



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

Criminal Revision Petition No.317/2023

AJOY SUTRADHAR
S/O LATE SURENDRA CH. SUTRADHAR
R/O VIVEKANANDA SARANI ROAD,
WARD NO. 8, P.O. AND P.S. DOOMDOOMA,
DIST. TINSUKIA, ASSAM.

..... Petitioner.

-Versus-

1. THE STATE OF ASSAM,
REP. BY THE PP, ASSAM
2. SMT. SUPTA SUTRADHAR,
W/O SRI AJOY SUTRADHAR
R/O VIVEKANANDA SARANI ROAD
WARD NO. 8, P.O. AND P.S. DOOMDOOMA
DIST. TINSUKIA, ASSAM.

..... Respondents.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocates for the petitioner	:	Mr. A.K. Gupta,
Advocate for the respondent s	:	Mr. B. Dutta, Sr. Adv. Mr. J. Das, Mr. K.K. Parasar, Addl. PP, Assam.

Date of Hearing :- 09.10.2023

Date of Order :- 07.11.2023.

ORDER

CAV

Heard Mr. A.K. Gupta, learned Counsel for the petitioner and also heard Mr. B. Dutta, learned Sr. Counsel assisted by Mr. J. Das, learned counsel for the respondent. Also heard Mr. K.K. Parasar, learned Addl. P.P. for the state respondent.

2. In this petition, under section 397 read with section 482 Cr.P.C., the petitioner, Shri Ajoy Sutradhar, has put to challenge the legality, propriety and correctness of the Judgment and order, dated 11.08.2023, passed by the learned Sessions Judge, Tinsukia in Criminal Appeal No.14(2)/2022, wherein the learned Sessions Judge has affirmed the order dated 02.04.2022, passed by the learned Sub-Divisional Judicial Magistrate (S), Tinsukia, in Domestic Violence Case No. 35/2021.

3. The background facts, leading to filing of the present revision petition, is adumbrated herein below:-

"The respondent No.2 of the present petition, namely, Smti. Supta Sutradhar had instituted a proceeding under section 12 of the Protection of Women from Domestic Violence Act, 2005 seeking different relief(s), under sections 18/19/20/21/22 of the said Act. The present petitioner, on receipt of notice, entered appearance and filed written show cause and denied the averments made in the petition. Then after hearing the parties

the learned trial court, vide order dated 28.12.2021, had granted some relief(s) in favour of the respondent No.2, including residence order and from dispossessing her from the shared household and not to indulge in any sort of domestic violence or use of force upon the respondent No.2, and also directed the petitioner to hand over one set of key of the house property to the respondent No.2 and further to pay a sum of Rs.4,000/ to the respondent No.2, being the maintenance and education of her minor daughter. Thereafter, on 01.02.2022, the respondent No.2 had filed a petition No. 322/2022 before the learned trial court, alleging violation of the order dated 28.12.2021, by the petitioner. Then vide order dated 15.02.2022, the learned trial court had directed the Officer-In-Charge, Doom Dooma P.S. to enquire and submit a report. But, without informing the petitioner and merely on the basis of statement of respondent No.2, a report was submitted by Police on 28.03.2022. Then the learned court below, vide order dated 02.04.2022, reviewed the order dated 28.12.2022, and thereby restrained the petitioner from entering into the house and also restraining him from using the vehicle of the respondent No.2 and also to unlock the wheel of the car and to hand over the key to the respondent No.2.

Being aggrieved by the said order, the petitioner had preferred an appeal before the learned Sessions Judge, Tinsukia and the learned Sessions Judge, after hearing the parties was pleased to dismiss the appeal vide judgment dated 11.08.2023."

4. Being aggrieved by the said judgment, dated 11.08.2023, of the learned Sessions Judge, Tinsukia, the petitioner has approached this court by filing the present petition on the following grounds:-

- (i) That, no interim ex-parte order has been passed here in this case u/s 23 of the D.V. Act and as such section 23(2) of the said Act has no application in the interim order passed here in this case and as both parties were heard before passing the interim order, the same amounts to passing an order under section 23(1) of the Act.
- (ii) That, section 31 of the said Act will come into play when there is allegation of breach of interim order and the procedure prescribed under section 31 of the said Act has to be followed.
- (iii) That, the learned courts below have failed to consider the scope of section 28 of the D.V. Act, which prescribed procedure for passing an order under the Act.
- (iv) That section 25(1) of the D.V. Act, as held by the learned Appellate Court is not applicable, instead section 31 of the Act is applicable, and as such the judgment of the learned Appellate Court is not sustainable.
- (v) That the respondent, with a view to oust the petitioner from the house, hatched a conspiracy and made false allegation against the petitioner.
- (vi) That, the learned trial court had reviewed the order dated 28.12.2021 merely on the basis of a police report, which is

not permissible and this aspect eschewed consideration of the learned Appellate Court.

5. The respondent No.2 had filed affidavit in opposition denying the averments made in the petition. It is stated that she is the registered owner of the vehicle and she had purchased the vehicle and she also purchased a plot of land and thereafter, availing a housing loan from SBI, she had constructed a two storied building and she used to reside therein with her daughter and that the petitioner used to perpetrate domestic violence upon her and that he locked her car for which she could not use the same. It is also stated that the petitioner also used to disturb her by creating noise in the ground floor of her house, for which she had filed the petition No. 322/22, to take appropriate legal action against the petitioner for disobedience and violation of the court's order.

