

GAHC010048872019



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

Case No. : Crl.Pet./242/2019

WASHIM QURESHI AND 4 ORS.

S/O MD. NAYIM QURESHI, PRESENTLY R/A RUPNAGAR, CHINAMORA,
JORHAT, R/O FASI ALI NEAR BHUGDOI MASZID, P.S.-JORHAT, DIST-
JORHAT, ASSAM

2: MD. BABU AHMED
S/O MD. NAYIM QURESHI
R/O FASI ALI NEAR BHUGDOI MASZID
P.S.-JORHAT
DIST-JORHAT
ASSAM

3: MD. HASAN ALI
S/O MD. NAYIM QURESHI
R/O FASI ALI NEAR BHUGDOI MASZID
P.S.-JORHAT
DIST-JORHAT
ASSAM

4: MD. NAYIM QURESHI
S/O LATE ABDUL RASHID
R/O FASI ALI NEAR BHUGDOI MASZID
P.S.-JORHAT
DIST-JORHAT
ASSAM

5: MUSSTT. SAYADA BEGUM
W/O MD. NAYIM QURESHI
R/O FASI ALI NEAR BHUGDOI MASZID
P.S.-JORHAT
DIST-JORHAT
ASSA

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SMTI MAHE SAMIM
W/O MD. WASHIM QURESHI
D/O MD. JAMAL QURESHI
R/O TINKUNIA
NEAR MASZID
DIBRUGARH
P.O. AND P.S.-DIBRUGARH
DIST-DIBRUGARH
ASSAM
PIN-78500

Advocate for the Petitioner : MR D TALUKDAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 23.02.2023

Heard Mr. D. Talukdar, learned counsel for the petitioners. Also heard Mr. R.J. Baruah, learned APP for the State respondent no.1 as well as Mr. R. Chakraborty, learned counsel for the respondent no.2.

2. By filing this criminal petition filed under section 482 Cr.P.C., the petitioners have prayed for quashing of (i) the order dated 22.11.2018, passed by the learned Judicial Magistrate First Class, Dibrugarh, thereby issuing notice to appear in connection with CR Case No.58^{DV}/2018; (ii) order dated 18.02.2019, passed by the said learned Court to proceed ex-parte against the petitioner nos.1, 4 and 5; and (iii) the said CR Case No.58^{DV}/2018, which is a complaint filed under section 12 of the Protection of Women from Domestic

Violence, Act, 2005 (hereinafter referred to as "DV Act" in short).

3. The learned counsel for the petitioners has referred to the averments made in the complaint petition as well as in the joint affidavit of the petitioner no.1 and the respondent no.2 sworn on 15.12.2016 to project that earlier in point of time there was a matrimonial dispute between the parties leading to filing of Case No.12^C/2016 under the DV Act, which was tried before the Court of learned SDJM, Dibrugarh. However, by order dated 17.12.2016, the said learned Court took note of the said joint affidavit and had allowed the respondent no.2 to withdraw the said proceeding. In the said joint affidavit dated 15.12.2016, sworn by the petitioner no.1 and the respondent no.2, it is specifically mentioned that the petitioner nos. 2 to 5 are living separately. Accordingly, claiming that the petitioner nos.2 to 5 were not the members of the shared household of the petitioner no. 1 and the respondent no.2, this criminal petition has been filed.

4. The learned counsel for the respondent no.2 has defended the proceedings of case no.58^{DV}/2018 by projecting that even after living separately in a rented house, at the instigation of the petitioner nos.2 to 5, the respondent no.2 was mentally and physically tortured and she was made to starve and she was treated like a servant instead of a family member. It is also stated that on 10.10.2018, the respondent no.2 was mercilessly beaten and she was compelled to remain outside the house for the entire night as she was not permitted to enter the house. Thus, on 11.10.2018, the respondent no.2 had to take shelter in her parental home. In support of his submissions, the learned counsel for the respondent no. 2 had placed reliance on the cases of (i) *Satish Chander Ahuja v.*

Sneha Ahuja, (2021) 1 SCC 414, and (ii) V.D. Bhanot v. Savita Bhanot, (2012) 2 SCC 183.

5. Perused the materials available on record and the cases cited by the learned counsel for the respondent no.2 has been given due consideration.

6. In the case of *Satish Chander Ahuja (supra)*, the Supreme Court of India had examined the meaning of the words "shared household" and it was held in para 91.1 and 91.2 that the definition of "shared household" given in section 2(s) of the Act, 2005 could mean that shared household is a household where aggrieved person lives or belongs to the joint family of which husband or aggrieved is the member has a share. It was also held that the judgment rendered in the case of *S.R. Batra v. Taruna Batra, (2007) 3 SCC 169*, did not lay down a correct law. Thus, the meaning of the words "shared household" appears to have been expanded.

