

**In the Court of Ashok Kumar, Additional Chief Judicial
Magistrate Court No. 1 Shimla.**

CIS CNR No. : *HPSH110003922019*
CIS CASE TYPE : *Domestic Violence Act*
CIS CASE No. : *1/2019*
CIS CASE YEAR : *3.1.2019*
Decided on : *13.12.2021*

1. Nisha Devi, wife of Sh. Devender, R/O village Mulkoti, P.O Mashobra, Tehsil and Distt. Shimla, H.P.
2. Abhishek, son of Sh. Devender, R/O village Mulkoti, P.O Mashobra, Tehsil and Distt. Shimla, H.P.

.....Applicants.

Versus.

1. Sh. Devinder, s/o Sh. Bhoop Ram, R/O village Moolkoti, P.O Mashobra, Tehsil and Distt. Shimla, H.P.
2. Sh. Bhoop Singh, w/o sh. Mathku, R/O village Moolkoti, P.O Mashobra, Tehsil and Distt. Shimla, H.P.
3. Smt. Bimla Devi, w/o Sh. Bhoop Singh, village Moolkoti, P.O Mashobra, Tehsil and Distt. Shimla, H.P.

.....Respondents.

**Complaint/application under Section 12 of Protection of
Women from Domestic Violence Act.**

For applicants : Sh. Sandeep, learned Advocate legal aid
counsel.

For respondents: Nemo.

ORDER

Applicants have filed this application seeking protection, residence, maintenance and compensation order under the provisions of Protection of Women from Domestic Violence, Act.

2. Brief facts necessary for disposal of the application

are that applicant number 1 is the legally wedded wife of respondent No. 1 and her marriage with him was solemnized in the year 2010 as per hindu rites and customs. Out of this wedlock, applicant number 2 was born. Respondents number 2 and 3 are the mother in law and father in law of applicant number 1. It is alleged that after two years of marriage, the respondents started maltreating and harassing applicant number 1. She was not allowed to go anywhere. The respondent number 1 is habitual drunker. He used to throw her out of the house. She left the matrimonial house in the year 2017. Thereafter a compromise was executed. However, despite the aforementioned compromise, the behaviour of the respondent did not change. He has not made any provision for the maintenance of applicants. It is alleged that the respondents have committed the acts of domestic violence against them, hence, they are entitled to protection, residence, maintenance and compensation orders.

3. Respondents preferred to be heard exparte.

4. Following points arise for determination:-

1. Whether the applicants are entitled to protection, residence, maintenance and compensation orders, as alleged?
2. Final order.

5. The applicants in order to prove their claim examined three witnesses. Applicant number 1 appeared as CW-1 and stated that she has been neglected and harassed by the respondent.

6. CW-2 Sh. Hari Nand is the father of applicant, who corroborated the evidence of applicant.

7. CW-3 Sh. Hem Dutt, the brother-in-law of applicant deposed that a compromise Ext. CW-1/B was executed between the applicant and respondent.

8. CW-4 Sh. Roshan Lal stated that agreement Ext. CW-1/A was executed on 22.10.2017, wherein respondent No. 1 had admitted his mistake.

9. I have heard learned counsel for the applicant and have also gone through the case file.

10. For the reasons to be recorded here-in-after, while discussing the aforesaid points for determination, my findings on the same are as under:-

Point No. I :	Partly Yes
Final Order:	The application is partly allowed per operative part of the order.

(REASONS FOR FINDINGS)

Point No.1

11. The Protection Officer in discharge of his official duty filed Domestic Incident Report which amply demonstrates that the applicants have been neglected by the respondent No. 1 and applicant No. 1 has also been harassed and tortured.

12. The respondents did not appear to rebut the evidence led by the applicants. They preferred to be heard ex-parte. The evidence led on behalf of applicants has gone un rebutted and uncontroverted. Hence, an adverse inference is required to be drawn against them.

13. Section 3 of the Protection of Women from Domestic Violence Act provides the definition of domestic violence. Section 3 reads as under:

3. Definition of domestic violence.- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.- For the purposes of this section,-

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

- (iii) "verbal and emotional abuse" includes-

- (a) insults, ridicule, humiliation, name calling and insults or ridicule especially with regard to not having a child or a male child; and

- (b) repeated threats to cause physical pain to any person in whom the aggrieved person

is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

14. A bare perusal of this Section makes it clear that any commission or omission which causes physical or mental

harm to aggrieved person in a domestic relationship will tantamount to domestic violence.