6. Mr. A.K. Gupta, learned counsel for the petitioner, has reiterated the points mentioned herein above and also submits that the impugned order of the learned trial court dated 02.04.2022, was passed merely on the basis of a report submitted by police and that the petitioner was never consulted by police and as such the said order is not permissible in law. Mr. Gupta, further submits that the impugned order, dated 02.04.2022, was passed under section 23(1) of the D.V. Act, not under section 23(2) of the Act, and instead section 31 of the Act is applicable for breach of interim order, but the learned Appellate Court had failed to consider this aspect. Mr. Gupta further submits that section 25 of the Act is held to be applicable by the learned Appellate Court, but the same is not applicable, instead section 31 of the Act is applicable and therefore, the impugned

Judgment, dated 11.08.2023, so passed by the learned Appellate court is liable to be set aside. Mr. Gupta, therefore, contended to allow this petition by setting aside the impugned order dated 02.04.2022, passed by the learned trial court and also the judgment passed by the learned Appellate Court as the same failed to withstand the legal scrutiny.

7. On the other hand, Mr. B. Dutta, learned Sr. Counsel for the respondent No.2 has supported the impugned order so passed by the learned Magistrate and judgment so passed by the learned appellate court. Mr. Dutta also submits that as per section 28(2) the Act the court has the power to lay down its own procedure for disposal of an application under section 12 of the D.V. Act, and in that view of the matter, whatever procedure is adopted by the learned court below, cannot be put to challenge. Mr. Dutta further submits that the house was constructed by the respondent No.2 and the car was also purchased by the respondent No.2 and the petitioner had subjected the respondent No.2 to domestic violence in her own house and he also prevented the respondent No.2 from using the car. Mr. Dutta further submits that the petition is devoid of merit and therefore, it contended to dismiss the same.

8. Mr. K.K. Parasar, the learned Addl. P.P. also supported the impugned judgment and order passed by the learned courts below and contended to uphold the same.

9. Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record and also perused the impugned order dated 02.04.2022, so passed by the learned trial court and the judgment dated 11.08.2023, so passed

by the learned appellate court. Also I have gone through the relevant provisions of law.

10. It appears that the learned trial court had passed the interim order dated 28.12.2021, granting some interim relief(s) to the respondent No.2. The petitioner has no grievance against the said order. But, the learned trial court, on the petition No. 322/2022, filed by the respondent No.2, in respect of disobedience and violation of the order, dated 28/12/2023, had directed the Officer-In-Charge, Doom Dooma P.S., to visit the house of the parties and enquire the matter and to submit a report. Accordingly, the Officer-In Charge of Doom Dooma P.S. endorsed the matter to S.I. Abbas Ali and the said S.I. then conducted an enquiry and submitted a report to the learned trial court. And thereafter, hearing the parties, passed the impugned order, dated 02.04.2022, thereby modifying the interim order dated 28.12.2021, to the extent of restraining the petitioner from entering into the house, where, the respondent No.2 is residing and from using the vehicle registered in the name of the respondent No.2, and also to unlock the wheel of the vehicle.

11. Though Mr. Gupta, learned counsel for the petitioner, submits that the impugned order was passed on the basis of a report of police officer, who had made the enquiry and submitted the report without consulting the petitioner, yet, it appears from the record and also from the impugned order dated 02.04.2022, that the same was passed in presence of both the parties. It is a fact that while preparing the report, the Police Officer did not consult the present petitioner and other witnesses, which Mr. Gupta, learned counsel for the petitioner, has rightly pointed this out. But, at the same time it also cannot lose

sight of that such kind of domestic violence usually takes place within the four walls of a house not in presence of witnesses. And as such the victims and family members are the best person to testify about the incidence. And as such no fault can be found with the report submitted by the Police Officer, who had, after visiting the place of incidence, and examining the victim, submitted the report.

12. The report indicates the incidence of domestic violence and also indicates that the petitioner had locked the car of the respondent of which she is the owner. And on such count, and also in view of the provision of section 28(2) of the D.V. Act, which empowers the court in laying down its own procedure for disposal of an application under section 12 of the D.V. Act, and also in view of the statement object and reason behind enacting the said Act, no fault can be found with the said impugned order of the learned trial court and in the judgment of the learned appellate court.

13. Mr. Gupta also tried to persuade this court that the learned trial court is not empowered under section 23 of the D.V. Act in modifying the interim order dated 02.04.2022, rather the provision of section 31 of the said Act is attracted for breach of the provision of interim order, yet, said submission of Mr. Gupta left this court unimpressed in view of the provision of section 28(2) of the D.V. Act.

14. Thus, having examined the impugned order dated 02.04.2022, passed by the learned trial court and the Judgment dated 11.08.2023, passed by the learned Appellate Court, this court is of the considered opinion that the same suffers from no illegalities or infirmities requiring any interference of this court.

15. In the result, I find no merit in this petition and accordingly, the same stands dismissed leaving the parties to bear their own costs. However, the learned trial court is directed to conclude the proceeding at the earliest, preferably within three months from the date of receiving the certified copy of this judgment and order.

JUDGE

Comparing Assistant