

GAHC010193922021



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

PRINCIPAL SEAT AT GUWAHATI

Criminal Petition No. 691 of 2021

1. Samsur Uddin Laskar,
S/o Late Imdad Ali,
R/o Village: Neairgram Pt-II,
P.S.-Silchar, District: Silchar, Assam,
Pin- 788013

.....Petitioners

-Versus-

1. The State of Assam,
Represented by the Public Prosecutor, Assam.
2. Savy Khanam Barbhuiya,
S/o Naby Khanam Barbhuiya,
R/o: Village: Khasipur Pt-II,
P.S.: Silchar, District: Cachar, Assam.
PIN- 788009

.....Opposite Parties/Respondents.

Advocates for the petitioner : Mr L R Mazumder,
Advocate for the respondent : Mr M Khan.

BEFORE

HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Hearing : 25.05.2023

Date of Order : 02.06.2023

ORDER

Heard Mr L R Mazumder learned counsel for the petitioner and Mr P Borthakur, learned Additional Public Prosecutor for the State of Assam. Also heard Mr M Khan, learned counsel for the respondent No. 2.

Although the matter was fixed for admission hearing today, as agreed to by the learned counsel for the parties, the matter is taken up for final disposal.

2. The petitioner has filed an application under Section 482 CrPC, against the Judgment and Order dated 20.09.2021, passed by the learned Additional Sessions Judge, (FTC) Cachar, Silchar in Criminal Appeal No. 59/2019, which was preferred against the order dated 30.10.2019, passed by the learned JMFC, Cachar Silchar, in DV Case No. 220/2017, whereby the interim relief was granted to the respondent No. 2, i.e., the daughter of the petitioner.

3. The case of the petitioner is that the respondent No. 2 is the daughter of the petitioner. The marriage between the mother of respondent No. 2 and the petitioner was solemnized in the year 1992 and the respondent No. 2 was born in the year 1994, out of the said wedlock. It was alleged by the respondent No. 2 that after 2 ½ months of her birth, the petitioner tortured her mother both physically as well as mentally and drove them out from his house. The respondent No. 2 along with her mother took shelter in the house of her grandparents. Subsequently, the marriage between her mother and the petitioner was ended by a mutual divorce. Though the petitioner promised to look after the respondent No. 2 but the petitioner did not provide any financial support to the respondent No. 2. The mother of the respondent No. 2 was unable to bear of her expenses, as a result of which, her mother has handed over

her to the petitioner in the year 2004, when she was about 10 to 11 years old. While the respondent No. 2 was staying in the house of the petitioner, the second wife of the petitioner did not provide her food and caused physical and mental torture towards her. When she informed the matter to the petitioner, he also assaulted her. Finally, she was compelled to leave the house of the petitioner and started to live with her mother. With the intervention of village elderly people and their relatives, the respondent No. 2 again went to the house of the petitioner, but the petitioner drove her out on 27.11.2016 and accordingly, a case was filed by the respondent No. 2 against the petitioner claiming monetary relief. Accordingly, after hearing both sides, monthly maintenance to the tune of Rs. 1500/- (Rupees One Thousand Five Hundred) only was granted by the learned Magistrate to the respondent No. 2 and which was upheld by the learned Sessions Court.

4. It was urged by the learned counsel for the petitioner that the respondent No. 2 prior to filing of the DV Case No. 220 of 2017, filed a maintenance case before the Family Court under Section 125 CrPC, which was dismissed by the Family Court, as the respondent No. 2 is a major unmarried daughter and as such, she is not entitled for maintenance under Section 125 CrPC. According to the learned counsel for the petitioner, as the respondent No. 2 is the major unmarried daughter and once her maintenance case was dismissed by the Family Court, as such, the impugned Judgment dated 20.09.2021, passed in DV Case No. 220 of 2017, upholding the maintenance of respondent No. 2, is liable to be set aside.

5. It is also the submission of the learned counsel for the petitioner that the respondent No. 2 never visited the house of the petitioner after 2004. Hence, question of torture and driving out the respondent No. 2 from the house of the petitioner does not arise at all. It is also submitted that there is no proof about driving her out from the house of the petitioner

on 27.11.2016 and hence, she is not entitled for any maintenance.

