

GAHC010226172023



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

Case No. : Crl.Pet./1096/2023

MD ABUL HUSSAIN
S/O LATE CHAND MOHAMMAD
R/O SIJUBARI, NEAR GLOBAL HOSPITAL, P.O. AND P.S. HATIGAON,
GUWAHATI-781038
DIST. KAMRUP (M), ASSAM

VERSUS

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

2:MERIZA KHATUN
D/O LATE AJGAR ALI
R/O HOUSE NO. 5

GUWAHATI COLLEGE ROAD

JYOTINAGAR

P.O. BAMUNIMAIDAM
P.S. CHANDMARI

GUWAHATI-7810021
DIST. KAMRUP (M)
ASSA

Advocate for the Petitioner : MR M GARODIA, MS R DAS

Advocate for the Respondent : PP, ASSAM, MR P CHOUDHURY (r-2), MS P SAIKIA (r-2), MR D TALUKDAR (r-2), MS B GOSWAMI (r-2)

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

09/09/2024

Heard Mr. M Garodia, learned counsel for the petitioner and Mr. K Baishya, learned Additional Public Prosecutor, Assam for the State respondent No. 1. Also heard Mr. D Talukdar, learned counsel for the respondent No. 2/aggrieved person.

2. The petitioner in this criminal petition under Section 482 CrPC, has prayed for quashing of the proceeding of D.V Case No. 76^M/2018 that has been filed against him by his wife, the respondent No. 2 herein as aggrieved person under the provision of the Protection of Women from Domestic Violence Act, 2005 stating that the G.R. Case No. 12759/2016 arising out of Hatigaon Police Station Case No. 521/2016 under Section 498(A) IPC that was filed by the respondent No. 2 against him had been decided in his favour by the learned Judicial Magistrate, First Class (JMFC, in short), Kamrup (Metro), Guwahati by its judgment dated 17.06.2019 as the prosecution failed to prove the charge under Section 498(A) IPC against him and thereby the learned Trial Magistrate acquitted the petitioner in the said case.

3. The petitioner also submitted that he has already divorced the respondent No. 2, where said divorce was registered in the Office of the Muslim Marriages/Divorces Registrar, Guwahati, Sadar Kazi, Kamrup, Assam at Hatigaon, Guwahati and a certificate in that regard has been issued on 17.06.2016. However, the petitioner admitted the fact that the respondent No. 2, in the meanwhile, filed an application under Section 7 (1) (a) read with explanation (b) to Section 7 of the Family Courts Act, 1984 read with Section 34 of the Specific Relief Act, 1963 being F.C. (Civil) Case No. 825/2018 praying for a declaration that the Decree of Divorce dated 17.06.2016 executed by the petitioner, is bad in law and consequently, null and void that is presently pending before the Court of learned Principal Judge, Family Court, Kamrup (Metro) at Guwahati.

4. It is further contended that the respondent No. 2 earlier in May, 2016 filed an application before the Principal Judge, Family Court at Guwahati under Section 125 CrPC against the petitioner being F.C. (Crl.) Case No. 210/2016 seeking maintenance and pursuant to the order of the learned Family Court at Guwahati, he is paying Rs. 13,000/- per month to the respondent No. 2 as enhanced

maintenance.

5. It is also submitted by the petitioner that even on earlier occasion the respondent No. 2 filed a D.V. Case No. 104^M/2016 against the petitioner under the provisions of the Protection of Women from Domestic Violence Act, 2005 seeking interim relief therein. However, the learned JMFC, Kamrup (Metro), Guwahati by order dated 06.03.2017 passed in said D.V. Case No. 104^M/2016 did not grant any interim relief to her. Subsequently, as the respondent No. 2 withdrew the said D.V. Case No. 104^M/2016 filed against him, the learned Magistrate by order dated 03.03.2018 disposed of the said D.V. Case No. 104^M/2016 of the respondent No.2.

6. It is submitted by the petitioner that the respondent No. 2 in June, 2018 filed the D.V. Case No. 76^M/2018 under the Domestic Violence Act, 2005 against him, i.e., the proceeding involved in the present case, with the intention of causing harassment to him and demanding more money from him, as he is living separately from her since February, 2016.

7. The petitioner also stated that the said D.V Case No. 76^M/2018 is fixed at the stage of filing of assets and liabilities by the parties and if the proceeding of said D.V. Case filed against him by the respondent No. 2 is allowed to continue and further, additional amount of maintenance is directed to be paid, as been prayed for by her, in addition to the amount of monthly maintenance of Rs.13,000/- which he is already paying to the respondent No. 2, then he shall have to bear additional burden, for which, he shall suffer irreparable loss and injury. Hence, this criminal petition by the petitioner for quashing of the proceeding of said D.V Case No. 76^M/2018.

8. By filing its affidavit, the respondent No. 2 placed before the Court that earlier, after hearing her (aggrieved person) in said D.V. Case No. 76^M/2018, wherein the petitioner did not appear and choose to remained absent without any steps, the learned Sub-Divisional Judicial Magistrate (I) [SDJM (I), in short], Kamrup (Metro), Guwahati by order dated 18.12.2020, passed in her said D.V. Case No. 76^M/2018 directed the petitioner to pay Rs. 5,000/- per month to her as monthly interim maintenance from the date of the said order till disposal of the case or until further orders and further directed the petitioner to provide a suitable residential accommodation to her and also to pay Rs. 5000/- per month as rent.