7. In the case of *Satish Chander Ahuja (supra)*, the brief facts of the case was that the appellant therein had purchased the property in question. His son, namely, Raveen Ahuja was married to the respondent therein. After her marriage, she started to live in the first floor of the building along with her husband. Under such facts the definition of shared household was decided by approving para 56 of the order passed by the High Court. Para-17 of the said case is extracted below:-

17. *The High Court opined that the Trial Court erroneously proceeded to pass decree under Order XII Rule 6 CPC by not impleading the husband and failing to appreciate the specific submission of the appellant while admitting the title of the respondent that the suit premises was the joint family property but also losing the*

site of the DV Act. The directions given by the High Court are contained in the paragraph 56 to the following effect:

"56. In these circumstances, the impugned judgments cannot be sustained and are accordingly set aside. The matters are remanded back to the Trial Court for fresh adjudication in accordance with the directions given hereinbelow:

(i) At the first instance, in all cases where the respondent's son/the appellant's husband has not been impleaded, the Trial Court shall direct his impleadment by invoking its suo motu powers under Order I Rule 10 CPC.

(ii) The Trial Court will then consider whether the appellant had made any unambiguous admission about the respondent's ownership rights in respect of the suit premises; if she has and her only defence to being dispossessed therefrom is her right of residence under the DV Act, then the Trial Court shall, before passing a decree of possession on the wife premise of ownership rights, ensure that in view of the subsisting rights of the appellant under the DV Act, she is provided with an alternate accommodation as per Section 19(1)(f) of the DV Act, which will continue to be provided to her till the subsistence of her matrimonial relationship.

(iii) In cases where the appellant specifically disputes the exclusive ownership rights of the respondents over the suit premises notwithstanding the title documents in their favour, the Trial Court, while granting her an opportunity to lead evidence in support of her claim, will be entitled to pass interim orders on applications moved by the respondents, directing the appellant to vacate the suit premises subject to the provision of a suitable alternate accommodation to her under Section 19(1) (f) of the DV Act, which direction would also be subject to the final outcome of the suit.

(iv) While determining as to whether the appellant's husband or the in-laws bears the responsibility of providing such alternate accommodation to the appellant, if any, the Trial Court may be guided by paragraph 46 of the decision in Vinay Verma v. Kanika Pasricha, 2019 OnLine Del 11530.

(v) The Trial Court shall ensure that adequate safeguards are put in place to ensure that the direction for alternate accommodation is not rendered meaningless and that a shelter is duly secured for the appellant, during the subsistence of her matrimonial relationship.

(vi) This exercise of directing the appellant to vacate the suit premises by granting her alternate accommodation will be completed

expeditiously and not later than 6 months from today."

8. Thus, it is clear that the Supreme Court of India had approved of the decision by the High Court that it would determine as to whether the husband of the respondent or her in-laws would bear the responsibility of providing alternative accommodation.

9. In the case of *V.D. Bhanot v. Savita Bhanot*, (2012) 3 SCC 183, the Supreme Court of India had held that the previous conduct of the parties, even prior to the Domestic Violence Act coming to force could be taken into consideration and the aggrieved lady would be entitled to protection of the said Act. Para 7, 8 and 12 thereof are quoted below:-

7. *Before the Delhi High Court, the only question which came up for determination was whether the petition under the provisions of the PWD Act, 2005, was maintainable by a woman, who was no longer residing with her husband or who was allegedly subjected to any act of domestic violence prior to the coming into force of the PWD Act on 26-10-2006.*

8. *After considering the constitutional safeguards under Article 21 of the Constitution, vis-à-vis, the provisions of Sections 31 and 33 of the PWD Act, 2005, and after examining the statement of objects and reasons for the enactment of the PWD Act, 2005, the learned Judge held that it was with the view of protecting the rights of women under Articles 14, 15 and 21 of the Constitution that the Parliament enacted the PWD Act, 2005, in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them.*

12. *We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.*

10. Thus, when it is not in dispute that the respondent no. 2 was earlier residing in the shared household with the petitioner nos. 2 to 5. The respondent no. 2 had filed a complaint under DV Act, which was compromised on 17.12.2016. However, as per the complaint case, the matrimonial differences and dispute between the petitioner no. 1 and the respondent no. 2 had again erupted in the month of December, 2017. Therefore, in view of the ratio laid down in the case of *Satish Chander Ahuja (supra)*, and (ii) *V.D. Bhanot (supra)*, as the petitioner has, amongst others, prayed for residence order under Section 19 of the DV Act, the Court is of the considered opinion that the names of the petitioner no. 1 and/or the petitioner nos. 2 to 5 cannot be struck-off.

11. In course of the submissions, the learned counsel for the respondent no.2 has produced a photocopy of an order 03.04.2019, by which the learned trial Court had already vacated the order dated 18.02.2019 to proceed ex-parte against the petitioner nos.1, 4 and 5. Therefore, that part of the prayer to assail the order dated 18.02.2019 has been rendered infructuous.

12. Thus, the learned counsel for the respondent no. 2 has successfully been able to repel the challenge made in this petition. No case has been made out for quashing of the impugned order dated 22.11.2018 passed by the learned Judicial Magistrate First Class, Dibrugarh in CR Case No.58^{DV}/2018, or for quashing of the said complaint filed under section 12 of the DV Act.

13. Thus, this petition stands dismissed.

14. The petitioners as well as the respondent no. 2, who are duly represented by their respective learned counsel are directed to appear before the learned Court of Judicial Magistrate First Class, Dibrugarh on 20.03.2023, without expecting any further notice for appearance, and by producing a certified copy of this order, both sides shall await for further instructions and/or order from the said learned Court.

JUDGE

Comparing Assistant