

GAHC030005272022



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

Case No. : CRP/8/2022

Chuaauthuama
Durtlang Leitan, Mizoram

VERSUS

Malsawmi
Durtlang Leitan, Mizoram

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : Ms. Rosalynn L Hmar

BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. B. Lalramenga, Advocate.

For the Respondents : Mr. Lalramdinthara.

Date of Hearing : 27.09.2023.

Date of Judgement : 27.09.2023

JUDGMENT & ORDER (ORAL)

(A.D. Choudhury, J)

1. Heard Mr. B. Lalramenga, learned counsel for the petitioner. Also heard Mr. Lalramdinthara, learned counsel for the respondent.

2. **The challenge:**

The present civil revision petition is filed under Article 227 of the Constitution of India, by the petitioner/husband against the impugned judgment and order dated 14.04.2021 passed by the learned Judicial Magistrate Class-V, Aizawl, Mizoram in Criminal Complaint No. 7/2018 by which the petitioner herein has been directed to pay Rs. 20,000/- as compensation to the respondent herein, and also against the impugned order dated 10.02.2022 passed by the learned District & Sessions Judge, Aizawl, in Criminal Appeal No. 4/2021, which dismissed the appeal of the present petitioner.

3. **The brief facts of the case of the petitioner:-**

The petitioner and the respondent got married on 16.12.1986 and they had been married for a period of 30 years. They were blessed with three offspring who already attained majority and they have been staying with the petitioner. The respondent refused to live with her husband and the respondent left the matrimonial home on her own free will on 11.01.2017. On the night of 11.01.2017, the respondent's youngest son Shri PC Lalrindika dropped the respondent off at Zemabawk in the residence of her brother as per the respondent's desire. The respondent on 02.02.2018 filed a Criminal Complaint case against the petitioner under Section 18, 19, 20 &

22 of PWDV Act, 2005 for Order(s) of protection, residence, monetary relief and compensation. The learned trial Court after considering the matter in issue, refused prayers of the respondent under Sections 18, 19 & 20 of the PWDV Act, 2005 but the prayer of the respondent No. 2 was granted to the extent of directing the petitioner to pay a sum of Rs. 20,000/- to the respondent. Being aggrieved, the petitioner filed criminal appeal No. 4/2021 before the learned appellate court which was also dismissed. Hence the petitioner prefers this civil revision petition before this Court.

4. **The brief facts of the case of the respondent:-**

The respondent wife filed an application under Section 18, 19, 20 & 22 of PWDV Act, 2005 praying for order(s) of protection, residence, monetary relief and compensation as discussed hereinabove. According to her, the petitioner divorced the complainant/respondent by way of "Mak, Puanchhe Paihin an Paih Chhuak" on 11.01.2017. It was also alleged that the husband along with his children thrown her out from her matrimonial home and she has no place to live and unable to maintain herself. The husband is a government employee under Co-operative Department and the wife is unable to support herself due to her ill health and having hearing problem due to assault inflicted by her husband and children and therefore, she has not even been able to work as a daily labour.

The husband by filing a written statement amongst other took a stand that the husband is having no relation with the wife and they do not share same household anymore and the wife has left the house by her own free will. It was also stand of the husband that he has already retired and the respondent wife is an able woman and can take care of herself.

It was also stand of the husband that the wife used to stay at her sister's home at Electric veng and also stay with her brother and his family at Zemabawk.

To prove her case, the wife adduced six witnesses and respondent examined four witnessed to prove their case.

5. **Finding of the learned Magistrate:-**

The learned trial Court framed the following points of determination:-

- a) Whether the aggrieved person and the respondent have domestic relationship?*
- b) Whether the aggrieved person and the respondent share a household together?*
- c) Whether the respondent subjected the aggrieved person to domestic violence?*
- d) Whether the aggrieved person is entitled to relief prayed for?*

6. After examination of the witnesses, the learned Magistrate came to the following conclusion: -

- I. The aggrieved person and the respondent have a domestic relationship.
- II. The aggrieved person and the respondent have lived in the share household after their marriage till separation.
- III. After elaborately discussing the testimony of the aggrieved person and other witnesses including the cross-examination, came to a conclusion that aggrieved person was denied to live in the shared household by the respondent during the subsistence of their marriage

when the aggrieved person was taken out and dropped by bike at the house of her relative by her youngest son. On the basis of such determination, the learned Magistrate concluded the following:-

- a. The aggrieved person has failed to establish that the respondent subjected the aggrieved wife to physical and mental abuse, therefore, she is not entitled any protection under Section 18 of the DV Act.
- b. As the aggrieved person is residing with her relative and she has already go out from their house and a divorce application is pending between the parties, the learned Magistrate, did not consider it necessary to pass order against the respondent to allow the aggrieved person to return to her matrimonial home and to reside in the shared household.
- c. The monthly maintenance prayed by the aggrieved person was refused on the ground that the husband is of 87 years of old and he is living on his pension.
- d. Considering the duration of trial and expenses incurred by the aggrieved wife an amount of Rs. 20,000/- was granted as compensation.

7. **Findings of the Court:**

- I. The aggrieved person has not assailed the determination made as discussed hereinabove rather field an application for direction payment of compensation amount before this Court.
- II. This Court though is not approving the reasons cited for not granting of relief to the aggrieved person under Section 19 and 20

of DV Act, 2005 inasmuch as residing with relatives by an aggrieved person and pendency of a divorce petition cannot be a reason for refusing relief under Section 19 of the DV Act, 2005 and a Magistrate exercising of power under the aforesaid act are even empowered to direct for separate residence if it is established that aggrieved person is illegally deprived of residence. However, in absence of challenge to the judgment by the aggrieved person, this Court is not interfering with such finding, however, the Registry is to send the copy of this order to the learned Magistrate who passed this order. Such direction has been issued by this Court in exercise of its supervisory power under Article 227 of the Constitution of India. Similar is the case so far relating to refusing relief under Section 20 of the DV Act, 2005 inasmuch as age and income of the husband cannot be a ground for refusal of such relief more particularly when the husband is having a regular pension.

III. This Court, however do not find any illegality after perusal of the evidence on record to interfere with the decision regarding the payment of compensation under Section 22 of the DV Act, 2005.

IV. Law is by now well settled that a finding of fact based on principles of law, the interference by High Court under Article 227 of the Constitution of India is not warranted. Such finding of facts can be interfered when such facts are erroneous on account of non-consideration of material evidence or the conclusion arrived are contrary to evidence or based on inferences that are impermissible in law.

8. In the case in hand, the findings of fact arrived at by the learned

Magistrate has been affirmed by the appellate forum after due consideration of the material available on record including the evidence of the parties.

9. In the present case after perusal of the materials available on record subject to what have been observed hereinabove this Court finds no illegality in determining the compensation under Section 22 of the DV Act, 2005 inasmuch as the findings to which this Court are not in agreement being perverse are against the interest of the aggrieved person and the aggrieved person has not challenged such finding and in absence of such challenge, this Court even though do not approve the findings as discussed hereinabove, cannot grant relief to the aggrieved wife inasmuch as in the present proceeding also no cross objection has been filed.
10. In view of the aforesaid findings reasons and decisions, this Court finds no merit in the present revision petition and accordingly, same stands dismissed with a cost of Rs. 10,000/- to be paid by the petitioner to the respondent wife within a period of six weeks from today and file a compliance report in shape of an affidavit before the Registry of this Court.
11. Registry to send a copy of this Court to the learned Magistrate who passed the impugned order in terms of the observation made by this Court in Paragraph-7 (II) of this order.

JUDGE

Comparing Assistant