

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS

AIZAWL: MIZORAM

Criminal complaint No. 25 of 2018

Smt. C Zodinpuui : Petitioner

Protection Officer 'E'

Protection of Women from Domestic Violence Act, 2005

For aggrieved Smt Zomuanpuui

Versus

Shri Lalrinawma

S/o Ngurthuama

R/o Tlangnuam, Aizawl : Respondent.

BEFORE

SHRI. H. LALDUHSANGA
JUDICIAL MAGISTRATE FIRST CLASS
AIZAWL

For the Complainant : Shri JC Lalnunsanga, Advocate

For the Respondent : Smt C Ramdinmawii, Advocate

ORDER

Dated: 23.11.2018

1. This is a Criminal complaint No. 25 of 2018 filed U/S 12 of the Protection of Women from Domestic Violence Act, 2005 (*hereinafter called the Domestic Violence Act*) for reliefs U/s 18, 19 and 20 filed by Smt C Zodinpuui, Protection Officer 'E', Protection of Women from Domestic Violence Act, 2005 for aggrieved Smt Zomuanpuui against Respondent Shri Lalrinawma S/o Ngurthuama R/o Tlangnuam, Aizawl on 06.03.2018. On hearing the submission of the Service Provider and upon careful perusal of the documents on record including Domestic Incident Report, I am satisfied to proceed with the case. Received written objection from the Respondent wherein he took complete denial the allegations.
2. Heard the Ld. Counsel for the Complainant and the Ld. Counsel for Respondent *on maintainability of the case* on 05.11.2018. The Ld. Counsel for the Complainant prayed this Court to proceed with the present case which was strongly objected by the Ld. Counsel for the Respondent.

3. The Ld. Counsel for the Complainant placed reliance upon (1) Criminal Appeal No. 2069 of 2014 (2014) SCC 736 by the Hon'ble Supreme Court (2) Criminal Writ Petition No. 3791 of 2016 along with Criminal Application No. 296 of 2017, Prakash Babulal Dangi vs State of Maharashtra & Rekha Prakash Dangi along with Rekha Prakash Dangi vs State of Maharashtra & Prakash Babulal Dangi (Criminal Writ Petition No. 3239 of 2014) decided by the Hon'ble Bombay High Court (3) Civil Appeal No. 2500 of 2017 Manmohan Attavar vs Neelam Manmohan Attavar decided by the Hon'ble Supreme Court.
4. On the other hand, the Ld. Counsel for the Respondent cited (1) Inderjit Singh vs State of Punjab & ors (Criminal Appeal No. 7787 of 2010) (2) Criminal Application No. 160 of 2011 Sejal Dharmesh Ved Vs State of Maharashtra & ors decided by the Hon'ble Bombay High Court on 7th March, 2013 (3) Criminal Writ Petition No. 1865 of 2010 Jayantilal Kanji Nagda vs State of Maharashtra & ors decided on 08th May 2015 by the Hon'ble Bombay High Court.
5. In the light of the Complaint, the written objection and the points of argument raised by the two opposing Ld. Counsels, the following points are drawn for consideration at this stage of pre-hearing of the case. The maintenance was the focus of the instant complaint the Ld. Counsel for the Complainant informed in his frank manner the Court.

(1) As to whether the Complainant is to claim maintenance U/S 125 Cr.PC not U/S 20 of the Domestic Violence Act?

(2) As to whether the present complaint filed under the Domestic Violence Act after divorce is maintainable or not?

(3) As to whether the present complaint is barred by Limitation or not?

6. Point No 1: *As to whether the Complainant is to claim maintenance U/S 125 Cr. PC not U/S 20 of the Domestic Violence Act?* The Ld. Counsel for the Respondent submitted that a claim for maintenance should have been filed U/S 125 of Cr.PC not U/S 20 of the Domestic Violence Act. The monetary relief claimed U/S 20 of the Domestic Violence Act could not be held maintainable in the present case. The Ld. Counsel for the Complainant *on the other hand* submitted that a claim for maintenance U/S 20 of the Domestic Violence Act is maintainable. A maintenance could be claimed both U/S 125 of Cr.PC and U/S 20 of the Domestic Violence Act. Having heard the Ld. Counsels for both the Parties, this Court takes the view that one is at liberty to file a case for claiming maintenance U/s 125 of Cr.PC or under Sec 20 of the Domestic Violence Act. There could be two or more doors in a house. Further, the present Complainant had not been found claiming maintenance U/S 125 of Cr.PC as well. The **Hon'ble Bombay High Court on 10th**

October, 2017 in Criminal Writ Petition No. 3791 of 2016 along with Criminal Application No. 296 of 2017, Prakash Babulal Dangi vs State of Maharashtra & Rekha Prakash Dangi along with Rekha Prakash Dangi vs State of Maharashtra & Prakash Babulal Dangi (Criminal Writ Petition No. 3239 of 2014) held that the power to award maintenance under the DV Act is in addition to an order of maintenance u/s 125 Cr.PC or any other law for the time being in force.....Both the orders; the one passed under the provisions of Domestic Violence Act and another passed under section 125 of Cr.PC are required to be complied. Hence, this point is decided in favour of the Complainant.

