

GAHC010103782023



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

Case No. : Crl.Pet./463/2023

APARNA CHOUDHURY AND 2 ORS
W/O NIHARENDU CHOUDHURY
R/O WARD NO. 09, GAUTOM ROY LANE, HAILAKANDI,
P.O., P.S. AND DIST. HAILAKANDI
PIN-788155

2: NIHARENDU CHOUDHURY
S/O LT. NITYA GOPAL CHOUDHURY
R/O WARD NO. 09
GAUTOM ROY LANE
HAILAKANDI

P.O.
P.S. AND DIST. HAILAKANDI
PIN-788155

3: NANDITA CHOUDHURY
W/O PAPPU DEB
PERMANENT RESIDENT OF 1ST FLOOR
1A
PROGRESSIVE MANSION
RANGIRKHARI

P.O. AND P.S. SILCHAR
DIST. CACHAR
ASSAM
PIN-788005
PRESENT RESIDENT-
3RD FLOOR
F-136
F BLOCK
MANSAROVAR GARDEN
NEW DELHI
PIN-110015

VERSUS

BRATATI CHAKRABORTY
D/O PROMOTESH KANTI CHAKRABORTY
W/O SAMAR CHOUDHURY
R/O CENTRAL ROAD, WARD NO. 09, HAILAKANDI,
P.O., P.S. AND DIST. HAILAKANDI,
PIN-788151

Advocate for the Petitioner : MR. T A CHOUDHURY, MR. A Y CHOUDHURY

Advocate for the Respondent : MR. H I CHOUDHURY, MS. P ADHIKARI, MR. REZABUL HOQUE, MD. G UDDIN

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 10.09.2024

Heard Mr. A.Y Choudhury, learned counsel for the petitioners. Also heard Mr. G. Uddin, learned counsel for the respondent.

2. This is an application under Section 482 Cr.P.C. praying for quashing the proceeding against the petitioners in connection with M.R.(D.V.) Case No. 163/2022, pending in the court of learned JMFC, Hailakandi.

3. The brief facts of the case is that the respondent/wife filed a case under Section 12 of Protection Women from Domestic Violence Act, 2005 (herein after D.V. Act) before the learned CJM, Hailakandi vide M.R.(D.V.) Case No. 163/2022 against her husband and the present petitioners. On 26.06.2017, the marriage between the respondent and her husband took place. After their marriage, they lived together as husband and wife and out of their wedlock, one child was

born. It was alleged that after the birth of their female child, the respondent's husband, who had previously an affair with another woman, fell in love with her again. At the instigation of the petitioners, the husband began to torture the respondent, demanding Rs. 2,00,000 and pressurizing her to obtain the said money from her parental home. As the parents of the respondent failed to meet the demand of the husband of the respondent and the petitioners, the husband started to torture her more as a result of which she was compelled to leave her matrimonial house. It is further alleged that though she was taken back by her husband on several times with promise to lead happy conjugal life but the petitioners and the husband of the respondent did not change their attitude. Since then the respondent is staying along with her parents.

4. After taking cognizance by the learned trial court, notice was issued to the petitioners. The learned counsel for the petitioners submits that the petitioner No. 1 is the respondent's mother-in-law, petitioner No. 2 is her father-in-law, and petitioner No. 3 is her sister-in-law. The respondent along with her husband used to live in the first floor of the residential building which belongs to elder brother of her husband and the petitioner Nos. 1 and 2 used to stay in Assam type building which is situated to the eastern side of the respondent's matrimonial house.

5. According to the learned counsel for the petitioners, the husband of the respondent, being the son of the petitioner Nos. 1 and 2, generally extend monetary assistance and take care of his parents while the other brother residing in other places. From the very beginning of the marriage, the respondent has been attempting to prevent her husband from visiting his parents i.e. petitioner Nos. 1 and 2, and from taking care of them. It is quite unnatural for petitioner to live apart from his parents and to arrange separate accommodation as demanded by the respondent.

