

IN THE COURT OF ADDITIONAL SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT, AIZAWL, MIZORAM.

Present : Shri Vanlalenmawia, MJS
Additional Sessions Judge,
Aizawl Judicial District, Aizawl.

Criminal Appeal No. 2 of 2015

Shri Lalzidinga
S/o Lalliana (L),
R/o Jubilee Veng, Zamuang,
Mamit District, MizoramAppellant

-Versus-

Smt Lalthanhkumi
D/o Vanlalthanga,
R/o Hmunthatlan Veng, Rengdil,
Mamit District, MizoramRespondent

APPEARANCE

For the petitioner	:	Shri Saihmingliana Sailo, Advocate.
For the respondent	:	Ms Lalhriatpuii, Legal Aid Advocate.
Hearing	:	7.9.2015
Order delivered on	:	14.9.2015

ORDER

The criminal appeal has been filed under Section 29 of the Protection of Women from Domestic Violence Act, 2005 for setting aside the impugned order passed by the learned Judicial Magistrate First Class in Criminal Complaint No. 14 of 2015. In the order, protection was given to the present respondent. In addition, the appellant was directed to pay maintenance allowance of Rs. 2,000/- (Two thousand) each (Total Rs. 4,000/-) per month to the two minor children of the appellant and the respondent as provided under Section 20 of the Act with effect from the month of May, 2015 till the children attain majority. The maintenance allowance should be credited through the VCP, Rengdil, Mamit District every month.

2. I heard the learned Counsel Shri Saihmingliana Sailo appearing for the appellant and the learned Legal Aid Counsel Ms. Lalhriatpuii for the respondent.

3. The main contention raised by the learned Counsel Shri Saihminga Sailo during the course of hearing is that the protection order and the monetary relief passed against the appellant/Opposite party is arbitrary and inconsistent with the provisions of the Protection of Women from Domestic Violence Act, 2005. According to the learned Counsel, opportunity was not given to the appellant to effectively contest his case in the learned Trial Court.

4. Another contention raised by the learned Counsel for the appellant is that the learned Trial Court without considering his financial position passed the excessive maintenance allowance in favour of their children. According to the learned Counsel, the learned Trial Court should determine the just and reasonable maintenance allowance inasmuch as he has no regular source of income.

5. On the other hand, the learned Legal Aid Counsel Ms Lalhriatpuii strongly objected the points of law and facts raised on behalf of the appellant. In her submission during the course of hearing, the appellant was heard by the learned Trial Court. According to the learned Legal Aid Counsel, the learned Trial Court came to a just decision and passed reasonable order against the appellant. The learned Legal Aid Counsel also submitted that agreement or compromise made between the rival parties is not required before passing maintenance allowance.

6. I have considered the submission made by both the learned Counsels. I have also perused the records of the learned Trial Court made available before me.

7. In the records placed before me, it appears to me that copy of the complaint was not received by the appellant to effectively contest his case in the learned Lower Court. It is also not shown in any order of the learned Trial Court that the any domestic incident report of the Protection Officer was called and considered before passing the order on the application of the respondent/complainant.

8. If any deposition of complainant is taken, the opposite party shall be given opportunity of cross examination. The opposite party shall be given

opportunity to adduce evidence. It appears to me, opportunity was not given to the appellant during trial.

9. Also at Paragraph 9 of the order dated 23.4.2015 passed by the learned Trial Court, the name of the respondent is shown as Shri Lalbiakhluna and not as Shri Lalzidinga.

10. Looking at the matter from all angles, the impugned judgment of conviction and sentence cannot be justified or upheld.

11. In view of the discussion, I find that the order passed by the learned Judicial Magistrate First Class, Mamit requires interference of this Court. Hence, the impugned order is set aside and quashed and the case is remanded back to the learned Trial Court for denovo trial in accordance with the provisions of the Protection of Women from Domestic Violence Act, 2005 and its Rules, 2006 from the stage of delivery of copy of the complaint. However, the learned Trial Court shall dispose of the case as expeditiously as possible and preferably within a period of one (1) month from the date of receipt of the LCR.

12. The criminal appeal stands allowed.

Order is pronounced in open Court on this 14th day of September, 2015 under my hand and seal of this Court.

Sd/-(VANLALENMAWIA)
Addl. Sessions Judge,
Aizawl Judicial District,
Aizawl, Mizoram

Memo No. / AD & SJ (A) /2015 : Dated Aizawl, the 14th September, 2015.

Copy to :-

1. Shri Lalzidinga S/o Lalliana(L), Jubilee Veng, Zamuang, Mamit District.
2. Smt. Lalthankhumi D/o Vanlalthanga, R/o Hmuntha Tlang, Rengdil, Mamit District.
3. The Sessions Judge, Aizawl Judicial District, Aizawl.
4. The Chief Judicial Magistrate, Mamit District.
5. The Judicial Magistrate First Class, Mamit District.
6. Registration Section.
7. Guard File.
8. Case Record.
9. Calendar Judgment.

P E S H K A R