7. Point No 2: *As to whether the present complaint filed under the Domestic Violence Act after divorce is maintainable or not?* The Ld. Counsel for the Respondent submitted that after divorce, a complaint under the Domestic Violence Act could have not been filed. The marriage had stood dissolved in the present case. If the complainant was in need of financial support from the Respondent, she should have approached the Court of Law under Sec 125 of Cr.PC. There was no provision under the Domestic Violence Act for claiming monetary reliefs by an ex-wife against her ex-husband. The Ld. Counsel for the Complainant *on the other hand* submitted that an ex-wife could have filed a complaint and claimed a relief for maintenance under the Domestic Violence Act. The divorced wife was not barred under the Domestic Violence. Heard both the Ld. Counsels at length. **The Hon'ble Supreme Court in Criminal Appeal No. 2069 of 2014, (2014) SCC 736** has held that an act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex-parte order under section 23 of the Domestic Violence Act, 2005. Meanwhile, **the Hon'ble Punjab-Haryana High Court in Amit Agarwal & ors vs Sanjay Agarwal & ors on 31st May 2016** decided that the Complaint under the Domestic Violence Act after divorce could not be filed. The domestic relationship had come to an end and proceeding with it would be an abuse of the process of Law. **The Hon'ble Patna High Court also in Santosh Kumar vs State of Bihar on 6th October, 2017** held that complaint under the Domestic violence Act not maintainable at the instance of ex-wife after divorce.

8. I have heard the Ld. Counsels for both the Parties. In fact, there is no express prohibition of an ex-wife from filing a complaint against her ex-husband under the Domestic Violence Act. I have gone through the decisions taken with regard to this point by various Hon'ble High Courts and the Hon'ble Supreme Court. **The Hon'ble Supreme**

Court in Krishna Bhattacharjee vs Sarathi Choudhury (2016) 2 SCC 705: 2016 CrL LJ 330 held that a wife who is living separately from the husband even under a decree of judicial separation can claim her Stridhan back from the husband U/S 12 of the Domestic Violence Act. On 10th May, 2018, the Hon'ble Supreme Court, a three-judge Bench of Justice Ranjan Gogoi, Justice R Banumathi and Justice Naveen Sinha in Special Leave Petition (CRL.) No (S) 655/2014 A/o SBCRP No. 362/2011 Judgment & Order Dated 30.10.2013 passed by the Hon'ble Rajasthan High Court in Mohammad Talib Ali vs Smt Shabana @ Chand Bai & ors dismissed a petition and confirmed a verdict passed on 30th October, 2013 by the Division Bench of Rajasthan High Court that the term "Domestic Violence" cannot be restrained to marital relation alone. A woman can file a case for cruelty against her husband under the Domestic Violence Act even after dissolution of marriage. In this case, *"In the facts of the case we are not inclined to interfere. The Special Leave Petition is accordingly dismissed"* the Hon'ble Supreme Court says. The Domestic Violence Act means to punish men who abuse women in relationship. It extends to all man-woman relationships, and protects divorced women from their former husbands, the Hon'ble Supreme Court upheld. Accordingly, this point is decided in favour of the complainant.

9. Point No 3: *As to whether the present complaint is barred by Limitation or not?* The Ld. Counsel for the Complainant submitted that there was no limitation under the Domestic Violence Act and it was not a ground of rejection. The Ld. Counsel for the Respondent argued that although nowhere about limitation was expressly found in the Domestic Violence Act, the present case should have been filed *within a reasonable time*. In the light of the Hon'ble Supreme Court's decision in **Inderjit Singh Grewal vs State of Punjab & ors on 23.08.2012**, the present case should have been dismissed for not filing within a period of one year from the date of the alleged incident. Almost after two years from divorce, the complainant realized that she was subjected to domestic violence and filed the present case the Ld. Counsel argued. The domestic violence falsely alleged had also taken place in the month of April, 2016. Hence, filing the instant Complaint almost after almost two years was neither reasonable nor maintainable. Cited reliance upon **Criminal Application No 160 of 2011 Sejal Dharmesh Ved Vs State of Maharashtra & ors decided by the Hon'ble Bombay High Court on 7th March, 2013** wherein stated that *an application is required to be filed within a reasonable time to show that relationship would give her the cause of action to sue under the Domestic Violence Act for the reliefs under the Act.*

10. It is the considered view of this Court that there is no express prohibition of the petitioner from filing a complaint under the Domestic Violence Act after divorce. There is no express limitation in the Act itself. As such, this Court would like to highlight the relevant provisions of the Domestic Violence Act and the Code of Criminal Procedure and also travel to the decisions taken by various higher Courts. The **Hon'ble Supreme Court in Inderjit Singh Grewal vs State of Punjab & ors on 23.08.2012** says that a complaint under the Domestic Violence Act could not be filed after one year from the date of incident. In view of Sec 468 Cr.PC and Sec 28 and 32 of Domestic Violence Act, it could be filed only within a period of one year from the date of incident. The **Hon'ble Karantaka High Court also on 08.01.2014 in Gurudev vs Jayashee** held that a complaint after one is year barred as per sec 468 Cr.PC.

