

GAHC010010162023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./37/2023

ADHIR CHANDRA GHOSH AND 2 ORS
S/O- LATE SUREN GHOSH, R/O- VILL- DHUBRI, WARD NO. 7(CR DAS ROAD), P.O- DHUBRI, P.S- SADAR THANA, DHUBRI, DIST- DHUBRI, ASSAM

2: PANKAJ GHOSH
S/O- ADHIR CHANDRA GHOSH
R/O- VILL- DHUBRI
WARD NO. 7(CR DAS ROAD)
P.O- DHUBRI
P.S- SADAR THANA
DHUBRI
DIST- DHUBRI
ASSAM

3: JHUMA GHOSH
W/O- PANKAJ GHOSH
R/O- VILL- DHUBRI
WARD NO. 7(CR DAS ROAD)
P.O- DHUBRI
P.S- SADAR THANA
DHUBRI
DIST- DHUBRI
ASSA

VERSUS

ANUPAMA GHOSH
W/O- SRI MANTU GHOSH, D/O- SRI AKUL CH GHOSH, R/O- VILL-
BILASIPARA WARD NO. 4, P.O AND P.S AND DIST- DHUBRI, ASSAM

Advocate for the Petitioner : MRS. S ROY
Advocate for the Respondent : MR. M I HUSSAIN

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

20.09.2023

Heard Mrs. S. Roy, learned counsel for the petitioners. Also heard Mr. M. I. Hussain, learned counsel for the sole respondent.

2. This is an application filed under Section 482 of the Code Criminal Procedure, 1973 praying for quashing of the criminal proceedings initiated against the petitioners vide CR(DV) Case No.173/2021, pending before the Court of learned Sub-Divisional Judicial Magistrate (in short SDJM), Bilasipara, where cognizance of the offence was taken under Section 12 of the Protection of Women from Domestic Violence Act (in short PWDV Act), 2005 against the petitioners vide order dated 20.11.2021.

3. It is submitted by the learned counsel for the petitioners, Mrs. S. Roy that the present petitioners are father-in-law as petitioner No.1, brother-in-law as petitioner No.2 and sister-in-law as petitioner No.3 of the present respondent/complainant and they were added as a party in the Complaint Case (DV) No.173/2021 filed by the present respondent/complainant. The facts of the case is the respondent got married with one Sri Mantu Ghosh, son of the petitioner No.1 on 28.01.2012 as per the Hindu Rites and Rituals. After few days of their marriage, the respondent and her husband started to live separately in a separate house of the building where the petitioners lived jointly. Surprisingly, the respondent with an ulterior motive lodged a complaint Case against the present petitioners along with her husband by suppressing the

actual facts of the case with an allegation of domestic violence upon her. The Trial Court on perusal of the complaint petition and on hearing the complainant/present respondent took cognizance of the offence under Section 12 of PWDV Act and issued process against all the respondents which includes the present petitioners.

4. After receipt of the summon, the petitioners appeared before the learned Magistrate and submitted their written statement against the complaint filed under Section 12 of the PWDV Act by denying the allegation brought against them by the complainant/present respondent and also filed their written objection. After, submission of the written statement by the respondents/present petitioners, the learned Trial Court directed the complainant to submit her evidence-in-chief on affidavit and her witnesses. Accordingly, the complainant on 25.07.2022 submitted her evidence on affidavit of herself as P.W. 1 and other four witnesses as P.W.2 to P.W.5.

5. From the statement made in the complaint as well as in the evidence-in-chief on affidavit, it has been stated that the complainant was subjected to physical and mental torture on demand of dowry and finally driven out from her matrimonial house along with her minor son. Thus, it is seen that the allegation against the petitioners are omnibus allegation and no specific allegation has been made by the complainant against present petitioners. The main allegation is leveled against her husband and the present petitioners are implicated unnecessary and dragged into this Court only to harass them and to satisfy the ego and anger of the complainant/present respondent.

6. The complaint petition and the evidence on record itself shows that the complainant made a general allegation with regard to demand of dowry and

nothing has been disclosed on which date or time and month by whom the alleged demand was made and the manner by which she was subjected to cruelty and how she was tortured and harassed. Therefore, the allegations against the petitioners are extremely vague and omnibus and appear to be leveled on account of fit of anger because of matrimonial differences with her husband. Thus, the learned Trial Court while taking cognizance and issuing process against the present petitioners and her husband ought to have ascertained that there is prima facie material against the petitioners. But, here in the instant case the allegation against the petitioners are omnibus and general allegation and the prosecution of the of like nature would not be maintainable and the complaint petition and the proceedings started thereon is liable to be set aside and quashed under Section 482 of the Cr.P.C.

7. The learned counsel for the petitioners also submitted that if such proceeding is allowed to be continued, then, it would create negative effects thereby, the very purpose of the enactment of PWDV Act would be frustrated and the petitioners would suffer irreparable loss. Thus, he prays for quashing of the criminal proceeding and the order of cognizance passed against the petitioners by invoking the inherent power under Section 482 of Cr.P.C.

8. In support of her submission, she relies on the decision rendered by the ***Hon'ble Apex Court in the Case of Pepsi Foods LTD & Anr. Vs. Special Judicial Magistrate & Others reported in (1998) AIR (SC) 128***, wherein, she stressed mainly on paragraph-27 of the said judgment which read as under;

“Para-27, Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must

reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

9. Further, she also relies on the decision passed by the ***Hon’ble Apex Court in the Case of Neelu Chopra & Anr. Vs. Bharti reported in (2009) AIR (SCW) 6683***, and mainly stressed on paragraph-5 of the said judgment, wherein, it has been stated that;

“Para-5, In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not be all and end of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants.”

