

GAHC010063912022



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

Case No. : Crl.Pet./286/2022

SABBIR HUSSAIN CHOWDHURY AND 2 ORS.
S/O ALHAJ JAMILUN NABI CHOWDHURY
R/O VILL- BAGPUR, PART-3, P.S. SILCHAR, DIST. CACHAR, ASSAM

2: MASUARA BEGUM
W/O ALHAJ JAMILUN NABI CHOWDHURY
R/O VILL- BAGPUR
PART-3
P.S. SILCHAR
DIST. CACHAR
ASSAM

3: MASRUR AHMED BARBHUIYA
SON OF ABDUL MALIK BARBHUIYA
R/O SATKORA KANDI PART-II
P.S. SONAI
DIST. CACHAR
ASSA

VERSUS

THE STATE OF ASSAM AND 2 ORS.
TO BE REP. BY THE PP, ASSAM

2:RUHINA YASMIN LASKAR
D/O KAMRUL HAQUE LASKAR
R/O FAKAR UDDIN ALI AHMED NAGAR
ROUSHANI PATH
HOUSE NO. 1
SIX MILE
P.S. AND DIST. KAMRUP (M)
GUWAHATI-781022.

3:NIJAMUL HASSAN

(1ST HUSBAND)
S/O RASHIDUL ISLAM
VILL- SHIALTARI
P.O. AND P.S. MANKACHAR
DIST. SOUTH SALMARA
MANKACHAR
ASSA

Advocate for the Petitioner : MR. T J MAHANTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 14-02-2023

Heard Mr. A.Y. Choudhury, learned counsel for the petitioner as well as Ms. S.H. Bora, learned APP for the State and Mr. J.I. Borbhuiya, learned counsel for the respondent no.2.

2. In view of the nature of dispute raised in this application, the service of notice on the proforma respondent no.3 is dispensed with. In the said connection it may also be mentioned that the proforma respondent no.3, namely, Nijamul Hassan is not arrayed as accused no.4 in the proceedings of Misc. case no.4^M/2022. Therefore he would not be prejudiced by any order passed in this case.

3. By filing this application under Article 482 Cr.P.C read with Article 227 of the Constitution of India, the petitioner has prayed for quashing of the proceeding of Misc. case no.4^M/2022 filed under Protection of Women from Domestic Violence Act, 2005, which is pending for disposal before the Court of

learned Judicial Magistrate First Class, Kamrup Metro, Guwahati.

4. The learned counsel for the petitioner has submitted that the respondent no.2 had married the petitioner while concealing the fact that she was already a married woman. It is submitted that later on the petitioner came to know that the respondent no.2 had applied for divorce from the proforma respondent no.3. It is submitted that when the existence of the earlier subsisting marriage of the respondent no.2 came to the notice of the petitioner, the respondent no.2 started to harass the petitioner by filing multiple FIRs and cases against the petitioner with false and concocted stories.

5. The learned counsel for the petitioner has also submitted that when the illegal marriage made by the respondent no.2 with the petitioner came to light, the petitioner had filed CR case no.200/2021 before the Court of learned CJM, Cachar, Silchar and the said learned Court forwarded the said complaint to the Silchar P.S. for investigation by order dated 26.11.2021 which was registered as Silchar P.S. case no.4157/2021 under sections 418/419/420/468/469/471/494/495/500/34 IPC.

6. After receipt of information on the said case, the respondent no.2 threatened the petitioner and in the process CR case no.3796/2021 was filed before the Court of learned CJM, Kamrup Metro, Guwahati under sections 312/ 313/ 325/ 326/324/406/354/498A/506/509A and 34 IPC with allegation that the petitioner and his family members were demanding dowry of Rs.20.00 lakh and due to non-fulfillment of their demand, she was facing harassment.

7. The learned counsel for the petitioner has further submitted that the respondent no.2 has also alleged in her complaint that some of the relatives of the petitioner had made an attempt to rape the respondent no.2 and also alleged that she was physically and mentally tortured by them. Thereafter, the respondent no.2 has filed Misc. case no.4^M/2022 under section 12 of the Protection of Women from Domestic Violence Act, 2005.

8. It is also submitted that by repetitive filing of cases against the petitioner, the petitioner has been burdened with false cases including the proceedings of domestic violence case, which is also an abuse of the process of the Court.

