

**IN THE HIGH COURT OF MANIPUR  
AT IMPHAL**

**Criminal Revision Petition No.10 of 2023**

- 1) Loyangamba Thounaojam, aged about 43 years, S/o L. Brajamani Meitei.
- 2) Thounaojam Brajamani Meetei, aged about 78 years, S/o (L) Th. Parijat Singh.
- 3) Thounaojam Ongbi Ramani Leima, aged about 76 years, W/o Th. Brajamani Meetei.

- *All are residents of Sagolband Ingudam Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur.*

***... Petitioners/Appellants  
in Cril.Appeal Case No. 1 of 2022***

***-VERSUS-***

Smt. Kshetrimayum (N) Thounaojam (O) Joymati Devi, aged about 40 years, W/o Loyangamba Thounaojam of Sagolband Ingudam Leirak, P.O. & P.S. Imphal, Imphal West District, Manipur, at present residing at Chingamakha Kshetri Leikai, P.O. & P.S. Singjamei, Imphal West District, Manipur.

***... Respondent/Respondent in  
Cril.Appeal Case No. 1 of 2022***

**BEFORE  
HON'BLE MR. JUSTICE M.V. MURALIDARAN**

|                                      |    |                     |
|--------------------------------------|----|---------------------|
| For the Petitioners                  | :: | Mr. S. Suresh, Adv. |
| For the Respondent                   | :: | None appeared       |
| Date of Hearing and Judgment & Order | :: | 19.10.2023          |

**JUDGMENT AND ORDER**  
(ORAL)

Heard Mr.S.Suresh, learned counsel for the petitioners. None appears on behalf of the respondent despite service of notice and her name being published in the cause list. The respondent, thereafter, called absent and set ex parte.

2. This Criminal Revision Petition has been filed by the petitioners under Section 396 read with Section 401 Cr.P.C. to set aside the order dated 12.4.2023 passed by the learned Sessions Judge, Imphal West in Criminal Appeal No.1 of 2022.

3. The learned counsel for the petitioners submitted that the impugned judgment and order dated 12.4.2023 passed in the appeal is not sustainable in the eye of law, inasmuch as the same was passed without application of judicial mind. The learned counsel further submitted that the learned Sessions Judge has committed an error in passing the impugned judgment without deciding first the issue raised and framed as to the sustainability of the judgment and order dated 5.8.2019 passed by the learned Judicial Magistrate First Class, Imphal West. The conduct of the respondent is highly depreciable, inasmuch as the Criminal Complaint Case No.38 of 2014 ought to have been withdrawn by the respondent in terms of the order dated 14.11.2016 passed in

Mat. (Div.) Suit No.82 of 2014. Instead, the respondent pursued the matter which led to the passing the judgment and order dated 5.8.2019 by the learned Judicial Magistrate First Class.

4. The learned counsel further submitted that both the learned Judicial Magistrate First Class and the learned Sessions Judge have completely erred in passing the order dated 5.8.2019 in Criminal Complaint Case No.38 of 2014 and the judgment dated 12.4.2023 passed in Cril. Appeal No.1 of 2002 by keeping the order dated 14.11.2016 in Mat. (Div.) Suit No.82 of 2014 at naught.

5. According to the petitioners, the act of the respondent is nothing but abuse of the process of the order dated 5.8.2019 passed in Criminal Complaint Case No.39 of 2014. According to the petitioners, to prevent the miscarriage of justice, interference of this Court in the impugned order is called for. Thus, a prayer has been made to allow the criminal revision petition and to set aside the judgment and order dated 12.4.2023 passed in the criminal appeal.

6. The point that arises for consideration is whether the learned Sessions Judge was right in dismissing the appeal preferred against the order dated 5.8.2019 passed by the learned Judicial Magistrate, Imphal West.

7. The present revision is arising out of the judgment and order dated 12.4.2023 passed in Criminal Appeal No.1 of 2022, which was preferred against the judgment and order dated 5.8.2019 passed in Criminal Complaint Case No.38 of 2014. The Criminal Complaint Case No.38 of 2014 has been filed by the respondent herein under Section 12 of the Protection of Women from Domestic Violence Act, 2005 for passing appropriate order under Sections 18, 19, 21, 22 and 23 of the said Protection of Women from Domestic Violence Act, 2005.

8. The petitioners are husband, father-in-law and mother-in-law of the respondent. The first petitioner and the respondent are husband and wife and they were married on 5.7.2012. From the wedlock, one daughter, namely Thounaojam Lanchenbi Chanu, was born on 9.5.2013. The first petitioner and the respondent had been living together as husband and wife at the shared household till 27.5.2014. It is stated that the respondent left the matrimonial home on 27.5.2014. The first petitioner filed Mat. (Div) Suit No.82 of 2014 before the Family Court, Manipur against the respondent for dissolution of marriage. Pending Mat. (Div) Suit No.82 of 2014, the respondent filed Cril. (Maintenance) Case No.33 of 2014 and later on she had also filed Criminal Complaint Case No.38 of 2014 against the petitioners.

