

GAHC010118522019



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

Case No. : Crl.Pet./582/2019

FARUK SEKH AND 2 ORS.

S/O ALI HUSSAIN, R/O SATGAON, AMBARI, PALLITOL, P.S.-SATGAON, P.O.-
UDAYAN BIHAR (CDA), DIST-KAMRUP(M), ASSAM, PIN-781171

2: ALI HUSSAIN
S/O LATE DALIMSHAH SEKH
R/O SATGAON
AMBARI
PALLITOL
P.S.-SATGAON
P.O.-UDAYAN BIHAR (CDA)
DIST-KAMRUP(M)
ASSAM
PIN-781171

3: TAMIJAN BEGUM
W/O ALI HUSSAIN
R/O SATGAON
AMBARI
PALLITOL
P.S.-SATGAON
P.O.-UDAYAN BIHAR (CDA)
DIST-KAMRUP(M)
ASSAM
PIN-78117

VERSUS

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

2:SMTI ILU BEGUM
W/O FARUK SEKH
R/O SATGAON

NOAPARA
P.O.-PANJABARI
P.S.-SATGAON
DIST-KAMRUP(M)
ASSAM
PIN-78103

Advocate for the petitioners : Mr. M. H. Ahmed, Adv.

Advocates for the respondents : Mr. M. P. Goswami, Addl.P.P.

Mr. M. J. Quadiri, R-2

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 27.04.2023

Date of Judgment & Order :15.05.2023

JUDGMENT & ORDER (CAV)

Heard Mr. M. H. Ahmed, learned counsel for the petitioners. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor representing the State respondent No.1 and Mr. M. J. Quadiri, learned counsel for the respondent No.2.

2. This Criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973, praying for setting aside and quashing of the impugned complaint petition registered as No.75m/2017, which is pending before the Court of learned Judicial Magistrate, 1st Class, Kamrup(M), Guwahati, and the

order dated 14.06.2017 for taking cognizance, and impugned order dated 02.03.2019, whereby, the Maintenance of Rs.5000/-(Rupees Five Thousand) only granted in favour of the respondent No.2 and to the child.

3. The brief facts leading to the filing of the present petition is that;

3.1 The petitioner No.1 is an unemployed person having no source of income of his own. The petitioner Nos. 2 and 3 are his parents, suffering from various ailments. In the year 2015, the petitioner No.1 got married with the respondent No.2 and since after the marriage, the respondent No.2 started to torture the petitioner No.1 by various ways, and also insulted the accused petitioner No.1 that he has no source of income. After marriage, the respondent No.2 also pressurized the petitioner No.1 to transfer the property in her name. She also compelled the petitioner No.1 to live separately from his parent's. As per the wish of the respondent No.2, the petitioner started to live separately in the house of the respondent No.2 as a "Ghar Jamai". Both the petitioner No.1 and the respondent No.2 are the parents of one male child, who was born out of their wedlock, but, even then, the respondent No.2 refused to stay along with the parent's of the petitioner No.1.

3.2 On 29.06.2016, the respondent No.2, fled away, after stealing the gold ornaments worth Rs.3,00,000/-(Rupees Three Lakhs) approximately, and for which reason, the petitioner No.1 had lodged an FIR against her. On the ground of lodging the FIR, and also for not fulfilling her demand, the respondent No. 2 filed a petition under Section 125 Cr.P.C., which was registered as F.C.(CrI) Case No.09/2017, before the learned Principal Judge, Family Court-II, Kamrup(M),

wherein, she prayed for Rs.25,000/-(Rupees Twenty-Five Thousand) only per month as a maintenance for herself and for the child.

3.3. In the meantime, for no action of the Police, with respect to the FIR, the petitioner No.1 filed a protest/complaint Case No.1217/2017, before the Court of learned Judicial Magistrate, 1st Class, which is still pending in trial stage.

3.4. During the pendency of the petition under Section 125 Cr.P.C., the respondent No.2 submitted a complaint in the District Welfare Officer, Kamrup(M), with some false and concocted allegation by suppressing the facts of the pendency of the petition under Section 125 Cr.P.C against the petitioners. The District Social Officer, without making any enquiry or verification forwarded the complaint to the Court of the learned Chief Judicial Magistrate, Kamrup (M), Guwahati. Further, the learned Judicial Magistrate, without recording the statement of the respondent No.2, vide impugned order dated 14.06.2017, took cognizance against the petitioners under the provision of Domestic Violence Act and issued notices upon the petitioners.

3.5. On receipt of the notices, for the Domestic Violence Act, the petitioners appeared before the learned Trial Court and also filed their written statements narrating the actual facts of the case in detail.

3.6. In the meantime, the learned Principal Judge, Family Court-II, Kamrup (M), vide order dated 24.07.2018, directed the petitioner No.1, to pay a sum of Rs.1,000/-(Rupees One thousand) only per month as an interim maintenance, considering the facts, that the petitioner No.1 has no source of income, whereas

the respondent No.2 is earning more than 30,000/-(Rupees Thirty Thousand) only by serving in a commercial school and also by running a shop.

3.7. Further, in the case of Domestic Violence, the petitioner No.1 raised objection against the prayer for interim maintenance. It was also submitted that considering the financial status of the petitioner No.1 and the respondent No.2, the learned Family Court granted reasonable maintenance of Rs.1,000/-(Rupees One Thousand) only as an interim maintenance. But, the learned Magistrate vide impugned order dated 02.03.2019, directed the petitioner No.1 to pay a sum of Rs.5,000 (Rupees Five Thousand) only as interim maintenance for the respondent No.2 and child.

3.8. The petitioner No.1 also submitted that the facts stated in the petition under Domestic Violence Act is totally different from the facts narrated in the petition under Section 125 Cr.P.C., which otherwise establishes that the case filed under Domestic Violence Act is totally false and concocted one. But, the learned Judicial Magistrate, without making any enquiry or obtaining any report from the Protection Officer, had taken cognizance directly against the petitioners, which is nothing but abuse of judicial power.

3.9. The petitioners further submitted that when maintenance of Rs. 1,000/- (Rupees One Thousand) only has been granted by the learned Principal Judge, Family Court-II, Kamrup (M), considering the earnings of the petitioner No.1. But, the learned Judicial Magistrate, 1st Class passed the order of maintenance of Rs.5000/-(Rupees Five Thousand) only per month, which is highly exorbitant and illogical. Further, the respondent No.2 obtained the order of maintenance

suppressing the fact of interim maintenance granted by the Court of learned Principal Judge, Family Court-II, Kamrup (M), which is bad in law and unjustified.

4. Accordingly, in the instant petition, the petitioners has prayed for setting aside and quashing of the proceeding of the cognizance order dated 14.06.2017 and also the interim maintenance order dated 02.03.2019.

5. Mr. M. H. Ahmed, learned counsel for the petitioners has submitted that the entire proceeding of the case under the Domestic Violence Act has been initiated against the petitioners only out of grudge. But, no enquiry was made either by the District Social Officer or by any authority or by the Magistrate and no information was provided to the petitioners in this regard. Thus, the report and the entire proceeding are illegal, and bad in law.

6. The learned counsel for the petitioners also submitted that the respondent No.2 had not informed the Court that she is availing the benefit of interim maintenance of Rs.1,000/- (Rupees One Thousand) only under Section 125 Cr.P.C. He further submitted that, it is mandatory for disclosure of such fact under Section 26(3) of the Domestic Violence Act. The Section 26(3) under the Domestic Violence Act, which read as under:-

"Section 26.....(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."

7. It is submitted that, as per the provisions of Section 26(3) of the Domestic Violence Act, it is the duty of the respondent No.2 to inform the Magistrate about the relief obtained in maintenance under Section 125 Cr.P.C. Hence, under the said provisions of Section 26(3), the petition under the Domestic Violence Act is not at all maintainable, and it is liable to be set aside and quash the entire proceeding. Moreover, it is also a fit case, where, the power of Section 482 of the Code of Criminal Procedure, 1973 can be invoked.

