

GAHC010055392021



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

Case No. : Crl.Pet./228/2021

HITESH MAHANTA AND 2 ORS
S/O LATE SATISH MAHANTA, R/O WARD NO. 1, GOPAL THAKUR ROAD,
P.O.-RANGAPARA, P.S.-RANGAPARA, DIST-SONITPUR, ASSAM

2: DHRUBA MAHANTA
S/O LATE SATISH MAHANTA
R/O WARD NO. 1
GOPAL THAKUR ROAD
P.O.-RANGAPARA
P.S.-RANGAPARA
DIST-SONITPUR
ASSAM

3: LALIT MEDHI
S/O UDAY MEDHI
R/O BARKURIHA
P.O. AND DIST-NALBARI
ASSA

VERSUS

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

2:SMT. MINAKSHI KALITA
W/O SRI RAJU MAHANTA
D/O SRI DILIP KALITA
R/O VILL-NEPALI BASTI
MISSAMARI
MOUZA-MISSAMARI
P.S.-MISSAMARI
DIST-SONITPUR
ASSAM
PIN

Advocate for the Petitioner : MR. D DAS SR. ADV

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGEMENT AND ORDER

Date : 06.02.2023

Heard Mr. N. Mahajan, learned counsel for the petitioners. Also heard Mr. S.K. Singh, learned Senior counsel assisted by Mr. B. Pushilal, learned counsel for the respondent No. 2 as well as Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State of Assam/respondent No.1.

2. The petitioners have filed an application under Section 482/397/401 of Cr.P.C., 1973 praying for quashing of the order dated 24.06.2020 issuing notice to the petitioners/respondents in connection with C.R. Case No. 178/2020 under Section 12 of Protection of Women from Domestic Violence Act, 2005(herein after referred as 'D.V. Act, 2005').

3. The brief facts of the case is that the respondent No.1 has filed a complaint case under Section 12 of D.V. Act, 2005 before the court of Chief Judicial Magistrate, Sonitpur, alleging *inter alia* that she has been tortured both physically as well as mentally by her husband and his family members and as such, sought various reliefs under the provisions of the Act. Subsequently, a domestic incident report under Section 12 was also forwarded to the court of learned Chief Judicial Magistrate, Sonitpur from the protection officer and then it was registered as C.R. case No. 178/2020.

4. After registration of the aforesaid case, it was transferred to the

court of JMFC, Tezpur for disposal of the same. On receipt of the case from the court of CJM, Sonitpur, the next date was fixed on 22.06.2020 for passing necessary order. On 22.06.2020, the opposite party No. 2 was absent and the court was also not functioning properly due to Covid-19 pandemic and the case was fixed again on 08.07.2020 for necessary order. On 24.06.2020, the aggrieved party i.e. the respondent No. 2 filed an application praying for interim monetary relief and the learned court was pleased to grant ex-parte interim relief of Rs.1200/- for the aggrieved person/respondent No. 2 and her child and also issued notice against the respondents including the present petitioners.

5. Being highly aggrieved and dissatisfied with the issuance of notice by the learned Trial court, this petition for quashing of the order has been preferred.

6. Mr. N. Mahajan, learned counsel for the petitioners has submitted that the perusal of the complaint filed by the respondent No. 2, does not reveal any allegation of petitioners being involved in any act of domestic violence as defined under the D.V. Act and as such, the mechanical issuance of notice against the petitioners is not in consonance with law and as such, the proceeding of C.R. Case No. 178/2020 and the order dated 24.06.2020, issuing notice against the petitioners may be set aside.

7. It is also submitted by the learned counsel for the petitioners that there is no whisper about commission of any act under the D.V. Act as against the petitioner No. 2 to save and except the expression of all family members and in view of lack of any specific act or role, on the basis of vague and omnibus allegation, the issuance of notice and continuance of proceeding of the case would result in failure of justice and as such, the

proceeding of C.R. Case No. 178/2020 as well as order dated 24.06.2020 issuing notice against the petitioners may be set aside and quashed.

8. It is also stated that the petitioner No. 3 who is the maternal uncle of Raju Mahanta i.e. husband of respondent No.2 is no way connected with any domestic violence towards the aggrieved persons i.e. respondent No.2. The allegations against him is that he played a pivotal role in arranging the marriage of the parties and his name has been dragged for this reason only, which does not come under the purview of D.V. Act.

