

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT : AIZAWL**

Crl.Appeal. No.7/2013
In Crl.Complt.No.84/2012
U/s 12 PWDV Act

P R E S E N T

Mrs. Helen Dawngliani
Addl. District & Sessions Judge

Vanlalliana
S/o Dingliana(L)
R/o Phunchawng Mel-6
Aizawl

..... Appellant

Versus

Lalramzauvi
D/o Lalngaihzuali
R/o Chanmari,
Aizawl

..... Respondent

Date of Hearing

..... 04.03.2014

Date of Judgment

..... 01.04.2014

A P P E A R A N C E

For the Appellant

..... Mr. Lalrammuana Khawlhling, Advocate

For the Respondent

..... Mr. J.C. Lalnunsanga, Advocate

J U D G M E N T A N D O R D E R

1. The instant appeal has been filed u/s 29 of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act in short) read with Sec. 374(3)(a) Cr.P.C against the Judgment & Order dt. 25.9.2013 passed by Smt. Ngursangzuali Sailo, JMFC Aizawl in Crl. Complt. No. 84/2012.

2. The brief facts of the case leading to the instant appeal is highlighted as follows:-

Smt. Lalramzauvi M/o Lalngaihzuali (Respondent) filed an application u/s 12 PWDV Act seeking relief for her daughter Lalngaihzuali under section 18 PWDV Act(Protection Order), U/s 19 for residence Order, U/s 20 for monetary Order, u/s 22 for compensation order and for any other appropriate order under the PWDV Act against the

appellant Vanlalliana. The complaint was accompanied by Domestic Incident report prepared by Protection Officer, Domestic Violence Act.

The complaint was contested by the appellant. The same was disposed off by the impugned Judgment & Order wherein protection Order u/s 18 and residence Order u/s 19 were granted, the appellant was directed to pay Rs.1500/- as monetary relief in order to meet the medical expenses and the appellant was also directed to pay Rs.1,00,000/- u/s 22 PWDV Act as compensation to the respondent within 30 days from the date of Order.

3. Heard the Ld. Counsels and perused the record.

Mr. Lalrammuana Khawlhring, Ld. Counsel for the appellant submitted that there are two different complaints one u/s 190 Cr.PC and the other u/s 12 PWDV Act arising out of the same incident. The Ld. Counsel argued that the Ld. Trial court committed serious error in taking the two different complaints in one case and disposing it off together. The Ld. Counsel argued that a Police case which as registered as a result of the same incident is pending disposal before the Sessions Court and that the Ld. Trial Court committed serious illegality in disposing off the case which in a way amount to conviction as non-compliance would entail imprisonment even before the Ld. Sessions judge disposed off the case is improper and liable to be set aside and quashed. The Ld. Counsel also argued that the monetary order was passed on the basis of blank cash memos without the name of the patient. The next submission of the Ld. Counsel is that the appellant and the victim did not have any formal marriage but were in a 'live in' relationship. According to the Ld. Counsel such 'live in relationship' cannot be regarded as 'domestic relationship' within the meaning of the Act. Mr. Lalrammuana further argued that compensatory Order was whimsically passed by the Ld. Trial Court without having any basis for arriving at the said amount. The Ld. Counsel argued that the appellant does not have any employment, as a result of which, in order to make ends meet, he has to sell liquor which is prohibited in the State. Accordingly, the appellant does not have the paying capacity of such huge amount of compensation.

On the other hand, Mr. J.C. Lalnunsanga, the Ld. Counsel for the respondent submitted that the submission of the Ld. Counsel for the appellant except on the Ld. Trial court taking up two different cases and grant of monetary relief are beyond the pleadings. The Ld. Counsel argued maintenance u/s 125 CrPC can very well be claimed which is clearly provided in section 20(d) of the PWDV Act. According to the Ld. Counsel in terms of the provision of sec.31 of the PWDV Act, the pendency of a criminal case is not

a bar to the application under the PWDV Act. The Ld. Counsel further argued that the monetary relief granted was actually based on cash memos and it is in fact less than the total expenses incurred. Referring to the cross examination of the appellant, the Ld. Counsel argued that the appellant himself admitted that he was living with the victim as husband and wife and also states that he earns about Rs.15000/-pm. Thus he has the capacity to pay compensation and the quantum so fixed is justified as the Id.trial court has rejected the prayer for grant of maintenance u/s 125 Cr.PC

4. After hearing the parties and on careful perusal of the record, without going into the merits of the appeal, I intend to dispose of the appeal by remanding the matter back to the Ld. Trial court on the following reason :-

It is noticed during the course of trial that the complainant examined 4(four) witnesses including the victim and the complainant herself. It is noticed that on 7/6/2012 the victim and complainant were present and they were examined. The appellant/O.P was also produced from judicial custody. The next date was fixed for submission of written objection. Thereafter on 23.5.2013 the complainant closed their evidence and the matter was fixed for defence evidence. There is no material on record to show that the appellant was offered opportunity to cross-examine the victim and her mother. The written objection submitted by the appellant clearly shows that he denies the allegation made against him in the complaint. Accordingly, from the pleading it is clear that the appellant has not accepted the allegation made against him in the complaint which is reasserted by the oral testimony of both the victim and her mother. Cross-examination is a weapon given to the opposite party to challenge the veracity of evidence given by a witness in the examination-in-chief. In the event of the opposite party accepting the statement or declining to cross-examine, then failure to cross-examination would not be fatal. Chapter X of the Indian Evidence Act deals with examination of witness and it clearly provide how evidence is to be recorded. A fact cannot be said to be 'proved' or 'disproved' unless evidence is properly recorded.

The honble Kerala high Court in the case of **EP Narayanan Nambiar versus State of Kerala** reported in **1987 KLJ 699** has held that *a party entitled to cross-examine but did not get opportunity for that purpose can say that the evidence cannot be acted upon and the court is bound to accept that contention.*

For the reasons indicated above, without commenting on the merit of the case, the impugned Judgment & Order dt.25/9/2013 in Crl. Complt. No.84/2012 is set aside and

quashed. The matter is remanded back to the Ld. Trial Court who shall give an opportunity to the opposite party to cross-examine the victim and her mother and after hearing the parties proceed to pass judgment. It is expected that the whole exercise shall be completed within 45 days from the date of receipt of the record.

It is learnt at the bar that the incumbent Mrs. Ngursangzuali Sailo is on maternity leave. Keeping in mind the nature of the case, let the matter be referred to the Ld. District Judge for necessary re-endorsement alongwith the Case Record and a copy of this judgment.

5. With the above Order, the appeals stands disposed off.

Sd/- HELEN DAWNGLIANI
Addl. District & Sessions Judge
Aizawl Judicial District, Aizawl

Memo No. _____/AD&SJ(A)/2014 : Dated Aizawl, the 1st April, 2014

Copy to: -

1. Vanlalliana through Counsel Mr. Lalrammuana Khawlhing, Advocate.
2. Lalramzauvi through Counsel Mr. J.C. Lalnunsanga, Advocate.
3. District & Sessions Judge, Aizawl Judicial District, Aizawl.
4. Registration Section.
5. Guard File.
6. Case Record.

P E S H K A R