggrieved party.

The officer-in-charge of Golabari police Station is hereby directed to provide all necessary legal assistance to the aggrieved party so that the order passed herein is implemented by the respondents.

Let a free copy of the order be given to the aggrieved party and O/C of concerned P.S. free of cost for compliance.

The petition under section 23 of the Act is disposed of accordingly.

Fix 18.03.2025 for evidence and personal appearance of both the parties and payment.

Dictated and correct by me

Judicial Magistrate,
1st Court, Howrah

Disha Barai
(JO Code WB01420)
Judicial Magistrate,
1st Court, Howrah