

GAHC010038382023



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

Case No. : Crl.Pet./192/2023

RAKIB AHMED MAZUMDER
S/O RAHMAN UDDIN MAZUMDER
R/O VILL- KANAKPUR PART-II, P.S. SILCHAR, DIST. CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:MUSSTT. SEBI BEGUM LASKAR
W/O RAKIB AHMED
MAZUMDER
D/O IDOR ALI LASKAR
R/O VILL- BANSKANDI PART-II
P.S. LAKHIPUR
DIST. CACHAR
ASSAM
PIN-78810

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 01-03-2023

Heard Mr. L.R. Mazumder, learned counsel for the petitioner as well as Mr.

D.P. Goswami, learned APP for the State.

2. This petition under section 482 Cr.P.C. has been filed for quashing of the order dated 05.07.2022 passed by the learned Judicial Magistrate First Class, Lakhipur, Cachar in Misc. (D.V.) case no.34/2018 as well as order dated 19.11.2022 passed by the learned Sub-Divisional Judicial Magistrate (M), Cachar in Execution case no.09/2022.

3. The learned counsel for the petitioner has submitted that the respondent no.2 who is the estranged wife of the petitioner has filed a domestic violence case against the petitioner which was tried by the Court of learned Judicial Magistrate First Class, Lakhipur, Cachar. It is submitted that the petitioner has submitted a written statement in the said proceedings on 14.06.2019, but thereafter defaulted in appearing and consequently a final order was passed by the learned Judicial Magistrate First Class, Lakhipur, Cachar in DV case no.34/2018 which was instituted under provision of section 12 of the Protection of Women from Domestic Violence Act, 2005.

4. The learned counsel for the petitioner submits that the petitioner had certain ailments during the relevant period of time for which he was unable to attend the Court. It is also submitted that the petitioner is presently unemployed and is dependent on his elder brother. It is also submitted that the proceeding was filed after period of 6 years only for the purpose of harassment.

5. The learned APP has made his submissions.

6. Considered the materials available on record.

7. In so far as the final order dated 05.07.2022 passed by the learned Judicial Magistrate First Class, Lakhipur, Cachar in DV case no.34/2018 is concerned, the said order has attained finality. As per the provision of section 29 of the Domestic Violence Act, appellate remedy is provided for and there is no material in this application to show that the petitioner has availed such prescribed statutory remedy available to him against the final order dated 05.07.2022.

8. Therefore, the impugned order, which was passed to execute the final order passed by the learned trial Court is not liable to be set aside and quashed under section 482 Cr.P.C. in absence of any appeal filed against the said final order, after the said order has attained finality.

9. As the final order dated 05.07.2022 has attained finality, there is no way that the Court can declare that the order dated 19.11.2022 passed in connection with the execution of the final order is bad in law. By the said order, notice was issued to the petitioner requiring him to make payment on 16.12.2022. The execution of the final order dated 05.07.2022 in DV case no.34/2018 is a natural consequence of default in compliance of the said final order passed by the trial Court in domestic violence proceedings.

10. Accordingly, this Court does not find any merit in this criminal petition and the same is dismissed at the motion stage without issuance of notice on the respondents.

11. The Registry shall transmit a copy of this order to the Court of Judicial Magistrate First Class, Lakhipur, Cachar to be made a part of record of DV case no.34/2018.

JUDGE

Comparing Assistant