

GAHC040010512021



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

Case No. : WP(C)/359/2021

Papiya Boss and 2 Ors
D/o Shri Chitta Ranjan Deb,
Village Banderdewa Beligaon, P.O Pathalipahar, P.S Bihpuria, District North
Lakhimpur, Assam

2: Bobby Chakravorty
Age:
Occupation :

3: Sidharth Sankar Deb
Age:
Occupation

VERSUS

THE STATE OF AP and 2 Ors.
Represented by the Chief Secretary, Govt.of Arunachal Pradesh.

2:Arunachal Pradesh State Commission for Women
Age: 0
Occupation :

3:Gayatri Deb
Age: 0
Occupation

Advocate for the Petitioner : T T Tara

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 06.06.2024

Heard Mr. T. T. Tara, learned counsel for the petitioners. Also heard Mr. Y. Riram, learned Government Advocate for the State respondent No. 1 and Mr. P. Taffo, learned counsel for the respondent Nos. 2 & 3.

2. This is an application under Article 226 of the Constitution of India for issuance of writ in the nature of mandamus or certiorari and/or any other appropriate writ, order or direction of like nature.

3. The present writ petition has been filed by the petitioners challenging the legality and validity of the impugned summons dated 27.10.2021, issued by the Arunachal Pradesh State Commission for Women in domestic violence case No. APSCW/PP/DV-23/2021, whereby the petitioners have been directed to appear before the Commission on 03.11.2021 at 10.30 a.m. to answer the charges of the complaint.

4. It is submitted by Mr. T. T. Tara, learned counsel for the petitioners, that the Arunachal Pradesh State Commission for Women (in short 'APSCW') has no authority/jurisdiction to issue summons to the petitioners on the basis of a complaint filed by the private respondent No. 3, who is an ordinary resident of

Banderdewa Baligaon, P.O. Patali Pahar, P.S. Bihpuri, District North Lakhimpur, Assam. He further submitted that the petitioner No. 3 got married with private respondent No. 3 in the year 2010 as per Bengali Customary system and practice and they started living as husband and wife in village Baligaon, P.S. Banderdewa, District North Lakhimpur, Assam. However, the petitioner No. 3, being a Police Constable in Arunachal Pradesh at PTC Banderdewa, used to travel to his place of posting, which is about 2 km from his house to attend his normal duties. Initially, both the petitioner No. 3 and the private respondent No. 3 used to reside happily as husband and wife, but subsequently the respondent No. 3 used to inflict mental and physical torture on the old aged mother and father of the petitioner No. 3 in absence of him. The petitioner No. 3 tried to settle the matter, but he could not convince the respondent No. 3 and hence, he had filed a divorce petition before the Court of learned District & Session Judge, North Lakhimpur, Assam seeking divorce, which is still pending before the learned Court below. Thereafter, the private respondent No. 3 had filed a domestic violence case, being Case No. APSCW/PP/DV-23/2021, as vengeance to harass the petitioners, before the Arunachal Pradesh State Commission for Women by suppressing the material fact and address of the private respondent and hence, the present petition under Article 226 of the Constitution of India has to be filed by the petitioners challenging the legality and validity of the entire proceeding of the said domestic violence Case No. APSCW/PP/DV-23/2021 and the impugned summons issued to the petitioners dated 27.10.2021 directing them to appear before the Commission on 03.11.2021.

5. He further submitted that the Arunachal Pradesh State Commission for

Women has no jurisdiction to entertain the present complaint and took cognizance or conduct the trials as no cause of action arose within its jurisdiction since the petitioners and the complainant/private respondent No. 3 are the resident of Assam and therefore, to secure the ends of justice, the same is liable to be set aside and quashed exercising power under Article 226 of the Constitution of India since the impugned action of the respondent No. 2 is without jurisdiction and in contravention to objective of Arunachal Pradesh State Commission for Women Act, 2002 (hereinafter referred to as 'Act of 2002'). He further submitted that the concerned Gaon Burah of village of private respondent No. 3 also issued a certificate stating that the respondent No. 3 is a resident of village Banderdewa Beligaon, P.S. Bihpuria, District North Lakhimpur, Assam.