10. Mrs. S. Roy, the learned counsel for the petitioners also relies on the decision passed by the ***Co-ordinate Bench in Crl.Petn.1297/2022***, wherein, the criminal proceeding was set aside and quashed by invoking the power under Section 482 of Cr.P.C., which had been initiated against the petitioners under Sections 498(A) /406 /506/34 of IPC, by considering the ground of non-availability of incriminating materials against the petitioners. Accordingly, she also submitted that this is also a fit case where the criminal proceeding initiated

under the PWDV Act is liable to be set aside and quashed.

11. In this regard, the learned counsel for the respondent, Mr. M. I. Hussain has submitted that the respondent is alone with her minor son and there is no one to care for her and in such a situation she was bound to file case under PWDV Act seeking for relief. He also submitted that the learned counsel for the petitioners suppressed the materials available in the complaint petition as well in the evidence, wherein, it has been clearly stated that the present petitioners had instigated and abetted the husband of the respondent to torture her physically and mentally. He further submitted that there are specific allegations mentioned in the complaint petition in paragraph Nos.4, 6, 7 & 8 against the present petitioners/respondents as to how they were also involved in torturing the respondent physically and mentally and how they instigated the husband of the respondent to assault her. Further, he also submitted that in the evidence on affidavit and the witnesses has also leveled the specific allegation showing their involvement in the alleged offence. It is also a fact that the Act comes under the social allegation and if there is any quashing of the criminal proceeding against the present petitioners, it will send wrong message to the society. Thus, he submitted that it is not at all a fit case where the criminal proceeding against the present petitioners can be quashed by applying the provision under Section 482 of Cr.P.C.

12. After hearing the submissions made by the learned Advocates of both sides, I have perused the case record along with the annexure annexed along with the petition. It is seen that vide order dated 20.11.2021, the learned SDJM took cognizance against the present petitioners along with the husband of the present respondent under Section 12 of PWDV Act and accordingly, issued

notice and called for the report from the Protection Officer of the Social Welfare Department, Dhubri. From the order passed by the learned Trial Court, it is seen that before taking cognizance or issuance of notice the Court was satisfied considering the incriminating materials available in the case record against the present petitioners and also after hearing the complainant the cognizance was taken and process was issued accordingly after being satisfied. Thus, it is seen that while taking cognizance the learned Trial Court perused the case record/complaint petition and also heard the complainant in person and thereafter, on being satisfied the process was issued.

13. Coming to the complaint petition, it is seen that the allegation of torture is mainly brought against the husband of the respondent. In the same time, it cannot be denied that sufficient incriminating materials are also brought against the present petitioners showing their involvement in the alleged offence. From the evidence on affidavit and witnesses, it is seen that the petitioners not only participated in the alleged offence, but also instigated and abetted the husband of the respondent for demanding dowry of Rs. 7(Seven) lakhs and tortured her brutally. Thus, it is seen that there are sufficient materials available in the complaint petition as well in the evidence of the respondent as P.W.1 and other four witnesses, wherein, the allegation of torture also brought against the present petitioners along with the husband of the respondent.

14. Further, in the judgment relied by the learned counsel for the petitioners in the case of ***Neelu Chopra (Supra)***, wherein, it has been observed by the Hon'ble Apex Court that the particulars of offence committed and role played by the each and every accused has to be brought into the notice of the Court. But, here in the instant case, the matter is still at the evidence stage and the learned

Trial Court issued notice taking cognizance against the accused petitioners only considering the prima facie materials available in the complaint petition as well as after hearing the complainant in person.

15. Also, in the case of the ***Pepsi Foods (Supra)***, the Hon'ble Apex Court has observed that the duty of the Magistrate is not to be a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations. But, here in the instant case, it is seen that the evidence is yet to be recorded from the materials available in the complaint petition and after hearing the complainant in person, the learned Trial Court prima facie satisfying himself took the cognizance of the offence and issued notice accordingly.

16. Further, coming to the judgment of the ***Hon'ble Supreme Court in the Case of State of Haryana & Ors. Vs. Bhajan Lal & Ors.,*** reported in **1992 Supp (1) SCC 335**, has given some guidelines in paragraph 102 while dealing along with the petition under Section 482 of Cr.P.C. which read as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

- (2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a magistrate within the purview of Section 155(2) of the Code.*
- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

17. In paragraph 102(7) in the case of **Bhajan Lal (Supra)**, the guidelines speaks that, if, the criminal proceeding is instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. But, here in the instant case, it is seen that the lady instituted a case against the present petitioners along with her husband with an allegation of physical and mental torture on her and specific allegation is brought against the present petitioners that they instigated and abetted the husband of the respondent in committing such offence. However, there are no materials that the case is initiated against the petitioners due to private and personal grudge. More so, in paragraph 103 of the said judgment, it has been

observed by the Hon'ble Apex Court that the power under Section 482 of Cr.P.C. should be exercised very sparingly and with circumspection and that too in a rarest of the rare cases.

18. So, considering the entire discussion made above, it is seen that the learned Trial Court took cognizance against the present petitioners along with the husband of the respondent by considering the materials available in the complaint case and had issued process only after his satisfaction. More so, materials available in the complaint case as well as the evidence of the witnesses, I find that the learned Trial Court had not committed any error while passing the order of cognizance against the present petitioners as the *prima facie* case is also established against the petitioners under Section 12 of PWDV Act.

19. So, from the entire discussion made above, I find that this is not a fit case to exercise the power under Section 482 Cr.P.C. In the result, I find no merit in this petition and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant