

GAHC010037052024



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

Case No. : Crl.Rev.P./67/2024

RAJIB ALI AND 4 ORS
S/O UMAR ALI,
RESIDENT OF VILLAGE PURANI TELAHI, PO BANGALDHARA, PS
DHARAMTUL DIST MORIGAON, ASSAM 782412

2: ADIL ALI
S/O UMAR ALI
RESIDENT OF VILLAGE PURANI TELAHI
PO BANGALDHARA
PS DHARAMTUL DIST MORIGAON
ASSAM 782412

3: MRS. TAJEBUN NESSA
W/O UMAR ALI
RESIDENT OF VILLAGE PURANI TELAHI
PO BANGALDHARA
PS DHARAMTUL DIST MORIGAON
ASSAM 782412

4: MRS. JEMINA KHANOM
W/O ADIL ALI
RESIDENT OF VILLAGE PURANI TELAHI
PO BANGALDHARA
PS DHARAMTUL DIST MORIGAON
ASSAM 78241

VERSUS

SEHNAZ SULTANA RAHMAN
D/O MD. MAKIBUR RAHMAN
RESIDENT OF VILLAGE BORIGAON, PO NIZ DANDUA, PS AND DIST
MORIGAON, ASSAM 782104

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

28.02.2024

Heard Mr. J.I. Borbhuiya, learned counsel for the petitioners.

2. In this petition, under Sections 397/401 of the Cr.P.C., read with Section 482 of the Cr.P.C., the petitioners have put to challenge the correctness or otherwise of the orders dated 27.12.2023, and 19.01.2024, passed by the learned Additional Chief Judicial Magistrate, Morigaon, in C.R. (DV) Case No. 242/2023.

3. It is to be noted here that vide order dated 27.12.2023, the learned court below has directed the petitioners to appear before the learned court below physically and also imposed cost of Rs. 2,000/- for filing petition No. 5022/2023, showing the cause of absence and vide order dated 19.01.2024, the learned court below again directed the petitioners to remain present physically and to submit further order of this Court.

4. Mr. Borbhuiya, learned counsel for the petitioner submits that the sole respondent of this case has filed a petition under Section 12 of the Domestic Violence Act, before the learned CJM, Morigaon, against the present petitioners. The said petition was transferred to the court of learned Addl. CJM, Morigaon for disposal. The learned Addl. CJM, Morigaon then called for a Domestic Incident Report from the Protection Officer, Morigaon and issued notice to the respondents i.e. the present petitioners, to show cause as to why the relief sought by the petitioner i.e. the present respondent, shall not be granted.

4.1. Thereafter, the petitioners have preferred one criminal petition before this

Court, being Criminal Petition No. 823/2023, wherein prayer is being made for quashing the complete proceeding of C.R. (DV) Case No. 242/2023, pending before the learned Additional Chief Judicial Magistrate, Morigaon and in the said petition, this Court vide order dated 11.08.2023, was pleased to stay the proceeding, pending before court of learned Addl. CJM, Morigaon.

4.2. Mr. Borbhuya further submits that in spite of staying of the proceeding of C.R. (DV) Case No. 242/2023, by this Court, the learned court below had chosen to proceed with the matter and vide impugned order dated 27.12.2023, has directed the respondents i.e. the present petitioners to appear before the court physically and imposed cost of Rs. 2,000/- for filing a petition for remaining absent on that day and vide order dated 19.01.2024, learned court below has again directed the respondents i.e. the present petitioners to appear before the court physically. It is the further submission of Mr. Borbhuiya that since vide order dated 11.08.2023, this Court was pleased to stay the proceeding of C.R. (DV) Case No. 242/2023, the learned court below ought not to have proceed with the same and it ought not to have passed the impugned orders 27.12.2023, and 19.01.2024, and as such, the impugned orders, so passed by the learned court below, failed to withstand the legal scrutiny and therefore, it is contended to quashed the same.

5. Having heard the submission of learned counsel for the petitioner, I have carefully gone through the petition and documents placed on record and perused the impugned order dated 27.12.2023, which is read as under :-

“Aggrieved party is present.

All the respondents are absent vide pt. No. 5022/2023, showing grounds of absent. Heard. Prayer is allowed with cost of Rs. 2,000/-.

Respondents are directed to be physically present on next date and to submit further orders from Hon’ble GHC.

Fix on 19.01.2024 for N.O/cost.”

And also perused the impugned order dated 19.01.2024, which is read as under :-

“Aggrieved party is present along with heard Id. Counsel.

Respondent No. 1 Rajib Ali is present by filing hazira but not physically appeared before the court and other respondents are on advocate representation. Respondent No. 1 is directed to appear physically on next date as per order dated 27.12.2023.

Seen pt. No. 220/2024 filed by the Id. Counsel stating that case pending before the Hon’ble Gauhati High Court is not yet listed. So, further is required for submission of further order. Perused. Allowed.

Fix on 29.02.2024 for N.O./cost.”

6. It is not in dispute that vide order dated 11.08.2023, this Court has stayed the proceeding of C.R. (DV) Case No. 242/2023, pending before the learned Additional Chief Judicial Magistrate, Morigaon and in spite of knowing the same, the learned court below has chosen to proceed with the same and passed the impugned orders dated 27.12.2023, and 19.01.2024.

7. Thus, the impugned orders, having been passed by the learned court below, without authority of law, failed to withstand the legal scrutiny and therefore, this Court is inclined set aside the impugned orders dated 27.12.2023, and 19.01.2024.

8. In terms of above, this Criminal Petition stands allowed, at this motion stage itself.

JUDGE

Comparing Assistant