9. It is also the submission of learned counsel for the petitioners that the respondent No. 2 concealed material facts regarding her mental stage before marriage and has not come up with true facts in the case in question regarding leaving the house of her husband as she used to take treatment in the Mental Hospital at Tezpur for which she took shelter in the house of her father for 6(six) months for taking treatment of her mental disorder and as such, the subsequent implication of present petitioners have been done with clear intention of harassing them. Hence, the proceeding of C.R. Case No. 178/2020 as well as the order dated 24.06.2020 issuing notice against the petitioners may be set aside and quashed.

10. In support of his submissions, learned counsel for the petitioners has placed reliance on the following case laws-

- (i) (2011) vol. 12 SCC 588 (Inderjit Singh Grewal vs State of Punjab and Anr.)
- (ii) (2013) vol.4 SCC 176 (Ashish Dixit and Ors. vs State of Uttar Pradesh and Anr.)
- (iii) 2016 SCC online P&H 4200 (Amit Agarwal and Ors. vs Sanjay

Aggarwal and Ors.)

(iv) (2020) vol.3 SCC 14 (Shyam Lal Devda and Ors. vs Parimala.)

(v) 2021 SCC online SC 1251 (Mirza Iqbal @ Golu and Anr. Vs State of Uttar Pradesh and Anr.)

(vi) 2021 SCC Online Cal 2602 (Chaitanya Singhania and Anr. Vs Khusboo Singhania.)

(vii) (2022) vol. 6 SCC 599 (Kahkashan Kausar @ Sonam and Ors. vs State of Bihar and Ors.)

11. On the other hand, Mr. S.K. Singh, learned Senior counsel for the respondent No. 2 submits that a quashing petition is not maintainable as the proceedings under Domestic Violence Act are civil proceedings and the civil proceedings cannot be quashed in a petition under Section 482 Cr.P.C. It was urged that the proceeding under this Act is a remedy under the civil law.

12. By referring the Domestic Violence Rules, 2005, the learned Senior counsel for the respondent No. 2 submits that a complaint under Rule 2(b) of the D.V. Rules is defined as an allegation made orally or in writing by any person to a protection officer. On the other hand, a complaint under Section 2(d) Cr.P.C. is any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person whether known or unknown has committed an offence. Learned counsel further has pointed out that the Magistrate dealing with an application under Section 12 of the D.V. Act is not called upon to take action for the commission of an offence. Hence, what is contemplated is not a complaint but an application to a Magistrate as set out in Rule 6(1)

of the D.V. Rules.

13. It is further submitted that Rule 6(1) sets out that an application under Section 12 of the Act shall be as per Form II appended to the Act. Thus, an application under Section 12 not being a complaint as defined under Section 2(d) of the Cr.P.C., the procedure for cognizance set out under Section 190(1)(a) of the Code followed by the procedure set out in Chapter XV of the Code for taking cognizance will have no application to a proceeding under the D.V. Act. Section 190(1)(a) of the Code and the procedure set out in the subsequent Chapter XV of the Code will apply only in cases of complaints, under Section 2(d) of Cr.P.C. given to a Magistrate and not to an application under Section 12 of the D.V. Act.

14. The learned Senior counsel for the respondent No. 2 also pointed out by referring the case of *Adalat Prasad vs Rooplal Jindal* reported in *2004 vol. 7 SCC 432* that the ratio in that case applied when a Magistrate takes cognizance of an offence and issues process, in which event instead of going back to the Magistrate, the remedy lies in filing petition under Section 482 of the Code. The scope of notice under Section 12 of the D.V. Act is to call for a response from the respondent in terms of the statute so that after considering oral submissions, appropriate order can be issued. Thus, the matter stands on a different footing and the dictum in *Adalat Prasad vs Rooplal Jindal* (supra) would not get attracted at a stage when a notice is issued under Section 12 of the D.V. Act.

