

GAHC010284562019



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

Crl.Rev.P./429/2017

SHARADINDU BISWAS
S/O- LATE HARAKANTA BISWAS
R/O- VILL- CHURADIGIRPAR
P.O- GIRISHGANJ BAZAR- 788711
P.S- NILAMBAZAR
DIST- KARIMGANJ
ASSAM

VERSUS

NIRUPAMA DAS and 5 ORS.
D/O- LATE NARESH DAS
R/O- BILL BAR DALANI
P.S- MAYANG
P.O- MAYANG
DIST- MORIGAON
ASSAM

2:SANDIPA BISWAS
D/O- LATE HARAKANTA BISWAS
3:MONI BISWAS
D/O- LATE HARAKANTA BISWAS
4:JAYA BISWAS
D/O- LATE HARAKANTA BISWAS
5:SUTAPA BISWAS
D/O- LATE HARAKANTA BISWAS
6:SANDIPAN ROY
S/O- LATE SUBHAS ROY
ALL RESIDENTS OF VILL- CHURADIGIRPAR
P.O- GIRISHGANJ BAZAR- 788711
P.S- NILAMBAZAR
DIST- HAILAKANDI
ASSAM

Advocate for : MR. T U LASKAR
Advocate for : MR. S CHOWDHURY appearing for NIRUPAMA DAS and 5 ORS.

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 29.05.2024

Heard Mr. N.Dhar, learned counsel assisted by Ms. S.Dasgupta, learned counsel for the petitioner. Also heard Mr. S.Islam, learned counsel for the opposite party No.1/complainant.

2. By filing this revision under Section 397/401 CrPC r/w Article 227 of the Constitution of India, the petitioner has challenged the Judgment and Order dated 13.07.2017 passed by the learned Sessions Judge, Morigaon in Criminal Appeal No. 39/2016 in dismissing the said appeal and thereby affirming the final order dated 04.10.2016 passed by the learned JMFC, Morigaion in CR (DV) Case No.1089/2015.

3. The brief fact of the case is that the opposite party No.1/complainant got married to the petitioner by following Hindu rites and custom and after their marriage, they lived together as husband and wife in the house of the petitioner at Karimganj and out of their wedlock one female child was born.

4. The opposite party No.1/complainant filed a complaint case before the jurisdictional Magistrate under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (herein after 'DV Act'). The opposite party No.1/complainant alleged that since after their marriage, the petitioner and his family members used to torture her physically as well as mentally. It was also

alleged that when the opposite party No.1/complainant became pregnant, the petitioner and his family members tried to terminate her pregnancy. According to the opposite party No.1/complainant, the petitioner and his family members tried to kill her by administering poison and when they failed in their attempt, they tried to set fire on her on pouring kerosene oil but somehow she managed to escape and took shelter in her parental house at Morigaon. Thereafter, she filed a case against her husband and his family members under Section 12 of DV Act.

5. During trial, both sides adduced evidence and after hearing both sides, the trial court allowed the prayer of the opposite party No. 1 i.e. wife with a direction to provide residential/ rented accommodation to the opposite party No.1, compensation amounting to Rs.50,000/- and monthly maintenance of Rs.8000/- to his respondent wife and his daughter. Being highly aggrieved with the order of the trial court, an appeal has been preferred by the petitioner before the Sessions Judge, Morigaon which was also dismissed. Hence, this revision.

6. Learned counsel for the petitioner has argued that the learned trial court acted illegally and passed the impugned order without taking into consideration of the law under Section 12 of DV Act, as because there was no any domestic incident report from the protection officer or the service provider in the case which resulted into the miscarriage of justice.

7. It is further submitted that while passing the judgment/order, the learned trial court did not appreciate the provision of Section 14/15 of DV Act as there was no direction to the parties to undergo counselling with the service provider in the case and there was no assistance of the welfare expert in accordance with law.

8. It is also contended that there was no corroborative evidence of the witnesses regarding ingredients of Section 3 of DV Act as well as alleged cruelty to the aggrieved wife. Hence, the learned counsel for the petitioner prays for interference of this court against the judgment and order as aforesaid.

