GAHC010103692025

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

Crl.Rev.P./158/2025

PRITHWIRAJ DAS
S/O SRI PIJUSH KANTI DAS
R/O SREEMA LANE
TIKARBASTI
P.O.AND P.S. SILCHAR
DIST. CACHAR
PIN-788001
ASSAM

PH. NO. 9954099370 (M)

VERSUS

SMTI PANCHAMI DAS
W/O SHRI PRITHWIRAJ DAS
D/O SRI KRISHNA MOHAN DAS
R/O KANAKPUR ROAD

P.ORANGIRKHARI
P.S. SILCHAR

DIST. CACHAR
ASSAM
PIN-788005

Advocate for : MR B ACHARYYA
Advocate for : MR. K A MAZUMDER appearing for SMTI PANCHAMI DAS

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : --08.09.2026

Heard Ms. M Acharyya, the learned counsel for the petitioner. Also heard Mr. K A Mazmder, the learned counsel for the respondent.

2. This is an application u/s 528 BNSS read with Sections 442 and 438 of BNSS against the judgment & order dated 07.03.2025 passed by learned Sessions Judge, Cachar, Silchar in Criminal Appeal No. 91/2023 arising out of final order dated 30.11.2023 passed by the learned Additional CJM, Cachar, Silchar in Misc.(D.V.) Case No. 2/2019 whereby the said appeal filed by the respondent was partly modified by the Appellate Court.

3. It is submitted by Ms. M Acharyya that the respondent could not prove her case neither before the Trial Court nor before the Appellate Court though the maintenance order and the residence order was passed by the learned Appellate Court. She further submitted that she could not prove any allegation of domestic violence on her while she was residing with her husband/in the house of the petitioner. With some false and concocted allegations, she lodged the D.V. case before the learned Trial Court below.

4. Ms. Acharyya further submitted that in the judgment of the Appellate Court it is also discussed in para 4 of the judgment that she took shelter in her parents' house on 08.12.2018 but, she lodged the D.V. case only on 21.06.2019 with sufficient delay that has not been explained. That apart from the judgment

passed in criminal appeal it also reveals that she never lodged any FIR nor instituted any complaint case against the petitioner though she alleged that she was subjected to mental and physical torture while she was residing in the house of the petitioner. Accordingly, she submitted that the respondent could not even prove that she was subjected to any mental and physical torture or any domestic violence was meted on her to get the order of maintenance or shared household as passed by the learned Trial Court as well as the learned Appellate Court. To substantiate her plea Ms. Acharyya also relied on a decision of the Apex Court passed in the case of **Sangita Saha v. Abhijit Saha in Special Leave to Appeal (Crl.) No(s). 2600-2601/2016** wherein also it has been held by the Apex Court that any aggrieved is not entitled for any benefit under the D.V. Act, if she could not establish any incident of torture or demand of money or physical violence on her to get the relief of any maintenance or the residence order. Accordingly, Ms. Acharyya submitted that the learned Trial Court below as well as the learned Appellate Court had arrived at a wrong decision and not only maintenance but, the shared household is allowed by the learned Appellate Court which is liable to be dismissed and accordingly she prayed for setting aside and quashing of the order passed by the learned Appellate Court in Criminal Appeal No. 91/2023 arising out of final order dated 30.11.2023 passed by the learned Additional CJM, Cachar, Silchar in Misc.(D.V.) Case No. 2/2019.

5. Mr. Mazumder, the learned counsel for the respondent submitted that the respondent had already proved the case of domestic violence on her and on the basis of her evidence as well as the supporting witnesses the order of maintenance was passed by the learned Trial Court below. She categorically stated in her evidence as to how she was subjected to mental and physical

torture on her. Thus, the learned Trial Court below had rightly passed the order in favour of the respondent allowing Rs. 5,000/- towards maintenance allowance to her. But, the learned Trial Court below did not pass any order of residence or shared household and for which the respondent had to approach the learned Appellate Authority for seeking some modification in the order passed by the learned Trial Court below. Considering the submission and the materials on record, the learned Appellate Authority had passed the order with some modification directing the present petitioner to provide maintenance of Rs. 5,000/- per month and also ordered for shared household with the observation that the aggrieved has right to live in the shared household.

6. Mr. Mazumder during his argument also relied on a decision of **Prabha Tyagi v. Kamlesh Devi** passed in **Criminal Appeal No. 511/2022 dated 12.05.2022** wherein it is observed in para 27 of the judgment that – "*the object and purpose of the D.V. Act is to protect a woman from domestic violence, the salutary object of Sub-section (1) of Section 17 is to confer a right on every woman in a domestic relationship to have the right to reside in a shared household. Hence, the said provision commences with a non-obstante clause.*"

7. The said same judgment discussing with the provision of 17(1) and 19 of the D.V. Act, it is held by the Apex Court that she has the right to reside in the shared household who was in domestic relationship not only in her husband's house or may be in another place which is also a shared household. The para 31 of the said judgment reads as under:-

> "31. Further, the expression 'the right to reside in a shared household' cannot be restricted to actual residence. In other words, even in the absence of actual residence in the shared household, a woman in a domestic relationship can enforce her right to reside therein. The

aforesaid interpretation can be explained by way of an illustration. If a woman gets married then she acquires the right to reside in the household of her husband which then becomes a shared household within the meaning of the D.V. Act. In India, it is a societal norm for a woman, on her marriage to reside with her husband, unless due to professional, occupational or job commitments, or for other genuine reasons, the husband and wife decide to reside at different locations. Even in a case where the woman in a domestic relationship is residing elsewhere on account of a reasonable cause, she has the right to reside in a shared household. Also a woman who is, or has been, in a domestic relationship has the right to reside not only in the house of her husband, if it is located in another place which is also a shared household but also in the shared household which may be in a different location in which the family of her husband resides."

8. Mr. Mazumder further submitted that in a case under the D.V. Act or an application u/s 12(1) of the D.V. Act had enacted especially by the legislation to give justice to those women who suffer from domestic violence and from preventing acts of domestic violence and such a case while dealing with a petition u/s 482 CrPC for quashing etc. the Court should exercise its jurisdiction very cautiously. In that context also Mr. Mazumder relied on a decision of Hon'ble Apex Court reported in **2025 0 Supreme (SC) 873[Shaurabh Kumar Tripathi v. Vidhi Rawal]** and basically relied on para 35 of the said judgment which reads as under:-

"35. When it comes to exercise of power under Section 482 of the CrPC in relation to application under Section 12(1), the High Court has to keep in mind the fact that the DV Act, 2005 is a welfare legislation specially enacted to give justice to those women who suffer from domestic violence and for preventing acts of domestic violence. Therefore, while exercising jurisdiction under Section 482 of the CrPC for quashing proceedings under Section 12(1), the High Court should be very slow and circumspect. Interference can be made only when the case is clearly of gross illegality or gross abuse of the process of law. Generally, the High Court must adopt a hands-off approach while dealing with proceedings under Section 482 for quashing an application under Section 12(1). Unless the High Courts show restraint in the exercise of jurisdiction under Section 482 of the CrPC while dealing with a prayer for quashing the

proceedings under the DV Act, 2005, the very object of enacting the DV Act, 2005, will be defeated."

9. Mr. Mazumder further submitted that the present petition has been filed only to harass the present respondent and the petitioner never approached any Appellate Authority aggrieved to the order of learned Trail Court below. Rather, he prayed for some time to provide a shared household to the respondent and during that period, he instituted the present petition as well as a petition for divorce. Thus, he approached this Court only to harass the present petitioner who is a destitute woman and without providing any maintenance and shared household, she has been harassed by the present petitioner. Mr. Mazumder accordingly prayed for dismissal of the present petition.

10. After hearing the submissions made by the learned counsels for both sides, I have also perused the case record and the order passed by the learned Appellate Court as well as the Court below. The respondent had approached the learned Court of CJM, Cachar, Silchar with a petition under D.V. Act praying for maintenance and other reliefs, which was accordingly sent for disposal to Additional CJM, Cachar, Silchar and vide its order dated 30.11.2023, the order has been passed in favour of the respondent directing the petitioner to pay Rs. 5,000/- per month towards maintenance. However, there was no order for any shared household or residence order and for which the respondent again approached the learned Session Judge, Cachar, Silchar for modification of the judgment passed by the learned Trial Court below. After hearing both parties and considering all aspects of the case the appeal was partly allowed and the order of the learned Trial Court below is modified to the extent by giving right of the shared household to the present respondent. On being aggrieved to the said order of the Appellate Court, the present petition is instituted by the

petitioner/husband of the respondent. However, it is seen that they have not agitated the order of learned Additional CJM, Cachar, Silchar whereby the D.V. case was allowed and the petitioner was also directed to pay Rs. 5,000/- per month towards maintenance allowance. Only after the disposal of the Criminal Appeal No. 91 /2023, the present petition is filed challenging the order of the learned Appellate Court.

11. It is the case of the petitioner that without there being any domestic violence, the learned Trial Court as well as the learned Appellate Court had granted relief, which is not maintainable. It is submitted by the learned counsel for the petitioner that she did not lodge any complaint or FIR against the present petitioner for the mental and physical torture on her and the present case is also lodged with sufficient delay claiming some relief under the D.V. Act. But, from the judgment passed by the learned Trial Court below as well as the learned Appellate Court, it is seen that the aggrieved/respondent had adduced her evidence alleging mental and physical torture on her. However, it is a fact that she did not lodge any complaint/FIR against the petitioner in any other Court or police station and in the same time, it is also an admitted fact that she lodged the case under the D.V. Act with some delay after leaving her matrimonial house. But, filing of FIR or complaint against the husband or the petitioner cannot be the sole ground for dismissal of D.V. case and in the same time there is also no bar in instituting a D.V. case with some delay as submitted by the learned counsel for the petitioner. It is also not a case that she could not bring any allegation of torture on her to attract a case under the D.V. Act and the learned Trial Court below as well as the learned Appellate Court had rightly assessed the evidence of PWs and accordingly passed the order arriving at a concurrent decision. More so, the petitioner did not agitate the order of the

learned Trial Court below whereby he was directed to pay monthly maintenance of Rs. 5,000/- to the petitioner.

12. As referred by Mr. Mazumder in case of **Shaurabh Kumar Tripathi v. Vidhi Rawal**, reported in **2025 0 Supreme (SC) 873**, the Apex Court had expressed the view that a D.V. Act is a welfare legislation, specially enacted to give justice to those women who suffers from domestic violence and from preventing acts of domestic violence and accordingly it is further held that while exercising the jurisdiction u/s 482 of CrPC for quashing a proceeding u/s 12(1) of the D.V. Act, the Court should be very slow and circumspect. The proceeding can be quashed only when it shows gross illegality or gross abuse of the process of law. In the present case also it is seen that a marriage is not disputed in the case and it is also admitted that she was sharing the same household with the petitioner and hence she has the right u/s 17(1) and 19 of the D.V. Act to claim for shared household or residence order which is subsequently allowed by the learned Appellate Court by modifying the order of the learned Additional CJM, Cachar, Silchar in Misc.(DV) Case No. 2/2019.

13. So considering all these aspects of the case, this Court is of the opinion that the learned Trial Court below as well as the learned Appellate Court had rightly passed the order arriving at a concurrent decision and hence the interference of this Court is not at all necessary. Thus, it is not a fit case to set aside and quash the judgment & order dated 07.03.2025 passed by learned Sessions Judge, Cachar, Silchar in Criminal Appeal No. 91/2023.

14. With the above observations, the present petition accordingly dismissed and stands disposed of.

JUDGE

Comparing Assistant