15. As per Section 18, the applicant is required to prima facie establish that domestic violence has taken place or is likely to take place against her. A duty has been casted upon the Magistrate to pass a protection order on being prima facie satisfied that domestic violence has taken place. **Section 18 of The Protection of Women from Domestic Violence Act, 2005 reads as under:**

“18. Protection orders.—The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

(a) committing any act of domestic violence;

(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) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependents, other relatives or any person who give the aggrieved person assistance from domestic violence;
(g) committing any other act as specified in the protection order.”

16. The provision under Section 20 of the act is at par with Section 125 of Code of Criminal Procedure. The object of Section 125 of Code of Criminal Procedure is to prevent vagrancy by compelling a person to support his wife or child or father or mother unable to support itself. Though this provision is not penal in nature, it aims at securing enforcement of duty imposed upon a person by law. Though the level of living required to be maintained is not classified in this provision, it has been held to be ensuring supply of food, clothing and shelter to the deserted wife and children. In spite of it, the inability of the wife to maintain herself is a condition precedent to the maintainability of her application for maintenance. The phrase 'unable to maintain herself' if read in the context of the opening sentence to the section would mean the means available to the deserted wife while she was living with her husband and would not take within itself the effects made by the wife after desertion to somehow survive. That is why, the maintenance has not been denied to a wife on the ground that she refused to earn though she was capable of earning. If a lady prefers to survive by begging, the same would not amount to her ability to maintain herself.

17. The evidence is clear that respondent number 1 has not made any provision for the maintenance of applicants. The applicant No. 1 as such has been proved to be an

aggrieved person. She has approached this Court under compelling circumstances. So far as quantum of maintenance is concerned, though, the applicant could not produce any document qua the income of respondent, but the respondent number 1 has not stated anything to counter the plea of applicant. Therefore, taking into consideration the status of parties, an amount in the sum of ₹ 5000/- per month is hereby assessed as maintenance allowance to be paid by respondent number 1 to the applicant number 1 from the date of application as she has also the liability to maintain the minor child.

18. In view of the evidence on record, it is clear that the respondents have committed the acts of domestic violence. Applicant number 1 being legally wedded wife of respondent number 1 is entitled to protection, residence and maintenance orders. The respondents cannot oust the applicant from the shared household. They have no right to commit acts of domestic violence against the applicant number 1.

19. As per definition of aggrieved person provided under Section 2(a) of the Protection of Women from Domestic Violence Act, aggrieved person means any woman who is, or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence. Applicant No. 2 is male and therefore is not covered under the definition of aggrieved person.

20. So far as compensation order is concerned, the applicant in her evidence has not stated anything regarding claim of compensation.

21. Accordingly, point number 1 is partly decided in affirmative and in favour of the applicant number 1.

FINAL ORDER

22. As a result of my findings on aforesaid point, the application is partly allowed. Accordingly, respondents are hereby restrained from committing any act of domestic violence, aiding and abetting. Respondent number 1 is directed to provide one room, kitchen, bathroom and toilet in the matrimonial house to the applicant. The respondent No. 1 is further directed to pay monthly maintenance allowance to the tune of ₹ 5000/- per month to applicant number 1 from the date of application. Application stands disposed of. Copy of this order be given to applicant free of cost. Let copy of this order be also sent to S.H.O. concerned for information and further necessary action in accordance with the Protection of Women from Domestic Violence, Act. File after due completion be consigned to records.

Announced and signed in the open
Court on this 13th day of December 2021.

[Ashok Kumar]
Additional Chief Judicial Magistrate
Court No. 1, Shimla.

V.S

Form-A

List of witnesses

Sr. No.	Name of Witness	Whether witness of applicants or respondent.
CW1	Smt.Nisha Devi	Petitioner.
CW2	Sh. Hari Nand	-do-
CW3	Sh. Hem Dutt	-do-

Form-B

List of Exhibits

Exhibit	Date of Exhibit	Description of Exhibits
Ext. CW-1/A	20.10.2021	Affidavit.
Ext. CW-1/B	-do-	Complaint.
Ext. CW-1/C	-do-	Birth Certificate.
Ext. CW-1/D	-do-	Rapat.
Ext. CW-1/E	-do-	Complaint.
Ext. CW-2/A	-do-	Affidavit

[Ashok Kumar]
Additional Chief Judicial Magistrate
Court No. 1, Shimla.