

GAHC010234392022



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

Case No. : Crl.Pet./1186/2022

NASIRUDDIN AND 4 ORS
S/O SAFIKUL ISLAM
VILL- GOTLONG, MOUZA- BHAIRABPAD,
P.O. KALIABHOMORIA, P.S. TEZPUR
DIST. SONITPUR, ASSAM

2: SOHURA BEGUM
W/O MD. SAFIKUL ISLAM
VILL- GOTLONG
MOUZA- BHAIRABPAD

P.O. KALIABHOMORIA
P.S. TEZPUR
DIST. SONITPUR
ASSAM

3: HAMIDUL ISLAM
S/O INTAZ ALI
VILL- GOTLONG
MOUZA- BHAIRABPAD

P.O. KALIABHOMORIA
P.S. TEZPUR
DIST. SONITPUR
ASSAM

4: ANJUMA BEGUM
W/O HAMIDUL ISLAM
VILL- GOTLONG
MOUZA- BHAIRABPAD

P.O. KALIABHOMORIA
P.S. TEZPUR
DIST. SONITPUR

ASSAM

5: NAJUMA BEGUM
W/O ASADULLAH
VILL- GOTLONG
MOUZA- BHAIRABPAD

P.O. KALIABHOMORIA
P.S. TEZPUR
DIST. SONITPUR
ASSA

VERSUS

MUSTT WAHIDA BEGUM
W/O NASIRUDDIN
D/O AMINUL HOQUE
R/O VILL- RUPKURIA
P.O. SOLMARA, P.S. TEZPUR
DIST. SONITPUR, ASSAM
PIN CODE- 784501

Advocate for the Petitioner : MD. I HUSSAIN

Advocate for the Respondent : MR D K MEDHI

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT

Date : 23-01-2024

1. Heard Md. I. Hussain, learned counsel for the petitioners. Also heard Mr. D.K. Medhi, learned counsel for the respondent.
2. The petitioner No. 1 is the husband of the respondent whereas the petitioner Nos. 2, 3, 4 and 5 are the in-laws of the respondent.
3. The genesis of the case was that the marriage between the petitioner No. 1 and the respondent was solemnised as per “Shariat” on 16.09.2021. Unfortunately their marital life was struck by chord of disharmony. The respondent used to quarrel with the petitioners on petty issues. She used to remain busy with her mobile phone and used to gossip with some unknown person. The petitioner No. 1 requested the respondent to discard her habits. On 29.10.2021, the respondent deserted the petitioner

without any rhyme or reason. The petitioner No. 1 went to the respondent's parental home to bring back the respondent but she refused to return to her matrimonial home. The respondent's family members also exercised threats through some antisocial miscreants. This impelled the petitioner to lodge an ejahar (FIR) with the police at Mahabhairab Police Outpost on 18.12.2001 (Annexure-1). The respondent was summoned to the police station and she gave an undertaking on 22.12.2021 stating that she had left her husband-petitioner No. 1 herein and she would abstain from maintaining communication with the petitioner No. 1 and the spouses will not be responsible for each other.

4. As the respondent did not return to her matrimonial home after several requests, the petitioner No. 1 sent a legal notice to the respondent asking her to return to her matrimonial home (Annexure No.3). As the respondent did not respond to the legal notice, the petitioner No. 1 filed a title suit for restitution of conjugal rights which was registered as T.S. (M) No. 59 of 2022 (Annexure-4). After receiving notice in connection with the title suit, the respondent filed a written statement on 22.07.2022 with false, concocted and wild allegations contending *inter alia* that the petitioner No. 1 demanded dowry. It is averred that the respondent never raised any allegation relating to demand of dowry when she left her matrimonial home.

4. It is further averred that the respondent, at the behest of her family members filed a petition u/s 12 of the Protection of Women for Domestic Violence Act, 2005 against her husband and her in-laws with false allegations and this case was registered was D.V. Case No. 432/2022 (Annexure No. 6). It is contended that the respondent had taken away all her *Stridhan* articles from her matrimonial home even before filing the domestic violence case against the petitioner and his family members. It is submitted that there is absolutely no ingredient or any material against the petitioners which may constitute any offence under the Domestic Violence Act of 2005 (the D.V. Act for short), and respondent is not entitled to any relief u/s 18, 19 and 20 of the D.V. Act. The case under the D.V. Act has been filed by the respondent as a counter-blast to the various steps of legal proceeding brought against the respondent. Possibility of conviction thus appears to be remote and bleak. The petitioners have prayed to set aside and quash the proceedings of the D.V. Case No. 432/2022.

5. Per contra the learned counsel for the respondent has submitted that this petition u/s 482 of the Code of Criminal Procedure (Cr.PC for short) is not maintainable as a proceeding under a D.V. Act is a proceeding of civil nature. In the event, the petitioners are convicted for violation of any order, then there may be a case for setting aside the proceeding u/s 482 Cr.PC. This case is at a premature stage and cannot be quashed and set aside. The written statements marked as Annexure-6 clearly reveals that an FIR was lodged against the petitioners which was registered as Tezpur P.S. Case No. 626/2022 u/s 498A of the Indian Penal Code (IPC for short) read with Section 4 of the Dowry Prohibition Act. The learned counsel for the respondent has prayed to dismiss the petition.