15. It is further submitted by the learned Senior counsel for the respondent No. 2 that the provisions of D.V. Act contemplate filing of an application under Section 12 to initiate the proceedings before the concerned Magistrate. After hearing both sides and after taking into

account the material on record, the Magistrate may pass an appropriate order under Section 12 of the D.V. Act. It is only the breach of such orders which constitutes an offence as it is clear from Section 31 of the Act. Thus, if there be any offence committed in terms of the provisions of the Act, the limitation prescribed under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the D.V. Act.

16. The learned Senior counsel for the respondent No. 2 has also contended that a petition under Section 482 Cr.P.C. would be maintainable only if the order complained of is passed by a criminal court or by a court in exercise of powers under the Cr.P.C. Quashing an application under Section 12 of the DV Act does not fall in either category as what the court is called upon to do at the stages of interdict the exercise of civil jurisdiction by the magistrate at the threshold. Since the Magistrate is exercising only a civil jurisdiction in granting reliefs under Chapter IV of D.V. Act, it follows that a Magistrate is not a criminal court for the purposes of proceedings under Chapter IV of the D.V. Act. As such, an application under Section 482 Cr.P.C. does not lie to quash an application under Section 12 of the D.V. Act.

17. Another point raised by the learned Senior counsel for the respondent No. 2 by referring Section 2(a) of the D.V. Act which defines an "aggrieved person" to mean a woman who is or has been in a domestic relationship with the respondent who alleges to have been subjected to

any act of domestic violence by the respondent. It is further pointed out that the grievance of the "aggrieved persons" is directed against a "respondent" as defined under Section 2(q) of the Act. Therefore, the relief sought for under Chapter IV of the D.V. Act is not in the nature of a formal acquisition like in a criminal case and the person against whom such a relief is sought for, is, therefore, not an accused before the magistrate.

18. The learned Senior counsel for the respondent No. 2 has relied upon the following case laws-

(I) (2021) 3 Civil Court cases 633 (Dr. P. Pathmanathan and Ors. vs TMT.V. Monica and Ors.).

(ii) AIR 2022 SC 2932 (Kamatchi vs Lakshmi Narayanan).

19. Mr. P.S. Lahkar, learned Additional Public Prosecutor for the respondent No. 1 has argued in the same tune by stating that all the proceedings that would come under the purview of domestic violence cases are civil in nature and hence quashing of proceeding under Section 482 Cr.P.C. is undesirable.

20. Responding to the arguments made by the learned counsel for the respondents, the submissions made on behalf of the petitioners that there are contrary views taken by some High Courts and there are judgments of other High Courts also taking a different view and Hon'ble Apex court in the case of *Ashish Dixit (supra)* had quashed the proceeding under the D.V. Act. It was also urged that the MP High Court had taken a view that the proceeding under Section 482 Cr.P.C. could be filed.

21. I have considered the submissions of learned counsel for the parties and I have also perused the case laws cited herein this case.

22. The D.V. Act is a legislation enacted to shield the rights of woman which are enshrined and guaranteed under the Constitution of India, besides paving way to deal with the matters connected to and arising out of the family disputes in an effective and efficacious manner.

23. When the provisions contained in the said legislation i.e. D.V. Act, 2005 are looked into, it is very clear that the proceedings that would be conducted are more civil in nature. The protection orders that would be granted under Section 18, the residence orders that would be granted under Section 19, the monetary reliefs that would be granted under Section 20, the custody orders that would be granted under Section 21 and the compensation orders that would be granted under Section 22, would be based on the applications that would be filed by the aggrieved persons, the domestic incident reports and the defence taken by the respondents therein. All those proceedings are civil in nature. No doubt, Section 28(1) of the Act of 2005 lays down that the proceedings shall be governed by the provisions of Code of Criminal Procedure. However, it is specifically mentioned under Section 28(2) of the Act of 2005 that the court is empowered to lay down its own procedure for disposal of the applications filed by the aggrieved persons or the protection officers. May be due to the facts that the power to deal with the domestic violence cases is given to the Magistrate, the litigant public are under the impression that the proceedings initiated under the Act of 2005 are purely criminal in nature.