9. As could be seen from the records, during the pendency of Criminal Complaint Case No.38 of 2014, a settlement was arrived at between the petitioners and the respondent in Mat. (Div) Suit No.82 of 2014 and both the parties have filed a joint application before the Family Court, Manipur praying to allow them to compromise the case in terms of amicable settlement arrived at between them. Based on the compromise arrived at between the parties, the Family Court disposed of Mat. (Div) Suit No.82 of 2014 vide order dated 14.11.2016.

10. The terms of the compromise have been quoted in the decree dated 14.11.2016 in Mat. (Div) Suit No.82 of 2014. For proper appreciation, the said terms and conditions as extracted in the decree in Mat. (Div) Suit No.82 of 2014 is quoted hereunder for ready reference:

“i) That, the plaintiff will make necessary arrangement for a separate residence of their own and until a separate residence can be arranged the defendant along with their minor daughter namely Lanchenbi now aged 3 and a half years, will stay at her parental house.

ii) That, while the defendant is staying in her parental house as aforesaid she will allow the plaintiff to visit him and to stay with her as and when necessary.

iii) That, the plaintiff will always look after the defendant and his daughter and he will bear their necessary expenditure. For this the plaintiff will deposit necessary amount in the Bank Account No.20131335268 of S.B.I. M.G. Avenue, from time to time.

iv) That, the defendant will withdraw (a) Cril. (C) Case No.38 of 2014 before the Judicial Magistrate First Class, Imphal West-I, (b) Cril. Misc. Case No.25 of 2016 Ref; Cril. (M) 33 of 2014 now pending in the Family Court, Manipur and for this the defendant will file necessary application in the concerned court.

v) That, for the immediate expenditure of the defendant, the plaintiff has this day handed over a sum of Rs.50,000/- (Rupees fifty thousand)

only to the defendant and the defendant has also acknowledged the receipt of the same.

vi) That, both parties will not do anything against the compromise now brought between the parties.”

11. Pending Criminal Complaint Case No.38 of 2014, the respondent filed Cril. Misc. Case No.37 of 2017 before the Judicial Magistrate First Class, Imphal West praying to issue direction against the first petitioner herein to pay the monetary relief/expenditure i.e. medical expenditures and educational expenditures of the minor daughter of the respondent. The learned Judicial Magistrate, by the order dated 17.8.2017, disposed of the said case. While disposing of the Cril. Misc. Case No.37 of 2017, the learned Judicial Magistrate observed that *“as the respondent (present first petitioner) had given a sum of Rs.50,000/- (Rupees Fifty thousand only) only on 14.11.2016 and the operation of the minor daughter being taken place on 4.1.2017 which expenses a sum of Rs.35,000/- (Rupees Thirty five thousand only), this Court is of the view that since the respondent had given for expenditure, the said amount may be adjusted. However, the respondent is directed to deposit the necessary expenditure monthly for the minor*

*daughter in the Bank Account of the complainant including the educational expenses before 10<sup>th</sup> of every calendar month.”*

12. On perusal of the said order dated 17.8.2017, the learned Judicial Magistrate has passed the order by relying upon the terms and conditions of the compromise recorded in Mat. (Divorce) Suit No.82 of 2014. Aggrieved by the order dated 17.8.2017, the respondent herein also filed Criminal Appeal No.9 of 2017 before the learned Sessions Judge, Imphal West and, by the judgment dated 21.2.2018, the said appeal was dismissed as devoid of merits. Challenging the dismissal of the criminal appeal, the respondent has filed Criminal Revision Petition No.11 of 2018 before this Court. This Court, by the order dated 30.5.2019, dismissed the Criminal Revision Petition. While dismissing the Criminal Revision Petition, this Court granted liberty to the respondent to file appropriate petition before the Family Court for enforcing the order made in Mat. (Div) Suit No.82 of 2014, dated 14.11.2016.

13. In the present case, contrary to the terms of withdrawal of the Criminal Complaint Case No.38 of 2014, the respondent had pursued the said case. The learned Judicial Magistrate, by the order dated 5.8.2019, held that the respondents (the petitioners herein) have committed domestic violence against the complainant

(the respondent herein) and the respondents were restrained from committing any form of domestic violence against the complainant. The learned Judicial Magistrate further ordered that the first respondent (first petitioner herein) shall pay a sum of Rs.3.00 lakh as compensation to the complainant for committing the domestic violence against the complainant within three months from the date of the order. In the said order, the learned Judicial Magistrate recorded that the respondents 1 and 2 examined themselves as D.W.1 and D.W.2 in chief, but no document was produced. Thereafter, the learned Judicial Magistrate treated the petitioners as ex parte and proceeded to pass orders. The aforesaid clearly indicates that the chief examination of D.W.1 and D.W.2 was done before recording the compromise in Mat. (Div) Suit No.82 of 2014 and the factum of compromise not bringing to the notice of the learned Judicial Magistrate by the respondent is not appreciable. In fact, she ought to have brought to the knowledge of the learned Judicial Magistrate about the compromise, which contains the withdrawal of the Criminal Complaint Case No.38 of 2014.