9. In the said order dated 18.12.2020, the learned SDJM (I), Kamrup (M), Guwahati also directed the petitioner prohibiting / restraining him from committing / repeating the acts of domestic

violence both physical and mental torture / verbal and emotional abuse on the aggrieved woman, i.e., the respondent No. 2; not to alienate her assets that are in his custody and further directed the Officer-in-Charge of Hatigaon Police Station for issuance of search warrant so as to search the premise of the petitioner for the articles of present respondent No.2 that are mentioned in the application submitted by her in said D.V Case No. 76^M/2018, observing further that in the event of recovery of the articles as been stated in her application that are not disputed by her, those shall be handed over to the her on executing a bond of Rs.1,00,000/-.

10. Mr. Talukdar, learned counsel for the respondent No. 2 submitted that against the said order of the learned SDJM (I), Kamrup (Metro), Guwahati dated 18.12.2020 passed in said D.V Case No. 76^M/2018 filed by the respondent No.2, the petitioner preferred an appeal before the Court of learned Sessions Judge, Kamrup (Metro) at Guwahati being Criminal Appeal No. 8/2021 and the learned Additional Sessions Judge No. 1, Kamrup (Metro), Guwahati by order dated 23.02.2023 partly allowed the said CrI. A. No. 8/2021 of the petitioner setting aside a part of the said order of the learned SDJM (I), Kamrup (Metro), Guwahati dated 18.12.2020 relating to the monetary reliefs only and remanded the matter to the Court of learned SDJM (I), Kamrup (Metro), Guwahati, enabling the concerned Magistrate to pass a fresh order in respect of the interim maintenance/interim monetary relief after considering all aspects and on receipt of the affidavits on disclosure of assets and liabilities, directing the said Magistrate to pass such order on interim maintenance afresh as per law without being influenced by any observation made by the said Appellate Court while disposing of the said appeal.

11. Mr. Talukdar, learned counsel for the respondent No. 2 pointed out that the petitioner suppressed the said decision of the learned SDJM (I), Kamrup (Metro), Guwahati dated 18.12.2020 passed in D.V Case No. 76^M/2018 as well as the order dated 23.02.2023 passed by the learned Additional Sessions Judge No. 1, Kamrup (Metro), Guwahati in CrI. A. No. 8/2021 that was preferred by the present petitioner against the order dated 18.12.2020 passed by the learned SDJM (I), Kamrup (Metro), Guwahati in said in D.V Case No. 76^M/2018.

12. On perusal of the petition, it is found that the petitioner is totally silent with regard to the filing of the said CrI. A. No. 8/2021 by him against the order of the learned SDJM (I), Kamrup (Metro), Guwahati dated 18.12.2020 passed in D.V Case No. 76^M/2018, involved in the present case.

13. Pursuant to the order of the Court dated 02.09.2024, Mr. Talukdar, learned counsel for the respondent No. 2 placed the certified copy of the CrI. A. No. 8/2021 preferred by the present

petitioner as appellant before the learned Sessions Judge, Kamrup (Metro), Guwahati against the said order of the learned SDJM (I), Kamrup (Metro), Guwahati in D.V Case No. 76^M/2018.

14. From the copy of the Memo of said Criminal Appeal No. 8/2021, preferred by the petitioner before the learned Sessions Judge, Kamrup (Metro), Guwahati against the order dated 18.12.2020 passed by the learned SDJM (I), Kamrup (Metro), Guwahati in D.V. Case No. 76^M/2018, noted above, that is placed by Mr. Talukdar, learned counsel for the respondent No. 2, it is seen that the petitioner raised all the issues in this criminal petition before the said Appellate Court and that the respondent No. 2 also filed her objection against the said appeal of the petitioner.

15. It is also seen that only after hearing the present petitioner as well as the respondent No. 2, the learned Additional Sessions Judge, Kamrup (Metro), Guwahati by judgment dated 23.02.2023 passed in Crl. A. No. 8/2021 remanded back the said D.V. Case No. 76^M/2018 to the learned SDJM (1), Kamrup (Metro), Guwahati for fresh consideration relating to the amount of interim maintenance after receipt of the affidavit on disclosure of the assets and liabilities. It is further seen that in the said judgment dated 23.02.2023 passed in Crl. A. No. 8/2021, the learned Additional Sessions Judge, Kamrup (Metro), Guwahati, specifically observed that it did not find anything wrong so as to interfere with the other part of the interim relief granted by the learned SDJM (I), Kamrup (Metro), Guwahati in its order dated 18.12.2020 passed in said D.V. Case No. 76^M/2018 to the aggrieved person, i.e., present respondent No. 2.

16. It is found that the petitioner suppressed the above noted facts in this criminal petition filed by him.

17. This shows that the petitioner did not approach the Court with his clean hands.

18. For the reasons above, this criminal petition stands dismissed with a cost of Rs. 25,000/- to be paid by the petitioner, out of which the petitioner shall deposit an amount of Rs.15,000/- before the learned Sub-Divisional Judicial Magistrate (I), Kamrup (Metro), Guwahati in said D.V Case No. 76^M/2018 **on or before 04.10.2024** and on such deposit of Rs.15,000/- by the petitioner before the learned SDJM (I), Kamrup (Metro), Guwahati, it shall release the said amount to the aggrieved person/ respondent No. 2 herein. Further, the petitioner shall pay the remaining amount of Rs.10,000/- with the District Legal Services Authority, Kamrup (Metro), Guwahati **on or before 04.10.2024** and shall obtain a written receipt in that regard from the Secretary, DLSA, Kamrup

(Metro), Guwahati, which shall be placed before the learned SDJM (I), Kamrup (Metro), Guwahati in said D.V Case No. 76^M/2018.

19. The certified copy of the Memo of appeal of CrI. A. No. 8/2021 that was filed by the petitioner before the Court of learned Sessions Judge, Kamrup (Metro), Guwahati, noted above, that is placed before the Court today by Mr. Talukdar, learned counsel for the respondent No. 2 be kept as a part of the record.

JUDGE

Comparing Assistant