

GAHC010159312021



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

Case No. : Crl.Pet./549/2021

NITIN MITTAL AND ANR
S/O LT. SUBASH MITTAL, R/O JILMIL COLONY D-BLOCK, 147 SECOND
FLOOR, EAST DELHI, P.O. VEVAK VIHAR, P.S. VEVAK VIHAR, NEW DELHI,
INDIA, PIN-110095

2: UMA MITTAL
W/O LT. SUBASH MITTAL
R/O JILMIL COLONY D-BLOCK
147 SECOND FLOOR
EAST DELHI
P.O. VEVAK VIHAR
P.S. VEVAK VIHAR
NEW DELHI
INDIA
PIN-11009

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:BOBITA GOSWAMI MITTAL
D/O RADHA BINUD GOSWAMI
R/O TOWKOK TEA ESTATE
P.O. TOWKOK
P.S. NAMTOLA
DIST. CHARAIDEO
ASSAM
INDIA
PIN-78569

Advocate for the Petitioner : MR. T DEURI, MR. B KALITA

Advocate for the Respondent : PP, ASSAM, MR. A DEB (r-2),MR. A A R KARIM (r-2)

BEFORE

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

29-10-2024

Heard Mr. T. Deuri, learned counsel appearing for the petitioners and Mr. R.J.Boruah, learned Additional Public Prosecutor, Assam for the respondent/opposite party No.2. Also heard Mr. A.A.R. Karim, learned counsel appearing for the respondent/opposite party No. 2.

2. This is an application filed under Section 482 of the CrPC challenging the impugned order dated 13.03.2020 passed by the learned Sub-Divisional Judicial Magistrate (SDJM in short), Charaideo taking cognizance and directing for issuance of notice to the present petitioners in respect of Misc. (DV) Case No. 03/2020.

3. The learned SDJM, Charaideo had accepted the application under Section 12 of the Domestic Violence Act, 2005 filed by the present respondent and had directed to issue notice to the present petitioners. Thereafter, the said SDJM, Charaideo called for the domestic incident report from the concerned Protection Officer referring Section 12 of the said Act.

4. Mr. Deuri, learned counsel for the petitioners submits that according to the said provision, the concerned Magistrate is bound to call for the domestic incident report from the Protection Officer before issuing notice to the present petitioners.

5. Mr. Deuri, learned counsel for the petitioners also submits that on the basis of the said report, the Court should have taken cognizance and should have issued notice to the petitioners.

6. Mr. Karim, learned counsel for the opposite party No. 2 submits that the case is presently at the evidence stage. Now the mistake committed by the concerned Magistrate is required to be ignored.

7. I have considered the submissions made by both the sides.

8. For the reasons above, this Court is of the opinion that the learned SDJM, Charaideo should have procured the domestic incident report from the Protection Officer before issuing notice to the present petitioners. Therefore, the impugned order dated 13.03.2020 passed by the learned SDJM, Charaideo is bad in law. Accordingly, the said impugned order dated 13.03.2020 is set aside.

9. However, the learned SDJM, Charaideo is directed to procure the domestic incident report from the concerned Protection Officer and the Court of the learned SDJM, Charaideo shall be at liberty to issue notice to the present petitioners on the basis of the said report and thereafter, the said Court of learned SDJM, Charaideo shall dispose of the matter following the due procedure and in accordance with law.

10. With the above observations and directions, this Criminal Petition stands disposed of.

JUDGE

Comparing Assistant