14. According to the petitioners, both the learned Judicial Magistrate and the learned Sessions Judge have completely erred in passing the judgment and order dated 5.8.2019 passed in Criminal Complaint Case No.38 of 2014 and the judgment and

order dated 12.4.2023 passed in Criminal Appeal No.1 of 2022 respectively by keeping the order dated 14.11.2016 passed in Mat. (Div) Suit No.82 of 2014 aside.

15. From the impugned judgment dated 12.4.2023, it is evident that the learned Sessions Judge framed the issue - whether the impugned order of the trial Court can be sustainable when both the parties settled their dispute in connection with Mat. (Div) Suit No.82 of 2014 before the Family Court in which one of the conditions is that the respondent shall withdraw the case?

16. The learned Sessions Judge has reproduced the terms and conditions entered between the parties and, after extracting the terms and conditions, held as under:

*“6.3 Admittedly, the defendant, now Respondent has not withdrawn Cril. (C) Case No.38 of 2014 before the Judicial Magistrate First Class, Imphal West-I which is one of the condition of the Terms and Conditions of the parties culminating into compromise. It is not known whether other Terms or Conditions No.I& II have been complied with. It is also not brought into the record whether the defendant has withdrawn Cril. (M) Case No.33 of 2014. Whichever the case may be, the case settled by the parties is Mat. (Div) Suit No.82 of 2014 and*

*before the Ld. Family Court. The Terms and Conditions under which the case was settled were binding between the parties as if the same was contract between them. Thus, in the event of breaching any Term and Condition by any of the parties, the other Party may file Execution/Enforcement of the Terms & Conditions of their agreement. In short, in this case, the settlement was brought before the Ld. Family Court and in case of breach of any of the term and condition made by one party, the other party is to approach the Ld. Family Court.*

*6.5 Further, it is seen that the case before the Ld. Trial Court proceeded the case ex-parte on the failure of the appearance of the present appellant who appeared before the Ld. Trial Court through Counsel even after the passing of the compromise order. It is also seen that the Respondent communicated the order of the Ld. Family Court to the Ld. Trial Court who had knowledge of the existence of the order but proceeded apparently on the breach of the condition. I also find the Ld. Trial Court considered the case minutely before giving its decision on merit.”*

17. Despite formulating the issue referred supra, the learned Sessions Judge without giving a finding as to the

sustainability of the order impugned before him has disposed of the appeal leaving the question of law raised and the issue framed therein undecided. The said finding arrived at by the learned Sessions Judge is not legally sustainable. Once the issue is framed, the learned Sessions Judge ought to have answered the issue. However, the learned Sessions Judge failed to do so. On the other hand, the learned Sessions Judge in paragraph 6.6. held that “*the Sessions Court has no jurisdiction for executing/enforcing the order passed by the learned Family Court in Mat. (Div) Suit No.82 of 2014*”.

18. It is apposite to note that it is not the claim of the petitioners as appellants before the learned Sessions Judge for enforcement of the order passed in Mat. (Div) Suit No.82 of 2014. As stated supra, the learned Sessions Judge ought to have answered the issue once the issue is framed.

19. Once the respondent agreed to withdraw the Criminal Complaint Case No.38 of 2014 on compromise in another proceedings, which is related to the matrimonial dispute, she should honour the undertaking given in the compromise. On the contrary, the respondent has pursued the said case. The act of respondent in proceeding further the Criminal Complaint Case No.38 of 2014 before the learned Judicial Magistrate without intimating the Court

as to the compromise entered by her with the petitioners is nothing but abuse of process of law. The said fact has not been clearly analysed by the learned Sessions Judge while delivering the impugned judgment even though the compromise entered between the respondent and the petitioners and the terms and conditions made thereon was brought to the notice of the Court. In fact, the learned Sessions Judge erred in holding that the Judicial Magistrate has not committed any mistake. The further finding of the learned Sessions Judge that there is no error either on law or facts in arriving the impugned order by the learned trial Court is also erroneous.

20. As stated supra, despite service, the respondent has not entered appearance in this matter.

21. Upon considering the grounds of revision canvassed by the appellants and also taking into consideration the overall given facts and circumstances of the case, this Court is of the view that the order of the learned Judicial Magistrate First Class as well as the learned Sessions Judge impugned herein are not legally sustainable and the same are liable to be set aside.

22. In the result,

- (i) The Criminal Revision Petition No.10 of 2023 is allowed.
- (ii) The order of the learned Sessions Judge dated 12.4.2023 in Criminal Appeal No.1 of 2022 and the order of the learned Judicial Magistrate, First Class, Imphal West dated 5.8.2019 in Criminal Complaint Case No.38 of 2014 are set aside.
- (iii) No costs.

**JUDGE**

**FR/NFR**

*Sushil*