

GAHC010079922022



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

Case No. : Crl.Pet./398/2022

SOHID ALI
S/O- LT. KAZIMUDDIN, VILL. HALDIBARI, P.O. DHUMERGHAT, P.S.
LAKHIPUR, DIST.- GOALPARA, ASSAM.

VERSUS

MUNIJAHATUN
D/O- LT. ABDUL KHALEQUE, VILL. NOLONGA, P.S. BOGUAN, DIST.-
GOALPARA, ASSAM, PIN- 783129.

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

Advocate for the Petitioner : MR. J AHMED

Advocate for the Respondent : MR. M H TALUKDAR

Date of Hearing : 21.09.2023

Date of Judgment : 16.10.2023

JUDGMENT AND ORDER

Heard Mr. J. Ahmed, learned counsel for the petitioner and also heard Mr. M.H. Talukdar, learned counsel appearing for the respondent.

2. In this petition, under Section 482 of the Code of Criminal Procedure, the petitioner, namely, Sohida Ali, has challenged the correctness or otherwise of the Judgment and Order dated 22.02.2022, passed by the learned Addl. Sessions Judge, Goalpara in Criminal Appeal No. 12/2021. It is to be mentioned here that vide impugned Judgment and Order dated 22.02.2022, the learned Addl. Sessions Judge, Goalpara had upheld the Judgment and Order dated 07.04.2022, passed by the learned Sub-Divisional Judicial Magistrate, Goalpara in DV Case No. 215/2017. It is also to be noted here that vide Judgment and Order dated 07.04.2022, the learned SDJM(S) Goalpara had directed the petitioner to maintenance @ Rs.5000/- (Rupees Five Thousand) per month in favour of the respondent and @ Rs.3000/- (Rupees Three Thousand) per month to the daughter of the respondent.

3. The factual background, leading to filing of this petition, is briefly stated as under:-

"The respondent, Mustt. Munija Khatun had got married with the petitioner on 19.06.2016 as per shariat and thereafter lived together as husband and wife. After peaceful living of conjugal life for one month the petitioner started demanding a sum of Rs.3,00,00/- (Rupees Three Lacs) from her and on account of failing to provide the same the petitioner had started torturing her physically. Thereafter, the respondent had given birth of a child. Then on 25.02.2017, the petitioner had again demanded a sum of Rs.3,00,000/- (Rupees Three Lacs) from her as dowry within a period of ten days. As the respondent had failed to meet the demand the

petitioner had driven her out of the matrimonial home. Then the respondent, having no alternative available, started taking shelter in her parental abode. Then having find it difficult to maintain herself and her daughter, the respondent had filed a petition before the learned Chief Judicial Magistrate, Goalpara under section 12 of the Protection of Women from Domestic Violence Act, 2005, against the petitioner and his first wife namely, Amina begum seeking following relief(s):-

- (i) Protection Order u/s 18 of D.V. Act;
- (ii) Residence Order u/s 19 of D.V. Act;
- (iii) Monetary relief of Rs.30,000/ for herself and Rs.15,000/ for her daughter;
- (iv) Compensation u/s 22 of the D.V. Act amounting Rs.7,00,000/ on account of the torture meted out to her;

Then, upon hearing both the parties the learned Sub-Divisional Judicial Magistrate(s) Goalpara, vide impugned Judgment and Order dated 07.04.2021 had granted following relief(s):-

- (i) Restrained the petitioner from committing any act of domestic violence upon the respondent;
- (ii) Restrained the petitioner from dispossessing the respondent and her minor child from the shared household;
- (iii) Directed the petitioner to pay maintenance @ Rs.5000/- (Rupees Five Thousand) per month in favour of the respondent and @ Rs.3000/- (Rupees Three Thousand) per month to the daughter of the respondent.
- (iv) Directed the petitioner to pay a sum of Rs.50,000/- as compensation

for being subjected the respondent to physical and mental torture.