24. Section 2(i) of the Act of 2005 states that 'Magistrate' means Judicial Magistrate of First Class or the Metropolitan Magistrate, as the case may be, exercising jurisdiction under the Code of Criminal Procedure. However,

as indicated earlier, the proceedings under the Act of 2005 are more civil in nature. Section 31 of the Act of 2005 is the only provision which makes the breach committed within the purview of the Act of 2005 punishable. As per Section 31 of the Act of 2005, breach of a protection order or an interim protection order is a punishable offence. Further, Section 31(3) of the Act of 2005 empowers the Magistrate to frame charges under Section 498(A) IPC or any of the provisions of the Indian Penal Code or Dowry Prohibition Act while framing charge for the offences punishable for breach of the protection order or interim protection order. May be due to that reason i.e. to deal with the offence committed by breaching the protection order or an interim protection order and the connected offences punishable under the Indian Penal code and the Dowry Prohibition Act, the legislature by all its wisdom has empowered the Judicial Magistrate of First Class to deal with the matters pertaining to other provisions and for issuance of required orders as enumerated under Sections 18 to 22 of the Act of 2005. That does not mean that the entire proceedings that would be conducted by the Magistrate under the Act of 2005 are criminal in nature. Thus, when the orders that would be granted in domestic violence cases, basing on the material produced, are civil in nature, it has to be seen how far it is justifiable on part of the parties against whom the aggrieved person or the protection officer has initiated proceedings to seek quash of proceedings under Section 482 Cr.P.C.

25. Law is well settled that in a petition filed under Section 482 Cr.P.C., the High Court is required to examine whether its intervention is required for prevention of abuse of law or otherwise to secure the ends of justice. It is only in extremely extraordinary cases that the courts can exercise its

jurisdiction conferred under Section 482 C.P.C. to quash the proceedings under the Protection of Women from D.V. Act, 2005. Only on the sole ground that the parties arrayed as respondents by the aggrieved person were unnecessarily roped in, the proceedings against them cannot be quashed.

26. None of the reliefs claimed in D.V. Act vide No. C.R. case No. 178/2020 by the respondent No. 2 can be called crimes. Though the Act empowers a Magistrate to entertain the complaint of an aggrieved person under Section 12 of D.V. Act. and makes it incumbent on the Magistrate to make enquiry of the same under the Code of Criminal Procedure Code, 1973 reliefs under Sections 18 to 22 of the Act are in the nature of civil reliefs only. It is only violation of the order of the Magistrate which becomes an offence under Section 31 of the Act and which attracts penalty for breach of protection order by any of the respondents. Similarly, Section 33 of the Act provides for penalty for discharging duty by protection officer. Except under Sections 31 and 33 of the Act which occur in Chapter V, all the reliefs under Chapter IV of the Act are not offences and enquiry of rights of the aggrieved person under Sections 18 to 22 of the Act cannot be termed as trial of a criminal case. Therefore, it is clear that the proceedings conducted till passing of the order under Sections 18 to 22 are only civil in nature to provide civil remedy.

27. So far as the procedure is concerned, no doubt, the above reliefs are to be provided by a Judicial Magistrate First Class. A close perusal of Section 28 would show that though as per this Section the proceedings under Sec.12, 18 to 23 and offences under Section 31 are governed by the Code of Criminal Procedure, 1973 but that is not an inscrutable rule

inasmuch as Section 28(1) is having a saving clause and also subject to sub-section(2).

28. Having regard to the facts that the scheme of the Act which provide civil reliefs and the Magistrate can lay his own procedure by not taking coercive steps in general course and the enquiry being not the trial of a criminal offence, the respondents cannot rush with 482 Cr.P.C. petitions seeking quashment of the proceedings on the ground that they were unnecessarily roped in. They can establish their non-involvement in the matter and non-answerability to the reliefs claimed by participating in the enquiry. It is only in exceptional cases like without their existing any domestic relationship as laid under [Section 2\(f\)](#) of the D.V. Act between the parties, the petitioner filed D.V case against them or a competent Court has already acquitted them of the allegations which are identical to the ones levelled in the Domestic Violence Case, the respondents can seek for quashment of the proceedings since continuation of the proceedings in such instances certainly amounts to abuse of process of Court.

29. To sum up the findings, since remedies under D.V. Act are civil remedies, the Magistrate in view of his powers under Section 28(2) of D.V. Act shall issue notice to the parties for their appearance and in case of non appearance of the parties despite receiving notice can conduct enquiry and pass ex-parte order with the material available. It is only in the exceptional cases where the magistrate feels that the circumstance requires that he can insist the presence of the parties even by adopting coercive measures.