6. On the other hand, learned counsel for the respondent No. 2 has submitted that it is not in dispute that the petitioner is the father of the respondent No. 2. Though the petition for maintenance under Section 125 CrPC was dismissed by the Family Court, as she is major unmarried daughter without any disability, but the learned Magistrate has power to grant interim relief to the respondent No. 2, who is the daughter of the petitioner, as per the The Protection of Women from Domestic Violence Act, 2005 (hereinafter, in short, referred to as "the DV Act").

7. It is also submitted that it is not in dispute that the petitioner got married to the mother of the respondent No. 2 as per Muslim rites and rituals. Since then their relations were domestic relationship as defined under Section 2 (f) of the DV Act. Both of them had lived together in a shared household as defined under Section 2 (s) of the DV Act. As such, though the respondent No. 2 is the major daughter, she is entitled for maintenance under the DV Act.

8. In support of his submission, learned counsel for the respondent No. 2 has submitted the following case law:-

(2014) 10 SCC 736; (Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori & Anr.)

9. I have considered the submissions of the learned counsel for the parties as well as the scanned copy of the record.

10. The marriage between the petitioner and the mother of the respondent No. 2 is not disputed. It is also not disputed that the petitioner and the respondent No 2 were residing together in the shared household. The petitioner has also not denied his relationship with the

respondent No. 2 as his daughter. Section 23 of DV Act says about the interim relief. At this stage, only a *prima faice* view is required to be taken by the Magistrate in respect of the domestic violence and allegations of aggrieved may be taken at the face value, without being influenced by denial of the petitioner, of course, if there are cogent reasons or compelling circumstances, not to believe the same.

11. The questions to be considered in this case, is that, whether maintenance can be claimed under the DV Act, by the major unmarried daughter.

12. Section 2 (a) of the DV Act defines aggrieved person, which reads as follows-

“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 respondent.

13. Section 2 (f) defines domestic relationship, which reads as follows-

“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;

14. Section 2 (s) defines “shared household”, which reads as follows:-

“shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or

equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

15. On a bare look at the aforesaid provisions, it reveals that the definition of the "aggrieved person" given in DV Act is wider enough, and covers "any woman", who is or has been in domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. A plain and simple reading of the definition of aggrieved person clearly suggests that an unmarried daughter can be an 'aggrieved' against her father provided the other parameters of the DV Act are fulfilled. In the case in hand, the petitioner has not challenged the paternity with of the respondent No. 2. It is also not disputed that the respondent No. 2 and her mother lived along with the petitioner in a shared household.

16. It also appears that the petitioner did not provide any required maintenance to his daughter. Hence, *prima facie*, the ingredients required by the daughter to take an aid of DV Act are fulfilled. At this stage, only *prima facie* view is required to be taken by the Magistrate in respect of taking a case of domestic violence. Earlier, they lived in a shared household and subsequently, the daughter of the petitioner has been driven out from the house of the petitioner. Even otherwise, under Hindu Adoption and Maintenance Act, 1956 an unmarried daughter is given right to maintenance and her such right has been recognized by Section 20 (3) of the said Act, irrespective of her age.

17. According to the learned counsel for the respondent No. 2, the respondent No. 2 has no income of her own. Learned Magistrate has granted Rs. 1500/- only as interim relief to the

respondent No. 2, which is a meager amount to maintain one person in these days of inflation and economic crisis in the society. Admittedly, the petitioner is a salaried person, having monthly income of around Rs. 30,000/- He has capacity to maintain his major unmarried daughter.

18. In view of the above, I do not find any infirmity or illegality in the order passed by the learned trial Court as well as the appellate Court as aforesaid. Accordingly, the criminal petition stands dismissed.

19. The petitioner is directed to pay the interim maintenance of Rs. 1,500/- per month, along with the arrear amount, if any, to the respondent No. 2 before the learned trial Court.

20. The criminal petition stands disposed of.

JUDGE

Comparing Assistant