

GAHC010093392023



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

Case No. : WP(C)/2443/2023

MD. FIZNUR AHMED AND ANR
S/O- ILIAS ALI MUNCHI

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP, BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
SOCIAL WELFARE DEPARTMENT , DISPUR, GUWAHATI-06

2:DISTRICT MAGISTRATE
NAGAON
ASSAM

3:THE ADDL. DIST. MAGISTRATE
CUM I/C WOMEN CELL
NAGAON DISTRICT
NAGAON
ASSAM

4:DR. NASIMA KHATUN
D/O- JAMALUDDIN AHMED

VILL- NAGAJAN
P.O AND P.S- KHARUPETIA
DIST- DARRANG
ASSA

Advocate for the Petitioner : MR S BORTHAKUR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

05.06.2023

Heard Shri S. Borthakur, learned counsel for the petitioners. Also heard Shri M. Chetia, learned State Counsel whereas Shri A.M. Ahmed, learned counsel has appeared for the respondent no. 4.

Considering the issue involved and the fact that the contesting respondents have appeared, this writ petition is taken up for disposal at the admission stage.

The petitioners are the father-in-law and mother-in-law of the respondent no. 4. The said respondent no. 4 had lodged a complaint before the Women Cell, Nagaon District against the petitioners, their son (husband of the respondent no. 4) and other relatives which was registered as W/C (N) 159/2023.

On 13.03.2023, the respondent no. 3, i.e., the Addl. District Magistrate cum I/C Women Cell had passed an interim order under Section 19 of the Protection of Women from Domestic Violence Act, 2005 (herein after the Act). Subsequently, on 16.03.2023, the said respondent no. 4 had lodged another complaint before the respondent no. 3 in which the said respondent no. 3 without even calling for any report and affording any opportunity to the petitioners had passed an order dated 16.03.2023. By the said order, it has been held that the petitioner (respondent no. 4) has full right to enter in her matrimonial house and use her Stridhan Articles and therefore, she was allowed

to enter the matrimonial house. Further, the O/C Sadar P.S. was directed to “reflect” the order and help the petitioner (respondent no. 4) to enter the Matrimonial House “as anyhow”.

For ready reference, the relevant part of the order is extracted herein below:

“Seen the petition. According to the order Dated.13.03.2023, the petitioner is allowed to enter in her matrimonial house U/S 19 of the Domestic Violence Act 2005. Considering the fact of the petition filed by the Petitioner on today i.e. Dated 16.03.2023, the Petitioner has full right to enter in her matrimonial house and use her Stridhan Articles. So, she is allowed to enter in the Main and Proper matrimonial house.

So, O/C Sadar P.S. is directed to reflect the order and help the Petitioner to enter in her original/Main Matrimonial House as anyhow.

Copy sent to O/C Sadar P.S. further proceedings.”

Shri Borthakur, the learned counsel for the petitioners submits that without even assailing the order on merits at this stage, the order is void *ab initio* as it has not been passed by the authority who is empowered under the Act in question. He submits that the Act provides that complaints under the same are to be examined by a particular authority and not by the Women Cell. The learned counsel for the petitioners has also submitted that the allegations made against the petitioners are wholly incorrect and without even giving proper opportunities, the order has been passed.

Shri Chetia, the learned State Counsel fairly submits that there appears to be a jurisdictional error in exercising powers before passing the impugned order.

Shri Ahmed, the learned counsel for the respondent no. 4 however submits that the allegations made by the said respondent no. 4 are true. He, however, fairly submits that so far as the submissions made with regard to the jurisdiction, he may not object in principle. However, he hastens to add that the aggrieved party may be allowed to approach the appropriate forum in case this Court interferes with the present proceedings.

After considering the rival submission and the stand taken by the learned counsel for the respondents, this Court has carefully examined the order which has been impugned in this writ petition.

Perusal of the orders, more particularly the one dated 16.03.2023 would show that the same was recorded "in the order sheet for Magistrate Records".

"Magistrate" has been defined in Section 2 (i) of the Act which reads as follows:

"Magistrate" means the Judicial Magistrate of the First Class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place."

There is no ambiguity in the aforesaid expression "Magistrate" which for all purposes means the Judicial Magistrate of 1st Class, or as the case may be, the Metropolitan Magistrate who exercises this jurisdiction under the Cr.P.C. In the instant case, the order has been passed by the respondent no 3, who is the Additional District Magistrate cum I/C, Women Cell who is not vested with the jurisdiction under the Act. An Addl. District Magistrate who exercises executive

powers is not a Magistrate within the meaning of the Act of 2005 and therefore, not only the impugned orders but the proceeding as a whole is wholly without jurisdiction and void *ab initio*. This Court is rather surprised that an Officer in the rank of Addl. District Magistrate could not understand the implication of the definition of Magistrate which is clearly given in the Act itself.

However, without making any further comments on the said issue, this Court is of the unhesitant opinion that the impugned orders as well as the proceeding in W/C (N) 159/2023 before the Women Cell, Nagaon is wholly without jurisdiction *qua* the Protection of Women from Domestic Violence Act, 2005 and accordingly are set aside and quashed.

However, in the interest of justice, it is observed that the respondent no. 4 would be at liberty to approach the appropriate forum as provided by the Act if she is still aggrieved.

JUDGE

Comparing Assistant