30. In the case in hand, a perusal of the complaint would show that the allegations have been made by the wife i.e. respondent No. 2 against her

husband, father-in-law, mother-in-law and brother-in-law and respondent No. 7 i.e. present petitioner No. 3 who is the uncle of her husband that all the respondents including the present petitioners tortured her both physically as well as mentally and she has demanded maintenance and other reliefs through an application filed under Section 12 of D.V. Act. It is not disputed that the petitioner Nos. 1 and 2 are brother-in-laws of respondent No. 2 and she was living in the house with her husband along with other respondents including the petitioner Nos. 1 and 2 but the petitioner No. 3 was not residing with her. It is necessary to first refer to the provisions of Section 2(f) of D.V. Act, which reads as under-

“(f) domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”

31. A perusal of the provisions make it clear that domestic relationship arises in respect of an aggrieved person if the aggrieved person had lived together with the respondent in a shared household. This living together can either be soon before filing of petition or at any point of time. If there is a joint family where father has several sons with daughters-in-law living in a house and ultimately sons, one by one or together, decide that they should live separate with their own families and they establish separate household and start living with their respective families separately at different places; it cannot be said that wife of each of the sons can claim a right to live in the house of father-in-law because at one point of time she along with her husband had lived in the shared household. If this meaning

is given to the shared household then the whole purpose of D.V. Act shall stand defeated.

32. Domestic relationship continues so long as the parties live under the same roof and enjoy living together in a shared household. However, where the living together has been given up and a separate household is established and belonging was removed, domestic relationship comes to an end and a relationship of being relatives of each other survives.

33. The purpose of the Act is to give remedy to the aggrieved persons against domestic violence. The domestic violence can take place only when one is living in shared household with the respondents. The acts of abuses, emotional, economic or physical if committed when one is living in the same shared household constitutes domestic violence. However, such acts of violence can be committed even otherwise when one is living separate. When such acts of violence take place when one is living separate, these may be punishable under different provisions of [IPC](#) or other penal laws, but, they cannot be covered under [Domestic Violence Act](#). One has to make distinction between violence committed on a person living separate in a separate household and the violence committed on a person living in the shared household.

34. Only violence committed by a person while living in the shared household can constitute domestic violence. A person may be threatening another person who lives miles away, on telephone or on whatsapp or text messages etc. This may amount to an offence under [IPC](#), but, this cannot amount to domestic violence. Similarly, emotional blackmail, economic abuse and physical abuse can take place even when persons are living far away. Such abuses are not covered under [D.V. Act](#) but they are liable to be

punished under Penal laws. Domestic Violence is a violence which is committed when parties are in domestic relationship, sharing same household.

35. Reverting to the present case, a perusal of the complaint would show that respondent No. 3 is living in different district and was not living in the shared household with the respondent No.2. The only allegation made against him is that he arranged the marriage with the respondent No. 2 along with her husband. He had connived with her husband and was supporting him. These are vague allegations and the complaint against him is nothing but an abuse of the process of the court. The respondent No. 3 was not living in a joint household. The Magistrate without examining whether the domestic relationship existed or whether there was a shared household had issued notice. The trial Court without looking into the provision of the Act had summoned everybody who was arrayed as respondents. Hence, prayer of the petitioner No. 3 is allowed. The complaint and the notice issued to petitioner No. 3 is quashed.

36. So far as the petition filed by the petitioner Nos. 1 and 2, they are the brother-in-laws of the respondent No. 2 and they were living in a shared household prior to filing of the petition under Section 12 of the D.V. Act. Hence, this Court is of the view that the petition for quashing of proceedings filed by the petitioner Nos. 1 and 2 is unsustainable. Resultantly, criminal petition is dismissed so far as petitioner Nos. 1 and 2 are concerned.

37. In view of the above, the learned trial court shall now proceed with the case except petitioner No. 3 as expeditiously as possible without being influenced by any observations made by this Court.

38. With the above observations, the criminal petition stands disposed of and stay, if any, be vacated accordingly.

JUDGE

Comparing Assistant