8. In support of his argument, he further relied on the decision of the Hon'ble Apex Court, in the case of ***Haresh Dayaram Thakur vs. State of Maharashtra and others***, reported in 2000 (6) SCC 179, wherein, para-20, it has been held that;

"Para-20.....In the case in hand, as appears from the materials on record, no such procedure as prescribed under part-III of the Act has been followed by the conciliator. The conciliator appears to have held some meetings with the parties in which there was discussion and thereafter drew up the so called settlement agreement by himself in secrecy and sent the same to the court in a sealed cover. Naturally the so called settlement agreement drawn up by the conciliator does not bear the signatures of the parties. As the impugned order

shows the said settlement has been given a status higher than an arbitral award in as much as the court has refused to even entertain any objection against the said settlement agreement reiterating the position that the settlement arrived at by the conciliator will be binding on the parties. The conciliator who is a former judge of the High Court and the learned Judge who passed the impugned order failed to take note of the provisions of the Act and the clear distinction between an arbitration proceeding and a conciliation proceeding. The learned judge in passing the impugned order failed to notice the apparent illegalities committed by the conciliator in drawing up the so called settlement agreement, keeping it secret from the parties and sending it to the Court without obtaining their signature on the same. The position is well settled that if the statute prescribes a procedure for doing a thing, a thing has to be done according to that procedure. Thus the order passed by the High Court confirming the settlement agreement received from the conciliator is wholly unsupportable."

9. The above referred judgment is seems to be passed in other context, and same is not applicable in the present case. However, the only issue raised by the petitioners in this case, as to whether, the provision of Section 26(3) of the Domestic Violence Act, proceeding before the learned Judicial Magistrate 1st Class, under the Domestic Violence Act is maintainable or liable to be quash only on the ground that the relief, which was granted to the present respondent No.2 by the learned Principal Judge, Family Court-II, Kamrup (M), Guwahati, was not disclosed before the Court of learned Judicial Magistrate, 1st Class, while granting the interim relief.

10. In this regard, the learned counsel for the respondent No.2, Mr. M. J. Quadiri, has submitted that there is no bar in getting maintenance in two parallel proceedings under Section 125 Cr.P.C. and under the Protection of Women from Domestic Violence Act. However, the person, who is getting maintenance, is bound to inform the Court regarding granting of maintenance in the subsequent proceedings. It is also submitted that the petition filed under Domestic Violence Act, the respondent No.2 has not only claimed for her maintenance, but, some other relief are also sought for, under the said petition. Hence, only for the payment of Rs.1,000/-(Rupees One Thousand) towards interim maintenance by the learned Principal Judge, Family Court-II, Kamrup(M), the present case under the Domestic Violence Act, is not liable to be quash and set aside by invoking the power under Section 482 Cr.P.C.

11. So, after hearing the learned Advocates of both sides and also perusing the case record, it is revealed that, the two cases are pending against the petitioner No.1, before the Court of learned Principal Judge, Family Court-II, Kamrup (M), under Section 125 Cr.P.C. and another case is pending under the Domestic Violence, before the Court of learned Judicial Magistrate, Kamrup (M), Guwahati. It is also a admitted fact that, two orders of maintenance were being passed by the Court of learned Principal Judge, Family Court-II, Kamrup(M), and the learned Judicial Magistrate, Kamrup(M) under the Domestic Violence Act. It is observed that, as per the Section 26(3) of the Domestic Violence Act, it is the duty of the aggrieved person to inform the learned Magistrate about the relief obtained in any other proceeding. But, it is to be seen as to whether only on that ground of entire proceeding, which is pending before the Court of learned Judicial Magistrate, Kamrup (M), can be set aside or quash. Though, it is also an

admitted fact, that apart from the claim of maintenance, the respondent No.2 also sought for other relief under Domestic Violence Act.