Section 28 in The Protection of Women from Domestic Violence Act, 2005.

28. Procedure.-

(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

Section 31 in The Protection of Women from Domestic Violence Act, 2005.

31. Penalty for breach of protection order by respondent.-

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

Sec 468 of Cr.PC Bar to taking cognizance after lapse of the period of limitation.- (1)

Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be –

- (a) six months, if the offence is punishable with fine only;
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.”

11. Apparent that Sec 28 of the Domestic Violence Act deals with the procedure and stipulates that all proceedings under section 12, 18, 19, 20, 21, 22 and 23 and the offences U/S 31 shall be governed by Cr.PC, 1973. Meanwhile, regarding the question of limitation, assuming the Domestic Violence Act as *civil nature* as not punishment but reliefs are claimed, Article 137 of the Limitation Act 1963 lays down the period of limitation for filling any other application for which no period of limitation is provided elsewhere is three years from the date when the right to apply accrues. Assuming the Domestic Violence Act as a *criminal nature*, limitation stands 1 year. Under Sec 31 of the Domestic Violence Act, the penalty for breach of Protection order is punishable upto 1 year imprisonment or fine upto rupees 20,000 or both. Hence, after much thought and careful consideration and in the light of the above discussion, this Court holds the view that the Domestic Violence Act could not be considered as solely criminal law as it is more concerned with reliefs granted to the victim/aggrieved. The question of limitation would arise only in case of violation of protection order as provided Sec 31 of the Domestic Violence Act and thereby Sec 468 of Cr.PC would get attracted. Accordingly, this point is also considered in favour of the Complainant.

12. This Court takes a further view that the Complainant would have to establish the cause of action that she has suffered/has been suffering from the Respondent a domestic violent. In case of objection from the Respondent, the accusation would have to be proved by entering into evidence by the Court. **The Hon'ble High Court of Himachal Pradesh in Anil Kumar vs Shashi Bala on 2nd May 2017** held that if there is no evidence with regard to maltreatment or violence, no order for maintenance can be granted under the Domestic Valence Act. The Court says, "Since there was no evidence with regard to maltreatment or violence, learned Appellate Court below ought to not have granted any amount on account of maintenance" the Hon'ble Court says. **The Hon'ble Bombay High Court on 4th May, 2018 in Writ Petition No. 3553 of 2018 Shri Prakash Kumar Singhee Vs Smti Amrapali Singhee with Contempt Petition No. 459 of 2017 Smti Amrapali Singhee Shri Prakash**

Kumar Singhee said that the Domestic Violence Act, 2005 *could not be invoked simply for claiming maintenance unless the Party alleges an act of Domestic.* The Hon'ble **Madras High Court in Smti Jeyanthi vs Jeyapaul, Crl.R.C (MD) No. 138 of 2014 decided on 15.10.2015** held that *mere registration of complaint will not amount to cruelty.... Wife is not eligible to claim maintenance without proof of domestic violence.* This Court would therefore hold the view that the Complainant should have approached the Court as "aggrieved person". The Complainant has to prove that she was/had been subjected to domestic violence. Without proving the domestic violence allegedly suffered by the alleged aggrieved, granting the various reliefs claimed ***in toto*** at this initial stage would be unjust and would cause serious prejudice to the Respondent. After long discussion and taking all the views in above, this Court held, the present case maintainable but the domestic violence allegedly suffered by the complainant still needed to be proved by way of evidence. Hence, the following points are drawn for consideration.

- (1) As to whether the alleged Domestic violence had taken place and likely to happen and alleged aggrieved Smti Zomuanpuui is still in need of Protection under Domestic Violence Act or not.*
- (2) As to whether alleged aggrieved Smti Zomuanpuui has/had suffered or has been suffering domestic violence from the Respondent to have claimed reliefs U/s 18, 19 and 20 of the Domestic Violence Act or not?*
- (3) To what relief the alleged Aggrieved is entitled for?*

13. Fix: 19.01.2019 for the Complainant's evidence.

14. Give copy of this Order to all concerned

(H. LALDUHSANGA)

Judicial Magistrate First Class

Aizawl: Mizoram.

Memo No.....:

Dated Aizawl, the 23rd November, 2018

Copy to:-

1. Smt. Zomuanpuui through her Counsel Shri JC Lalnunsanga, Advocate.
2. Shri. Lalrinawma through his Counsel Smt. C Ramdinawmii, Advocate.
3. Case record.

PESHKAR