6. It is further submitted that the respondent in the year 2021 went to her parent's house on social visit with her child and suddenly after some days, she came with some police personnel on her matrimonial house with a search warrant and take away the marriage articles as per order of the court and since 03.12.2022, the respondent has been staying in her parents' house without any valid reason. The learned counsel for the petitioners further contended that the claim of the respondent is totally false, baseless and imaginary one. The respondent is a lady of hot temper and always misbehaved with petitioner Nos. 1 and 2 and always creates pressure towards her husband to leave his parents, either to arrange a separate rented house nearby of her father's house or to shift in his father's house. The petitioners being the parents-in-law and sister-in-law of the respondent are no way connected with alleged offence. As such, the case of the respondent i.e. the proceeding of D.V. Case pending against the petitioners is liable to be quashed.

7. On the other hand, the learned counsel for the respondent submits that the petitioners on receipt of the notice have preferred this application under Section 482 Cr.P.C. for quashing of the proceeding of D.V. Case. The trial is yet to commence as such, at this stage it is not possible to prove the allegation made by the respondent against the petitioners and which can only be possible during trial. Hence, the learned counsel for the respondent prays for dismissal of the criminal petition.

8. The Protection of Women from Domestic Violence Act, 2005 is a legislation enacted to shield the rights of women which are enshrined and guaranteed under the Constitution of India, besides paving way to deal with the matters connected to and arising out of the family disputes in an effective and efficacious manner.

9. When the provisions contained in the said legislation i.e. the Protection of

Women from Domestic Violence Act, 2005 are looked into, it is very clear that the proceedings that would be conducted are more civil in nature. The protection orders that would be granted under Section 18, the residence orders that would be granted under Section 19, the monetary reliefs that would be granted under Section 20, the custody orders that would be granted under Section 21 and the compensation orders that would be granted under Section 22, would be based on the applications that would be filed by the aggrieved persons, the domestic incident reports and the defence taken by the respondents therein. All those proceedings are civil in nature. No doubt, Section 28 (1) of the Act of 2005 lays down that the proceedings shall be governed by the provisions of Code of Criminal Procedure. However, it is specifically mentioned under Section 28(2) of the Act of 2005 that the Court is empowered to lay down its own procedure for disposal of the applications filed by the aggrieved persons or the Protection Officers. May be due to the fact that the power to deal with the domestic violence cases is given to the Magistrate, the litigant public are under the impression that the proceedings initiated under the Act of 2005 are purely criminal in nature.

10. Section 2(i) of the Act of 2005 states that "Magistrate" means Judicial Magistrate of First Class or the Metropolitan Magistrate, as the case may be, exercising jurisdiction under the Code of Criminal Procedure. However, as indicated earlier, the proceedings under the Act of 2005 are more civil in nature. Section 31 of the Act of 2005 is the only provision which makes the breach committed within the purview of the Act of 2005 punishable. As per Section 31 of the Act of 2005, breach of a protection order or an interim protection order is a punishable offence. Further, Section 31(3) of the Act of 2005 empowers the Magistrate to frame charges under Section 498-A IPC or any of the provisions of the Indian Penal Code or the Dowry Prohibition Act while framing charge for the offences punishable for breach of the protection order or

interim protection order. May be due to that reason i.e., to deal with the offence committed by breaching the protection order or an interim protection order and the connected offences punishable under the Indian Penal Code and the Dowry Prohibition Act, the legislature by all its wisdom has empowered the Judicial Magistrate of First Class to deal with the matters pertaining to other provisions and for issuance of required orders as enumerated under Sections 18 to 22 of the Act of 2005. That does not mean that the entire proceedings that would be conducted by the Magistrate under the Act of 2005 are criminal in nature. Thus, when the orders that would be granted in domestic violence cases, basing on the material produced, are civil in nature, it has to be seen how far it is justifiable on part of the parties against whom the aggrieved person or the Protection Officer has initiated proceedings to seek quash of proceedings under Section 482 Cr.P.C.