12. From the record, it is further, revealed that, this Court had passed an order dated 29.05.2019, directing the petitioner No.1 to continue to pay a sum of Rs.4,000/-(Rupees Four Thousand) only per month to the respondent No.2 in the case under the Domestic Violence Act by deducting an interim maintenance awarded to the respondent No.2 to the tune of Rs.1,000/- (Rupees One Thousand) only per month in the proceeding under Section 125 Cr.P.C., which is pending before the Court of learned Principal Judge, Family Court-II, Kamrup (M).

13. In the said circumstances of this case, the petitioners may move an application before the Principal Judge, Family Court-II, Kamrup (M), Guwahati intimating the interim maintenance awarded by the Court of learned Judicial Magistrate, Kamrup (M), under the Domestic Violence Act or the said Court can also be informed about the relief of maintenance awarded by the learned Principal Judge, Family Court-II, Kamrup (M). The respondent No.2 cannot claim for the maintenance in both the cases at the same time. It is also her duty to inform either of the Court regarding the orders of maintenance passed by the respective Courts. But, the prayer for, other relief, of the respondent No.2 cannot be overlooked. Thus, it cannot be a reasonable ground for setting aside and quashing of the entire proceeding initiated under the Domestic Violence Act.

14. As per Section 26(3) of the Domestic Violence Act, the respondent No.2

has to disclose about the relief, which was provided under Section 125 Cr.P.C., which is pending before the Court of learned Principal Judge, Family Court-II. However, under Section 26(2), it is clearly stipulated that the proceeding under the Domestic Violence Act can be sought for, in addition to other proceeding before any Civil or Criminal Court. Therefore, the application under the Domestic Violence Act, 2005, would be maintainable in addition to the order of maintenance under Section 125 Cr.P.C., if, pending between the parties. The only requirement of law under Section 26(3) of this Act, is that, it would act as to check and balance at the time, if, any enhancement is made by the Family Court. The Hon'ble Supreme Court in ***Sudeep Chaudhary vs. Radha Chaudhary***, reported in A.I.R 1999 SC 536 has expressed the view that "*the maintenance granted in other proceeding can be adjusted.*"

15. More so, it is seen that the order of cognizance was taken by the Court of learned Judicial Magistrate, 1st Class on 14.06.2017, and the order of interim maintenance was granted on 24.07.2018, which is subsequent to the filing of the complaint petition under the Domestic Violence Act. Hence, the statement of the interim relief of maintenance order passed by the Court of learned Principal Judge, Family Court-II may not be disclosed in the petition under the Domestic Violence Act as the petition for Domestic Violence Act was filed prior to the order passed by the Court of learned Principal Judge, Family Court-II, Kamrup(M).

16. In view of above discussion, I find that it is not a fit case to quash the entire proceeding of the Domestic Violence Act, which was registered as Complaint Case No.75m/2017, pending before the Court of learned Judicial

Magistrate, 1st Class, Kamrup (M), Guwahati, as well as the order of taking cognizance dated 14.06.2017, and the impugned order of maintenance granted on 02.03.2019, by invoking Section 482 of the Code of Criminal Procedure. However, it cannot be denied that the respondent No.2 is already getting a sum of Rs.1,000/-(Rupees One Thousand) only per month towards the interim maintenance passed by the Court of learned Principal Judge, Family Court-II, Kamrup(M) under Section 125 Cr.P.C. Hence, I find it justified to adjust the amount of maintenance granted under Section 125 Cr.P.C. with the amount granted towards interim relief of maintenance by the learned Judicial Magistrate, 1st Class. Kamrup (M) under the Domestic Violence Act.

17. Accordingly, I find that, till disposal of the proceeding under Section 125 Cr.P.C., the petitioner No.1 is hereby directed to pay the maintenance in the instant proceeding by deducting the amount, which was already granted by the learned Principal Judge, Family Court-II, as interim relief of maintenance. And, after final disposal of the cases, the amount of maintenance may be adjusted accordingly.

18. With the above observations, this criminal petition stands disposed of.

JUDGE

Comparing Assistant