6. In support of his submission, Mr. Tara further relied on a decision of Apex Court reported vide **(2010) 8 SCC 633 (Bhabani Prasad Jena Vs. Convener Secretary, Orissa State Commission for Women & Anr.)** and emphasized on paragraph No. 10 of the judgment, which reads as under:

"In other words, the State Commission is broadly assigned to take up studies on issues of economic, educational and healthcare that may help in overall development of the women of the State; gather statistics concerning offences against women; probe into the complaints relating to atrocities on women, deprivation of women of their rights in respect of minimum wages, basic health, maternity rights, etc. and upon ascertainment of facts take up the matter with the concerned authorities for remedial measures; help women in distress as a friend, philosopher and guide in enforcement of their legal rights. However, no power or authority has been given to the State Commission to adjudicate or

determine the rights of the parties.”

7. Mr. Tara further submitted that the private respondent No. 3 also prayed for maintenance under the complaint lodged by her before the Arunachal Pradesh State Commission for Women, which is not at all maintainable in the eye of law as the Judicial Magistrate First Class are already vested with the power under Section 125 Cr.P.C. to grant maintenance and as such, the impugned summons dated 27.10.2021, issued by the respondent No. 2, is bad in law, which was issued illegally, arbitrarily, discriminatory and without applying any judicious mind. The private respondent No. 3 ought to have approached the proper forum for redressal of her grievances in view of the fact that the remedy sought for by the respondent No. 3 is judicial in nature and not before the Commission. Accordingly, it is submitted that the entire proceedings pending before the Arunachal Pradesh State Commission for Women in domestic violence Case No. APSCW/PP/DV-23/2021 should be set aside and quashed.

8. Mr. P. Taffo, learned counsel for the respondent Nos. 2 & 3, has submitted in this regard that the petitioner No. 3 is working in Police Department under the Government of Arunachal Pradesh, which is an admitted fact. Further he submitted that the present writ petition is filed at the very premature stage as till date, there is no order passed by the State Commission for Women, i.e. APSCW, and only for the purpose of enquiry, the summons were issued to the petitioners as well as some of the witnesses and the matter is still at the enquiry stage. He further submitted that till any order is passed by the APSCW, it cannot be held as to whether the prayer made by the respondent No. 3 will be allowed by the APSCW or not. Further he submitted that the marriage between the

petitioner No. 3 and the respondent No. 3 was solemnized on 25.05.2010 at Tezu, District Lohit, Arunachal Pradesh as per Bengali customs and rituals. The respondent No. 3 was inflicted physically and mentally torture by the petitioner No. 3 and later on, she came to know that the petitioner No. 3 was indulging in illicit affair with one lady from village Gogamukh, District North Lakhimpur. Thereafter also, the respondent No. 3 tried to maintain the relationship with the petitioner No. 3, but when his physical and mental torture was become unbearable, finding no other alternative, the respondent No. 3 had to file a complaint before the Chairperson, Arunachal Pradesh State Commission for Women under Section (1)(a) of Section 16 *read with* Section 17 of the APSCW Act, 2002 on 24.05.2021. At the time of filing of the said petition, the respondent No. 3 had no knowledge about the pendency of the divorce petition filed by the petitioner No. 3.

9. Mr. Taffo further submitted that the petitioner No. 3 is not only posted at PTC, Banderdewa, Arunachal Pradesh, but the marriage between the parties also took place at Tezu, Lohit District, Arunachal Pradesh and they used to reside and cohabited under PTC, Banderdewa, District Papum Pare, Arunachal Pradesh. Therefore, the respondent No. 3 filed the maintenance application before the Arunachal Pradesh State Commission for Women having jurisdiction as a Family Court as well as the Civil Court to cause inquiry into any unfair practice of Government Servant of Arunachal Pradesh under Section 15(p) of APSCW Act, 2002 and make recommendations to be implemented by the appointing authority as per Rules governed by the Government of Arunachal Pradesh.

10. He further submitted that as per Section 14 Sub Section (1)(a) of APSCW Act, 2002, the Commission has the same power to make inquiry as are vested in a Civil Court while trying a civil suit under the Code of Civil Procedure, 1908 and has the authority to summon in enforcing the attendance of any witness. Further, as per Section 15(1)(a)(b) of the said Act, the Commission has the power to inquire into any unfair practice, take decision thereon and to recommend the Government to take actions in the matter and in the same time, has the power to cause notice to be made by the Principal Secretary on issue of matters concerning women or issues relating unfair practice and to report thereon to the Government for the corrective measures to be taken. Moreso, as per Section 15(1)(p) also envisage power to hold a Family Court to dispose off the cases related to unfair practices against women.