11. Law is well settled that in a petition filed under Section 482 Cr.P.C., the High Court is required to examine whether its intervention is required for prevention of abuse of law or otherwise to secure the ends of justice. It is only in extremely extraordinary cases that the courts can exercise its jurisdiction conferred under Section 482 C.P.C. to quash the proceedings under the Protection of Women from D.V. Act, 2005. Only on the sole ground that the parties arrayed as respondents by the aggrieved person were unnecessarily roped in, the proceedings against them cannot be quashed.

12. None of the reliefs claimed in D.V. Act vide No. M.R.(D.V) No. 163/2022 by the respondent/wife can be called crimes. Though the Act empowers a Magistrate to entertain the complaint of an aggrieved person under Section 12 of D.V. Act. and makes it incumbent on the Magistrate to make enquiry of the same under the Code of Criminal Procedure Code, 1973 reliefs under Sections 18 to 22 of the Act are in the nature of civil reliefs only. It is only violation of the

order of the Magistrate which becomes an offence under Section 31 of the Act and which attracts penalty for breach of protection order by any of the respondents. Similarly, Section 33 of the Act provides for penalty for discharging duty by protection officer. Except under Sections 31 and 33 of the Act which occur in Chapter V, all the reliefs under Chapter IV of the Act are not offences and enquiry of rights of the aggrieved person under Sections 18 to 22 of the Act cannot be termed as trial of a criminal case. Therefore, it is clear that the proceedings conducted till passing of the order under Sections 18 to 22 are only civil in nature to provide civil remedy.

13. So far as the procedure is concerned, no doubt, the above reliefs are to be provided by a Judicial Magistrate First Class. A close perusal of Section 28 would show that though as per this Section the proceedings under Sec.12, 18 to 23 and offences under Section 31 are governed by the Code of Criminal Procedure, 1973 but that is not an inscrutable rule inasmuch as Section 28(1) is having a saving clause and also subject to sub-section(2).

14. Having regard to the facts that the scheme of the Act which provide civil reliefs and the Magistrate can lay his own procedure by not taking coercive steps in general course and the enquiry being not the trial of a criminal offence, the petitioners cannot rush with Section 482 Cr.P.C. petition seeking quashment of the proceedings on the ground that they were unnecessarily roped in. They can establish their non-involvement in the matter and non-answerability to the reliefs claimed by participating in the enquiry. It is only in exceptional cases like without their existing any domestic relationship as laid under Section 2(f) of the D.V. Act between the parties, the petitioner filed D.V case against them or a competent Court has already acquitted them of the allegations which are identical to the ones levelled in the Domestic Violence Case, the petitioners can seek for quashment of the proceedings since continuation of the proceedings in

such instances certainly amounts to abuse of process of Court.

15. To sum up the findings, since remedies under D.V. Act are civil remedies, the Magistrate in view of his powers under Section 28(2) of D.V. Act shall issue notice to the parties for their appearance and in case of non appearance of the parties despite receiving notice can conduct enquiry and pass ex-parte order with the material available. It is only in the exceptional cases where the magistrate feels that the circumstance requires that he can insist the presence of the parties even by adopting coercive measures.

16. In the case in hand, a perusal of the complaint would show that the allegations have been made by the wife/respondent against her husband and the present petitioners i.e. father-in-law, mother-in-law and sister-in-law to torture her both physically as well as mentally by demanding money. The learned trial court issued notice against the petitioners after taking cognizance. At this juncture, no any special grounds have been shown to quash the proceeding of the D.V. Case vide M.R.(D.V) Case No. 163/2022.

Hence, the criminal petition is found to be devoid of any merit and accordingly dismissed. The learned trial court will proceed with the case in accordance with law.

JUDGE

Comparing Assistant