

GAHC010079602022



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

Case No. : Crl.Pet./413/2022

ABDUR RAHIM
S/O HABEJ UDDIN AHMED
VILL- NALIGAON, P.O. NALIGAON
P.S. BARPETA,
DIST. BARPETA, ASSAM

VERSUS

ARJOOARA BEGUM
D/O MUKADDESH ALI AHMED
VILL- GOREMARI P.S. SARTHEBARI
DIST. BARPETA, ASSAM
PRESENT ADDRESS- C/O MUHIUDDIN AHMED
R/O HOUSE NO. 12, SIX MILE, JURIPAR, PANJABARI, GUWAHATI-37, DIST.
KAMRUP (M), ASSAM PIN-781037

Advocate for the Petitioner : MR. R ALI
Advocate for the Respondent : MR D K BORDOLOI

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date : 18-01-2024

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Ali, learned counsel for the petitioner and Mr. D. K. Bordoloi, learned counsel for the respondent.

2. The petitioner has filed this application under Section 482 Cr.P.C. seeking

quashing of the proceeding of Complaint Case being CR Case No. 3516/2019 under Section 406 Indian Penal Code (IPC in short) and the impugned order dated 25.11.2019 passed in connection with the case captioned above.

3. It is submitted on behalf of the petitioner that the respondent had earlier filed a case of domestic violence and both the petitioner and the respondent have preferred an appeal and the appeal is still pending. Again the petitioner had filed a case for maintenance under Section 125 Cr.P.C. and a case under Section 498(A) of the Indian Penal Code.

4. Suppressing about the slew of cases being slammed against the petitioner, the respondent has filed another petition under Section 406 IPC which was registered as the case captioned above.

5. The respondent has brought up a case against the petitioner alleging that she was subjected to cruelty after solemnization of her marriage with the petitioner on 17.01.2013. She was gifted and provided with sufficient articles (Sridhan) like furniture, ornaments, Almirah, Dressing table etc. at the time of her marriage.

6. The present petitioner is arrayed as accused No.1 in the complaint Case No. 3516^C/2019 and her in-laws are arrayed as accused Nos. 2, 3, 4 and 5.

7. It is contended that on 30.04.2014, the present petitioner along with the other accused named in the complaint petition assaulted her and demanded a car and compelled the respondent to leave her matrimonial home. It was averred that the petitioner at the behest of his family members subjected the respondent to cruelty and he also threatened that he would marry another woman if his demand is not fulfilled. The respondent was compelled to leave her matrimonial home and take shelter in her parental home. The respondent had

left behind her articles in the petitioner's house and thereafter she has been residing with her family members at Panjabari Guwahati.

8. It is submitted that the learned JMFC, Kamrup(M) vide the impugned order dated 25.11.2019 in CR Case No. 3516^C/2019 erroneously took cognizance and issued summons without any jurisdiction. As the articles allegedly are in the petitioner's house at Barpeta, the jurisdiction falls within the Barpeta district and not under the Kamrup(M). It is also submitted that the respondent has not left behind any Sridhan article in the petitioner's house and the complaint case is liable to be quashed and set aside.

9. The learned counsel for the petitioner has submitted that under Section 181(4) of the Cr.P.C. the jurisdiction lies within the district of Barpeta. The learned counsel for the petitioner has prayed to set aside and quash the proceeding of CR Case No. 3516^C/2019 and the impugned order dated 25.11.2019.

10. Per contra the learned counsel for the respondent has relied on the decision of Hon'ble the Supreme Court in *Kushal Kr. Gupta and another vs Mala Gupta (2011) 12 SCC 434* wherein it has been held and observed that:

“6. On the other hand, learned counsel for the respondent, Mala Gupta, submitted that the complaint itself contains a categorical statement that the dowry articles were to be returned at Patiala Court, thus attracting the provisions of [Section 181\(4\)](#) Cr.P.C. It was also submitted that at the stage of taking cognizance, the Magistrate was only required to see whether there was any material in the complaint to proceed against the accused and the learned Magistrate had rightly observed that documents produced on behalf of the accused would be considered at the time of trial.

7. In the ultimate analysis, what emerges from the submissions of the parties is that during the trial the petitioners will have to disprove the complainant's case that part of the cause of action arose in Patiala where the dowry articles were to be returned to the complainant. As

it stands, the complaint does indicate that a part of the cause of action arose in Patiala, thus attracting the provisions of [Section 181\(4\)](#) Cr.P.C. The High Court has quite rightly observed that on a bare perusal of the complaint, the Patiala Court has jurisdiction to entertain the complaint. The decisions cited on behalf of the petitioners are not of much help to the petitioners' case."

11. The learned counsel for the respondent has submitted that a bare reading of Section 181(4) of the Cr. P.C. clearly reveals that the JMFC is not without jurisdiction as the Sridhan articles are to be returned to the respondents paternal home at Guwahati where the respondent has taken shelter after she has thrown out from the matrimonial home.
12. The learned counsel for the petitioner has submitted that the respondent's permanent house is at Barpeta where the articles are to be finally returned which falls within the jurisdiction of Barpeta.
13. On the contrary, learned counsel for the respondent has submitted that the petitioners parents are at present staying in the respondent's relative's house at Panjabari in Guwahati.
14. The case is pending at the stage of appearance. At this juncture, it cannot be ascertained whether the respondent will be staying permanently at Barpeta or in Guwahati. The submission of the learned counsel for the petitioner cannot be accepted that the respondent will finally and permanently settle in Barpeta. Presently the respondent is residing at Guwahati. There is no prima facie case to quash the proceeding at this juncture holding that the learned JMFC, Kamrup(M) has no jurisdiction.
15. In view of my foregoing discussions, this petition stands dismissed.

JUDGE

Comparing Assistant