

GAHC010030402023



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

Case No. : WP(C)/979/2023

ANUPAMA BORGOHAIN AND ANR.
W/O RAJIB BORGOHAIN R/O NALIAPOOL DIBRUGARH 786001 P.O.
DIBRUGARH P.S DIBRUGARH DIST. DIBRUGARH ASSAM

2: SUPRATEEV BORGOHAIN
S/O RAJIB BORGOHAIN R/O NALIAPOOL DIBRUGARH 786001 P.O.
DIBRUGARH P.S DIBRUGARH DIST. DIBRUGARH ASSA

VERSUS

THE UNION OF INDIA AND 2 ORS.
REP .BY THE SECRETARY TO THE GOVT OF INDIA MINISTRY OF LAW AND
JUSTICE 4TH FLOOR A WINGH SHASTRI BHAWAN NEW DELHI-110001

2:THE STATE OF KARNATAKA
REP. BY THE COMMISSIONER AND SECRETARY
LAW AND JUDICIAL DEPARTMENT
BANGALORE - 560009
KARNATAKA.

3:DIPANJALEE BORAH
W/O- TRIDEEV BORGOHAIN
PRESENTLY RESIDING AT FLAT NO. 144
TOWER B-2
AKSHAYA NAGAR MAIN ROAD
DLF WESTLAND HEIGHTS
BEGUR
BANGALORE - 560068
KARNATAK

Advocate for the Petitioner : MR. M DAS

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 13-03-2023

Heard Mr. M.P. Choudhury, learned counsel for the petitioners and Mr. K. Gogoi, learned Central Government Counsel for the respondent no. 1.

2. The instant writ petition has been preferred by the two petitioners to invoke the extra-ordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India for assailing an order dated 07.10.2022 passed by the Court of learned Metropolitan Magistrate, Traffic Court no. 5, Bangalore [‘the Court of learned MMTC-V, Bangalore’, for short] whereby the learned Court issued notices to the respondents arraigned in a petition filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 [‘the D.V. Act, 2012’, for short] which has been registered and numbered as CrI.Misc. no. 153/2022. The two petitioners herein have been arraigned as the respondent no. 2 and the respondent no. 3 in CrI.Misc. no. 153/2022, which has been instituted by the party-respondent no. 3 impleaded herein as the complainant/aggrieved person.

3. It is the case of the petitioners that the petitioner no. 1 and the petitioner no. 2 are the mother and the younger brother respectively of one Sri Trideev Borgohain. It is projected that the marriage of Sri Trideev Borgohain was solemnized with Smti. Deepanjali Borah [hereinafter referred to as the aggrieved person] i.e. the complainant in CrI.Misc. no. 153/2022, under the provisions of Special Marriage Act before the office of the Registrar of Marriages,

Dibrugarh on 07.10.2016.

4. It is mentioned in the application under the D.V. Act, 2012 that after solemnization of the marriage, the aggrieved person and Sri Trideev Borgohain i.e. the husband of the aggrieved person started residing at Bangalore in the State of Karnataka. Alleging commission of domestic violence, the aggrieved person has instituted the application under Section 12 of the D.V. Act, 2005 before the Court of learned MMTC-V, Bangalore arraigning her husband, Sri Trideev Borgohain as the respondent no. 1 and seeking a number of reliefs :-

[a] Prohibit the Respondent from committing any act of Domestic Violence;

[b] Prohibit the Respondent, his family members or any/all persons acting on behalf of the Respondent in aiding or abetting in the commission of acts of domestic violence;

[c] Declare that the Petitioner has the right to reside in the shared household owned by the Respondent, situated at Flat No. 144, Tower B-2, Akshaya Nagar Main Road, DLF Westland Heights, Begur, Bangalore - 560 068 as relief claimed under Section 17 of the Act;