Then being aggrieved the petitioner had preferred an appeal, being Criminal Appeal No.12/2021, against the impugned Judgment and Order passed by the learned SDJM(S), Golapara before the learned Addl. Sessions Judge, Goalpara. But, after hearing the parties, the learned Addl. Sessions Judge, Goalpara, vide impugned Judgment and Oder dated 22.02.2022, had upheld the Judgment and Order dated 07.04.2021, passed by the learned SDJM(S), Golapara."

4. Being highly aggrieved, the petitioner approached this Court for quashing and setting aside the impugned Judgment and Order, dated 22.02.2022, so passed by the learned Addl. Sessions Judge, Goalpara had upheld the Judgment and Order dated 07.04.2021, passed by the learned SDJM(S), Golapara on the following grounds:-

- (i) That, the learned appellate court had committed serious error in law, in granting maintenance and compensation to the respondent and her daughter;
- (ii) That, the learned appellate court had committed serious error by dismissing the appeal and upholding the quantum of maintenance and compensation granted to the respondent by the learned court below and as such the impugned judgment and order is liable to set aside;
- (iii) That, the learned appellate court had failed to consider the fact the petitioner had filed one petition, being petition No. 534/2020 to allow the petitioner to adduce the evidence but the same had not been considered and that the petitioner had also filed a petition seeking time to adduce evidence, but, the same was not considered on the ground that the petitioner had failed to enclose medical document and on such count the

petitioner could not adduce his evidence and as such the petitioner is deprived of to get opportunity to prove his case and therefore, both the impugned judgments and orders are liable to set aside and quashed;

(iv) That, the both the courts below had failed to apply judicial mind and examine the evidence on record in its proper perspective;

(v) That, the petitioner, due to his illness could not appear before the learned court below and adduce evidence and the learned court below had closed the evidence and though the petitioner had filed one petition, yet, the court below had rejected the same;

(vi) That, the petitioner had not subjected the respondent to any kind of domestic violence and had the petitioner be given an opportunity to adduce evidence then he could have establish his case and the respondent is not entitled to any relief as she left the matrimonial home at her own whim and caprice and as such both the impugned judgments are perverse and liable to be set aside and therefore, it is contended to allow this petition;

5. The respondent had not filed any affidavit in opposition/objection here in this petition.

6. I have heard Mr. J. Ahmed, learned counsel for the petitioners and also heard Mr. M.H. Talukdar, learned counsel for the respondent.

7. Mr. Ahmed, the learned counsel for the petitioner, submits that though several grounds have been assigned in the petition the main ground is that the petitioner has been denied opportunity to adduce evidence to establish his case. Mr. Ahmed further submits that the petitioner had filed one Title Suit for

restitution of conjugal right against the respondent and the suit was decided in favour of the petitioner and the learned appellate court had failed to consider the fact that the petitioner had filed one petition, being petition No. 534/2020 to allow the petitioner to adduce the evidence, but, the same had not been considered by the learned trial court on the ground that the petitioner had failed to enclose medical document and on such count the petitioner could not adduce his evidence and as such the petitioner is deprived of to get opportunity to prove his case and therefore, both the impugned judgments and orders are liable to set aside and quashed.

8. On the other hand, Mr. M. H. Talukdar, learned counsel for the respondent, has supported the Judgment and Order of the learned appellate court as well as the learned trial court and submits that the petitioner, though had filed his evidence yet, he could not remained present for cross-examination for the learned trial court had rightly expunged the same. Referring to Annexure - I, II, and III Mr. Talukdar further submits that petitioner was granted sufficient opportunities to adduce evidence, but he had failed to avail the same. Mr. Talukdar also submits that thought the counsel for the petitioner had assigned medical ground for inability to adduce on 31.12.2019, yet no medical documents was submitted to support the contention and as such the same was rightly rejected by the learned trial court. Therefore, it is contended to dismiss this petition.

9. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the record of the learned courts below.

10. It is not in dispute that the petitioner had filed written statement and also

filed his evidence-in-chief in the form of affidavit in support of his case. But, he had failed to make himself available for cross-examination by the respondent, though he had been given ample opportunities by the learned court below. And as the petitioner had failed to make himself available for cross-examination the learned court below had expunged the evidence-in-chief and closed the evidence and fixed the case for argument on 27.01.2020, vide order dated 31.12.2019. It is however, not in dispute that the petitioner was given the last chance vide order dated 16.09.2019- Annexure-I, and vide order dated 17.10.2019, at Annexure-II. Further it appears that on that day the petitioner was absent and he was represented by his lawyer. It also appears that thereafter, on 27.01.2020, the petitioner had filed one petition, being petition No. 534, but, on that day the learned Presiding Officer of the trial court was transferred and therefore, the case was put up before another Presiding Officer and the said Officer had ordered to fix the case for necessary order on 27.02.2020. It also appears that thereafter, on account of transfer of the presiding Officer, the case was not put up before any Presiding Officer for long time, till 11.11.2020. And that day the learned court below had ordered to fix the case on 03.02.2021 for necessary order. Thereafter, on 03.02.2021, the respondent remained present, but, the petitioner remained absent and on such count the learned court below fixed the case again for necessary order on 03.03.2021. On that day the respondent remained present, but, there is no indication in the said order as to whether the petitioner was present or not on that day. Nevertheless, it becomes clear from the said order that the learned trial court had fixed for case for argument on 22.03.2021. Then, on 22.03.2021, though the respondent was present with her counsel, yet, the petitioner was absent and he was represented by his counsel and his counsel had filed one

petition, being petition No. 978/2021, praying for time to conduct argument. But, the learned trial court had dismissed the same on account of the case being old pending and fixed the case for judgment on 07.04.2021 and asked the counsel for the petitioner to argue the case before final order on 07.04.2021. Thereafter, the learned court below had pronounced the judgment on 07.04.2021, but, there is no indication in the said order as to whether the petitioner's counsel had advanced any argument or not.

11. Thus, it becomes apparent that the learned trial court had never granted time to the learned counsel for the petitioner and the order dated 22.03.2021 is very much clear to indicate that on that day the learned counsel for the petitioner had not advanced any argument. As indicated herein above the order dated 07.04.2021 is also not clear as to whether the petitioner's counsel was allowed to argue the case or not before pronouncement of final order on that day. Further, it appears from the record that the petition No. 534/2020, filed by the petitioner for allowing him to adduce his evidence, was not disposed of, before the final order dated 07.04.2021. These facts are not disputed by the learned counsel for the respondent. From these instances, it becomes apparent that failing to dispose of the Petition No.534/2020, and referring to afford opportunity to the learned counsel for the petitioner to argue the case of the petitioner, had caused serious prejudice to him and thereby violate his right to fair trial. Further, it appears that basically the order of the learned Trial Court is an ex-parte order, and the same eschewed consideration of the Additional Sessions Judge.

12. It is now well settled that - "Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be

ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure, that have been designed to ensure justice, are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. [See - **Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.) (2007) 2 SCC 258**; and **Vijay Kumar v. State of U.P. & Anr., (2011) 8 SCC 136**].

13. Thus, having examined both the impugned judgments and orders, so passed by the learned courts below this court is of the view that the same failed to withstand the legal scrutiny. And therefore, this court is inclined to set aside both the impugned Judgments and Orders and to remand the matter to the learned trial court to proceed from the stage of evidence of the respondent and to afford opportunity to the petitioner to adduce evidence in support of his case and thereafter, to hear arguments of both side and to pronounce a fresh judgment. Till final decision, the petitioner shall continue to pay the interim maintenance to the respondent.

14. In terms of above, this criminal petition stands disposed of. The parties have to bear their own costs.

JUDGE

Comparing Assistant