9. *Per contra*, learned counsel for the opposite party No.1/complainant has submitted that the opposite party No.1 is a housewife and has no source of income to maintain herself and her daughter. The petitioner is a teacher in a government school. He has also movable and immovable property in his name. The opposite party No.1/complainant has no permanent house to live and she has no source of income except the monthly maintenance given by the petitioner. The daughter of the opposite party No.1 is also admitted in a school at Morigaon. The opposite party No.1/complainant has to bear more than Rs.5000/- for her daughter's education i.e. school fees, bus fare, tuition fees, books, private tutor fees etc. It is further submitted that due to rise of the price of every essential commodities day by day, it becomes very difficult for her to balance the rising price of the goods with the very little maintenance amount given by the petitioner. In that view of the matter, the learned counsel has prayed for dismissal of the petition.

10. I have perused the trial court record and considered the submission of the learned counsel for the parties and also the evidence of the witnesses recorded by the trial court.

11. The scope of a revision petition under Section 397 /401 CrPC has been succinctly explained by the Hon'ble Supreme Court in the case of *Amit Kapoor v-s Ramesh Chander* reported in (2012) 9 SCC 460 which is reproduced as below:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

*20. The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression ‘prevent abuse of process of any court or otherwise to secure the ends of justice’, the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under [Section 397](#) but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, [Section 482](#) is based upon the maxim *quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest*, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.”*

12. A perusal of the impugned order dated 13.07.2017 passed by the learned Sessions Judge, Morigaon reveals that the appellate court has observed that the learned trial court has assessed the evidence on record in its proper perspective

and rightly passed the judgment and order in CR (DV) Case No. 1089/2015 and as such, there is no need to interfere by the appellate court.

13. In the instant case, the respondent wife sought relief under Section 18 which includes protection order, residence order under Section 19, monetary relief under Section 20 and compensation under Section 22 of the DV Act. Accordingly, the learned Magistrate after considering the evidence of the witnesses passed the order in favour of the respondent wife.

14. A conjoint reading of Section 12 and Section 2-(a) of DV Act makes it abundantly clear that relief under the DV Act can be granted only when aggrieved person defined under the DV Act and an aggrieved person has been defined as a woman who is or has been in a domestic relationship with the respondent who alleges to have been subjected to any of domestic violence by the respondent. Therefore, the allegation of domestic violence is *sine qua non* for pursuing the petition under the DV Act.

15. In the case in hand, the respondent wife who filed the application under Section 12 of DV Act in the trial court is obviously an aggrieved person within the meaning of the Act because she made allegation of domestic violence against the petitioner and his family members and the fact that she was in domestic relationship with the husband as his wife which has been admitted by her petitioner husband.

16. Now, the question whether the wife proved commission of domestic violence against her husband in the trial court and become entitled to relief under Section 12 of the DV Act. Section 3 of DV Act defines domestic violence which is reproduced below:

“3. Definition of domestic violence.—For the purposes of this Act, any act,

omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

17. In the case in hand, this court also observes that trial court has arrived at the aforesaid conclusion regarding reliefs provided to the respondent wife under Sections 18, 19, 20, 22 of DV Act. It also appears that the respondent wife is legally entitled to maintenance allowance from her husband who is a government employee serving as a teacher in a government school. She has made out a good case justifying her separate living.

18. Admittedly, the opposite party No.1/complainant is a house wife and she has no source of earning whereas the petitioner husband draws a monthly salary of Rs.26,000/- in the year 2017. After 7 years definitely there is an increase of salary of the petitioner. In these circumstances, the denial of maintenance allowance to respondent wife and her minor daughter obviously causes 'economic abuse' to her within the meaning of domestic violence under Section 3 of the DV Act.

19. There is, therefore, no infirmity in the impugned judgment/ order passed

by the learned trial court as well as appellate court.

20. Resultantly, the revision petition stands dismissed.

21. Pending applications, if any , also stand disposed of.

Send back the trial court records.

JUDGE

Comparing Assistant