6. It is averred by learned counsel for the petitioner that the FIR was lodged by the respondent after he lodged the FIR against his wife. To this the learned counsel for the respondent has replied that the allegation of extra-marital offence against an innocent woman is nothing but cruelty and so on a later date the FIR was lodged.

7. I have considered the submissions at the Bar with circumspection.

8. The learned counsel for the respondent has relied on the decision of the High Court of judicature at *Madras in Arul Denial v. Suganya*, reported in **2022 (0) Supreme (MAD) 3686** wherein the question relating to quashing of a proceeding under the Domestic Violence Act has been discussed.

“75. We now summarise our conclusions to the questions set out in paragraph 1 of this opinion:

a. A petition under [Section 482](#) Cr.P.C. challenging a proceeding under [Section 12](#) of the D.V. Act is not maintainable. A petition under 227 of the Constitution is maintainable on a limited ground of patent lack of jurisdiction, as indicated in paragraphs 40 and 41, supra.

b. Except on the limited ground indicated, supra, jurisdiction under [Article 227](#) of the Constitution will not be exercised, as a measure of self-imposed restriction, by-passing the statutory remedies under the [D.V. Act](#) in the light of the decision of the Supreme Court in [Virudhunagar Hindu Nadargal Dharma Paribalana Sabai](#), supra.

c. In the light of the aforesaid conclusions, we uphold the decision of N. Anand Venkatesh, J. in Pathmanathan, supra, including the directions set out, in paragraph 52 in their entirety, though, in our view, the reference to [Section 483](#) Cr.P.C. therein, may not be appropriate. The decision of the Division Bench in [P. Ganesan](#), supra, to the extent that it is contrary to this opinion, shall stand overruled. Ex consequenti, the decisions of learned single judges in [S.Gowrishankar](#), supra, [Sathiyaseelan](#), supra, [G.Jayakumar](#), supra, [Mohana Seshathri](#), supra, and other cases following or adopting the line of reasoning therein, shall stand overruled, to the extent that they are contrary to the view taken herein.

As a sequitur to the above, it must necessarily follow that the petitions in this batch are not maintainable. We, therefore, see no useful purpose in remitting the matter to the learned single judge to perform the obsequies. Accordingly, exercising power under Order I Rule 7 of the Appellate Side Rules, we hold that all the petitions filed under [Section 482](#) Cr.P.C. shall stand dismissed at the SR stage itself, preserving all the rights and contentions of the parties and granting liberty to move the Magistrate to agitate their grievances, which shall be considered in consonance with the directions set out in paragraph 52 of the decision in Pathmanathan, supra.”

9. In the instant case, I have perused the scanned copies of the LCR. The Annexure-1 is the FIR dated 18.12.2021 filed by the petitioner No. 1 against his wife. The Annexure-2 is the undertaking dated 22.12.2021. The undertaking is produced herein below verbatim.

“To,

The In-Charge

Mahabhairab Police Out Post

Subject: Undertaking/contract

Sir,

Date 22/12/21.

It is respectfully submitted that, I Wahida Begum, resident of Rupkuria, Solmara, P.S. Tezpur, District Sonitpur, do hereby state that, today on 22.12.2021, I entered into a contract today and stated that, from today onward, I will not keep any contract with my husband Nasiruddin since my family members have took my responsibility. While my staying in the house of my parents, if anything happens, then my family members will take my responsibility.

From today onwards, I have left my husband Nasiruddin. If anything happens to him, then I or any of my family members shall not be held responsible and I have signed this contract letter in sound mind and health.

Witnesses

1) Sd/- Masuma Begum

W/o. Aminul Hoque

2) Aminul Hoque

S/o. Amzad Ali

Rupkuria, (Solmara),

Tezpur”

Sd/- Wahida Begum

D/o. Aminul Hoque

R/o. Rupkuria Solmara

P.S. Tezpur

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10. The undertaking reveals that immediately after the FIR was lodged, the respondent filed the undertaking at Mahabhairab Outpost on 22.12.2021 stating that she has left her husband and she has filed this contract letter in sound mind and health.

11. The respondent has alleged cruelty by the petitioners in the written statement against her filed by the respondent in the title suit initiated by the petitioner for restitution of conjugal rights. It is indeed too immature to adjudicate and hold that there is a prima facie case to quash the proceedings. The case under the Domestic Violence Act is at its nascent stage. Without any evidence it may not be possible to ascertain if domestic violence was prevalent in the household. At this nascent stage, it cannot be held that the proceeding will lead to abuse of the process of the Court. The conduct of the petitioner reveals that although he had lodged an FIR on 18.12.2021 and although his wife had left him and submitted an undertaking dated 22.12.2021, the petitioner was keen to restart his conjugal life with his wife. Now at this premature and nascent stage, it cannot be held that the D.V. Case No. 432/2022 is liable to be quashed and set aside. This Court is hesitant to invoke the provisions under Section 482 Cr.PC and quash and set aside the proceedings of the above-mentioned case.

The petition is dismissed.

No order as to costs.

JUDGE

Comparing Assistant