11. Further, he submitted that as per the address in the Aadhar Card issued to the respondent No. 3, it is seen that she is a resident of PTC Banderdewa, P.S. Banderdewa, District Papum Pare Arunachal Pradesh. In the same time, the Ration Card is also issued by the Government of Arunachal Pradesh, Department of Food and Civil Supplies in the name of respondent No. 3 as she being the resident of Arunachal Pradesh. Mr. Taffo further submitted that after the inquiry, the complaint filed by the respondent No. 3 also may be dismissed by the State Commission for Women, but it is at very premature stage as the matter is still under inquiry before the State Commission for Women. More so, from the available records and documents, it is also seen that the petitioner No. 3 is not only the government official under the Government of Arunachal Pradesh, but they are also claiming to be the resident of Arunachal Pradesh and thus, the

State Commission for Women, Arunachal Pradesh has the jurisdiction to entertain such claim. However, the petitioners are at liberty to approach this Court if he is aggrieved by any order to be passed by the State Commission for Women.

12. In this context, Mr. Y. Riram, the learned Government Advocate appearing on behalf of State respondent No. 1, has submitted that the Arunachal Pradesh State Commission for Women has the jurisdiction to entertain the complaint as the petitioner No. 3 as well as the respondent No. 3 are claimed to be the resident of the Banderdewa, Papum Pare District, Arunachal Pradesh and thus, the State Commission for Women had committed no illegality or irregularity while issuing the notice against the petitioners as well as the witnesses during the inquiry proceeding. Accordingly, he submitted that this is not at all a fit case wherein the extra-ordinary power under Article 226 of the Constitution of India can be applied for setting aside and quashing the entire proceeding pending before the Arunachal Pradesh State Commission for Women.

13. Considering the entire submissions made by the learned counsels for both sides, I have also perused the case record and the annexures filed along with the petition.

14. It is an admitted fact that the petitioner No. 3 is a government servant under the Government of Arunachal Pradesh and he also give his undertaking before the PTC, Banderdewa. From the Aadhar Card and the Ration Card filed by the respondent No. 3, it is seen that those 2 (two) documents were issued by the Government of Arunachal Pradesh considering her to be the resident of

Arunachal Pradesh. Moreso, it is seen that after their marriage took place in the district of Lohit, Tezu, Arunachal Pradesh, they continued to live as husband and wife in the district of Papum Pare, Arunachal Pradesh and hence, after the alleged incident, she had to file the complaint before the Arunachal Pradesh State Commission for Women. As discussed above, the State Commission for Women has the power to act as a Civil Court and to issue summons to the witnesses to make an inquiry and in the same time, as per Section 15(1)(a)(b), the Commission has the authority to inquire into any unfair practice and can take the decision to recommend the government the actions to be taken in the said matter. Moreso, as per Section 15(p), the Commission can also act as a Family Court to dispose of the cases related to unfair practice to women. In the same time, it is also seen that no any order has been passed by the State Commission taking cognizance of the matter, rather it is still in the inquiry stage wherein the summons were already issued to the petitioners to appear before the State Commission for women.

15. Further, it cannot be held that no cause of action arose in the State of Arunachal Pradesh as from the document relied by the respondent No. 3, it is seen that she claimed herself to be the resident of Arunachal Pradesh and accordingly, the Aadhar Card and Ration Card have also been issued by the State of Arunachal Pradesh. But, it is the matter of inquiry as to whether any cause of action arose in the State of Arunachal Pradesh or in the State of Assam, which may reveal after an inquiry made by the Arunachal Pradesh State Commission for Women, which is still under inquiry and hence, unless any order has been passed by the Commission, it will not be proper to set aside and

quash the entire proceeding pending before the Arunachal Pradesh State Commission for Women by exercising the extra-ordinary jurisdiction under Article 226 of the Constitution of India.

16. In view of above, I do not find it prudent to pass an order for setting aside or quashing the criminal proceeding by exercising the power under Article 226 of the Constitution of India at this stage and accordingly, the present petition, being devoid of merit, stands dismissed. However, the petitioners will be at liberty to approach this Court again if they are aggrieved by any order to be passed by the Arunachal Pradesh State Commission for Women.

17. The writ petition stand disposed of in terms above.

JUDGE

Comparing Assistant