[d] Prohibit the Respondent from alienating the marital house owned by the Respondent located at Flat No. 144, Tower B-2, Akshaya Nagar Main Road, DLF Westland Heights, Begur, Bangalore - 560 068 without leave of this Hon'ble Court as per section 19 of the Act;

[e] Pass an Order directing the Respondents to pay a sum of Rs. 40,00,000/- for the mental agony, cruelty, physical and psychological torture the Respondent has meted out the Petitioner throughout these years of marriage, and also during the duration of the marriage under

Section 22 of the Act;

[f] Pass such other and further reliefs for monetary relief and other relief to the Petitioner such as her costs, Counsel's fee and such further or other reliefs as this Hon'ble Court deems fit or the nature of the case requires.

5. On registration of the complaint as Crl.Misc. no. 153/2022 on 06.09.2022, the learned MMTC-V, Bangalore posted the case on 17.09.2022 for hearing and thereafter, on 07.10.2022 for hearing. The Court of learned MMTC-V, Bangalore after perusal of the materials on record, proceeded to issue notice to the respondents on the main petition as well as on the interlocutory applications by the impugned order dated 07.10.2022. Aggrieved thereby, the petitioners have approached this Court by the instant writ petition under Article 226 of the Constitution of India.

6. Mr. Choudhury, learned counsel for the petitioner has submitted that since as per the application filed under Section 12 of the D.V. Act, a part of the cause of action has arisen at Dibrugarh where the two petitioners reside, the petitioners have approached this Court seeking setting aside and quashing of the order dated 07.10.2022. According to Mr. Choudhury, the instant writ petition is maintainable under Article 226[2] of the Constitution of India.

7. On perusal of the allegations made in the application, filed by the aggrieved person, it transpires that the main allegations are against the husband of the aggrieved person. Besides the main allegations made against the husband of the aggrieved person, the aggrieved person has also made allegation against the two petitioners in paragraph nos. 17 & 27 thereof. The aggrieved person has **inter alia** brought allegations to the effect that when on 01.11.2019 she visited the paternal house of her husband, the husband did not allow her to enter his

parental house and as a result, the aggrieved person had to arrange flight tickets herself to come back to Bangalore all alone. Allegations have been leveled to the effect that the two petitioners herein have created a marital dispute between the aggrieved person and her husband by poisoning the mind of the husband of the aggrieved person as they purportedly would stand benefitted from it. It is the further allegation of the aggrieved person that the petitioners had been telling that the aggrieved person is not suited for their family. On the basis of the averments and allegations made in the complaint, the Court of learned MMTC-V, Bangalore decided to proceed with the complaint by taking cognizance and issuing process to the respondents therein including the two petitioners herein, for their appearance by the impugned order dated 07.10.2022.

8. Having regard to the projections made in this writ petition, I am of the considered view that the instant writ petition under Article 226 of the Constitution of India is not maintainable. The order which has been challenged in the instant writ petition is a judicial order passed by the Court of learned MMTC-V, Bangalore. The issues related to cause of action have been averred in the application filed by the aggrieved person under Section 12 of the D.V. Act, 2012, registered as Crl.Misc. no. 153/2022 in order to get reliefs, mentioned above from the Court of learned MMTC-V, Bangalore.

9. If the petitioners are aggrieved by the impugned order dated 07.10.2022 passed by the Court of learned MMTC-V, Bangalore in Crl.Misc. no. 153/2022, the same will be subject to scrutiny only before the jurisdictional High Court within whose jurisdiction the Court of learned MMTC-V, Bangalore falls. This Court is not persuaded to reach a view that this Court has any jurisdiction to

entertain a challenge to an order passed by a judicial forum situated outside its territorial jurisdiction by invocation of Article 226[2] of the Constitution of India.

10. In such view of the matter, the instant writ petition is not entertained. The petitioners are, however, at liberty to approach the appropriate Court seeking relief. It is further made clear that this Court has not made any observation as regards the merits of the claim of the petitioners qua the impugned order dated 07.10.2022.

JUDGE

Comparing Assistant