

GAHC010227692014



2024:GAU-AS:11270

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

Case No. : Crl.Pet./974/2014

BUBUL BORBORA
S/O LT. TILAK BORBORA R/O HATIGORH, SALAGURI GAON, P.S. JORHAT
DIST. JORHAT, ASSAM.

VERSUS

SMTI RUPANJALI BARUA
D/O LT. GOLAP BARUA R/O KACHAGARAL P.O. and DIST. JORHAT, ASSAM.
PIN - 785007.

Advocate for the Petitioner : MS.P HANDIQUE, MR.D BARUAH

Advocate for the Respondent : AMICUS CURIAE, PP, ASSAM,MR.A M BORA,LEGAL AID
COUNSEL,MRS.R BORO BORA

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

07.11.2024

1. Heard Mr. D Barua, learned counsel for the petitioner. Also heard Mr. A.M Bora learned senior counsel assisted by Mr. V.A Chowdhury, learned counsel who has

appeared as Amicus Curiae on being appointed by this court.

2. The present petition under section 482 Cr.P.C is filed for quashment of a proceeding registered as Misc Case No.75/2014, under section 12 of the Protection of Women from Domestic Violence Act, 2005, which is presently pending before the court of learned Chief Judicial Magistrate, Jorhat.

3. The fundamental ground of challenge is that, the respondent wife on the basis of the some incident lodged an FIR on 02.10.2009, before the Officer in-Charge Bhogdoi police station alleging cruelty and assault which was registered as Jorhat PS Case No.481/2009 under section 498A IPC. Subsequently, the present petitioner was charge sheeted and after a full length trial, the petitioner was acquitted. Thereafter, the application under section 12 of the DV Act, was filed by the respondent wife.

4. The fundamental ground of challenge is that as the petitioner has already been acquitted from the charges under section 498A IPC, there cannot be any reason for the learned court to proceed with the proceeding under the DV Act, inasmuch as such proceeding is based on same incident and therefore, it is an abuse of the process of the court.

5. Mr. Bora, learned Amicus by referring to the order of acquittal of the petitioner under section 498A IPC submits that though the petitioner has been acquitted from the charges of commission of offence under section 498A IPC, however, the learned trial court has categorically concluded that the petitioner could not establish that the petitioner and the respondent are not legally married. According to Mr. Bora learned senior counsel, in the aforesaid backdrop, therefore, there shall not be any bar in proceeding under section 12 of the DV Act, inasmuch as these two are distinct and separate causes of action.

6. I have considered the arguments advanced by the learned counsel for the parties.

7. It is correct that the petitioner has been acquitted by the learned CJM, Jorhat

in GR Case No.995/2009 from the charges under section 498 A IPC. It is also on record that the petitioner has taken a specific stand that the respondent is not his legally married wife, rather she was a maid servant who used to take care of his children. However, such defence taken by the present petitioner was rejected by the learned trial court below which had admittedly remained unassailed. The relevant portion of the aforesaid judgment is quoted herein below:

“Though the defence through the D.W’s attempted to establish the fact that the informant was brought as part time maid servant to work in day time to look after the children of the accused person, but the prosecution evidence are sufficient to establish the fact that P.W.1, the informant, had been living in his house after socially married to him. Thus, under the context of available evidence, I am of the opinion that the prosecution has been able to discharge its burden as per section 101,102 and 103 of the Indian Evidence Act and also able to prove the fact of marriage between the informant and the accused beyond all reasonable doubt as required and as observed by Hon’ble Supreme Court passed in Sanjib Kumar Vs. State of Punjab (2009) 16 SCC 487.”

8. I have also perused the application filed under section 12 of the DV Act, as well as it is also on record that the petitioner had entered appearance in the aforesaid proceeding and also filed a written statement in the meantime and is taking a similar stand that the respondent not being his wife but a maid.

9. The power of High Court under Section 482 of Cr.P.C., to quash complaint and criminal proceeding was summarized by the Hon’ble Apex Court in ***Indian Oil Corporation –Vs- NEPC India Limited and Others*** reported in ***2006 (6) SCC 736***. The relevant portion is quoted herein below:-

I. A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

II. The power to quash shall not, however, be used to stifle or scuttle a

legitimate prosecution. The power should be used sparingly and with abundant caution.

III. The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

10. Now coming to the case in hand, it is seen that the only ground of challenge to the proceeding initiated under Section 12 of the DV Act, 2005 is that as the petitioner has been acquitted from charges under Section 498A of I.P.C. and therefore, there was no occasion for the learned Court to proceed against the petitioner. In the considered opinion of this Court the petitioner shall have all the opportunities to raise any defence that is legally available to him before the learned Trial Court in the proceeding i.e. pending under DV Act, 2005. However, this Court in exercise of power under Section 482 of Cr.P.C. would not like to enter into the factual assertion made by the learned counsel for the petitioner inasmuch as the cruelty under Section 498A of IPC as well as the consideration required to be made in an application under Section 12 of the DV Act, 2005 are not on the same footing. The other ground urged by the learned counsel for the petitioner that the respondent is not his legally married wife rather she was a maid servant who used take care of his children can also be considered by the learned trial court below. In the considered opinion of this Court, if this Court takes the application filed under Section 12 of the DV Act, 2005 is taken its face value same discloses cause of action for consideration of the application. Accordingly, this Court is of the further considered opinion of this Court that this is not a fit case where this Court should exercise its inherent power under Section 482 of Cr.P.C to quash the same.

11. The object of revisional power of this Court under Section 397 Cr.P.C. is to set right a patent defect or an error of jurisdiction or law. Such power can be exercised where the decision under challenge are grossly erroneous, there is non compliance of provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.

12. It is equally well settled that a revisional jurisdiction of High Court should not be exercised in a routine manner. The Hon'ble Apex Court in ***Chandra Babu vs State*** reported in ***2015 (8) SCC 774***, held that normally revisional jurisdiction should be exercised in a question of law however, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. The Supreme Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

13. This Court is in agreement with the findings recorded by the courts below which are based on sound reasoning. In the considered opinion of this Court and as discussed herein above, the learned Courts below has duly appreciated the evidence on record. The conclusion arrived at on the basis of such appreciation of evidence cannot be termed as a decision which could not have been arrived at on the basis of evidence available on record more particularly, in the backdrop of the settled law in this regard as recorded hereinabove. This Court has not found anything as regards any patent defect of jurisdiction or of law. The learned counsel has not also been able to show non compliance of any provisions of law or that the findings recorded is based on no evidence or that material evidence is ignored or that judicial discretion is exercised arbitrarily or perversely.

14. In the considered opinion of this court, the learned Addl. Sessions Judge has not committed any illegality or irregularly leading to exercise of revisional power of this court. Therefore, this court is not inclined to interfere with the decision of the learned Addl. Sessions Judge impugned the present proceeding. Accordingly, the

present petition stands dismissed. Interim order passed earlier, if any, stands vacated. The LCR be returned back.

15. At this stage, the learned counsel for the petitioner submits that the respondent wife already got married and therefore on this count the revision petition should be allowed. However, this court cannot go into such disputed question of fact, inasmuch as the respondent wife is not represented by her counsel but rather by Amicus Curiae appointed by this court. Accordingly, while parting with the record, it is clarified that the petitioner shall be at liberty to take such a plea before the learned trial Court below.

16. While parting with the records, this court places on record the able assistance rendered by Mr. A.M Bora, learned senior counsel as Amicus Curiae.

JUDGE

Comparing Assistant