9. By referring to the contents of the domestic violence case registered as Misc. case no.4^M/2022, the learned counsel for the petitioner has submitted that the petitioner no.2 is the mother of the petitioner and that the petitioner no.3 is the uncle of the petitioner who resides far away from the matrimonial home and is not involved in the matter and therefore the proceedings against the petitioner no.2 and 3 are misuse and abuse of the process of the Court.

10. The learned counsel for the respondent no.2 has submitted that this is not an appropriate case for quashing of the proceedings of Misc. case no.4^M/2022 and has opposed the prayer made in this application on the ground that highly disputed questions of fact has been raised in this criminal petition. The proceeding between the petitioner and respondent no.2, the learned APP has taken a neutral stand.

11. In the present case in hand, there is nothing on record to show that the marriage of the respondent no.2 with the petitioner has been annulled before any competent Court having jurisdiction.

12. It may be appropriate to quote the definition of "aggrieved persons" as well as "domestic relationship" as provided under section 2 of the 2005 Act is quoted below:

"2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(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;

13. The learned counsel for the petitioner is not been able to demonstrate that any Court has decided that unless the marriage is lawful, the so-called 'wife' would not have a *locus standi* to maintain an application under the provisions of Protection of Women from Domestic Violence Act, 2005. The learned counsel for the petitioner has made an attempt to show that the proforma respondent no.3 had send the photographs and documents of his marriage with the respondent no.2 to the petitioner. However, the prior and/or subsisting marriage of the respondent no.2 is not the subject matter of determination in this case.

14. Be that as it may, the learned counsel for the petitioner has submitted that the proforma respondent no.3 has filed a case being T.S.(R) 89/2021 before the Court of learned Munsiff, Hatsingimari. The learned counsel for the respondent no.2 has submitted that the said proceedings have since been transferred to the Family Court at Kamrup and that in the said proceedings, the respondent no.2 has filed an application for cancellation of the kabinnama with the proforma respondent no.3.

15. Having regard to the fact that under the provision of section 36 of the 2005 Act, the provisions of Protection of Women from Domestic Violence Act, 2005 shall not be in derogation with any other law. The provision of section 26 and 36 of 2005 Act, is quoted below:

“26. Relief in other suits and legal proceedings.—

(1) Any relief available under sections 18, 19,20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

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36. Act not in derogation of any other law.—*The provisions of this Act shall be in*

addition to, and not in derogation of the provisions of any other law, for the time being in force."

16. From the conjoint reading of section 26 and 36 of the 2005 Act, it is clear that the relief available under section 18, 19, 20, 21 and 22 may also be sought for in any legal proceedings before the Civil Court, Family Court or a Criminal Court and that relief referred to under sub-section 1 of section 26 may be sought for in addition to and along with any other relief that the aggrieved persons may seek in such suit or legal proceeding before a civil or criminal court. However, the provision of sub-section (3) of section 26 of the 2005 Act provides that in case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

17. As the proceeding under the Domestic Violence Act is not in derogation of any other proceedings, the Court does not find any merit in this criminal petition for quashing of the proceedings of Misc. case no.4^M/2022.

18. The learned counsel for the petitioner has referred to the case of *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and others Vs. State of Gujarat and another*, (2017) 9 SCC 641, to project that the provision of section 482 Cr.P.C. can be invoked to secure the ends of justice and to prevent the abuse of the process of the Court. In the said context having noted herein before that the proceedings of the Domestic Violence Act is not in derogation of any other law and the Court is unable to hold that the proceedings initiated

under the Domestic Violence Act would constitute abuse of the process of the Court. Moreover, in so far as the principle of “securing of justice” is concerned, the Court is unable to accept that if the proceedings under the Domestic Violence Act is otherwise maintainable, on what account for the purpose of “securing ends of justice”, the said proceedings can be quashed. Therefore, the well settled principle of law laid down in the case of *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur & ors. (supra)* would not be applicable in this case due to by distinguishable facts and circumstances of the present case. Therefore, this criminal petition stands dismissed.

19. The appearing parties shall appear before the Court of learned Judicial Magistrate First Class, Kamrup Metro, Guwahati on 15.03.2023 and await further instructions from the said learned Court.

20. None of the observations made herein shall prejudice any party in the trial.

JUDGE

Comparing Assistant