
(2022) 08 GAU CK 0034
In the Gauhati High Court
Case No : Criminal Petition No. 568 Of 2021

Biraj Paul And Anr

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 17-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Protection Of Women From Domestic Violence Act, 2005 — Section 12, 18, 20, 22

Citation : (2022) 08 GAU CK 0034

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : Md F H Laskar

Final Decision : Dismissed

Judgement

1. By this application, under Section 482 of the Code of Criminal Procedure, petitioner No. 1- Shri Biraj Pal and petitioner No. 2- Ms. Pinky Paul prayed for striking off their names from the complaint in Domestic Violence Case No. D.V-01/2020, pending before the Court of learned Additional Chief Judicial Magistrate, Karbi Anglong, Diphu, Assam under Section 12 of Domestic Violence Act, 2005.

2. The factual background, leading to filing of this petition, is briefly stated as under: -

"The respondent No. 2- Smti. Rumpi Das Paul filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, against Shri Bikash Paul, Shri Biraj Paul and Ms. Pinky Paul, who are respondent Nos. 1, 2 & 3, respectively, in the complaint petition, alleging inter-alia amongst others that she got married with respondent No. 1 of the said petition, namely, Shri Bikash Paul, as per rites and rituals of the society on 24.03.2013, and thereafter, lived together as husband and wife at Bengali Garay Gaon, under Haluati P.S., District Sibsagar, and they were blessed with one baby boy on 19.06.2014. It is stated

that after the marriage, her husband- Bikash Paul told her that he was not ready for marriage as he was having an affairs with his younger brother's wife, namely, Ms. Pinky Paul, and that he married her because of his mother, and that after the marriage, her husband came to her in intoxicated state and did not have any physical relationship with her and the respondent No. 3 of the said petition, namely, Ms. Pinky Paul, who is the wife of respondent No. 2 of the said petition, namely, Biraj Paul, and who happens to be younger brother of the respondent No. 1 of the said petition, namely, Bikash Paul, treated her as a house maid and behaved with her as the owner of the said house and even while she asked for cosmetics, then the respondent No. 1- Bikash Paul used to give the same to the respondent No. 3- Pinky Paul and she use to collect the same from the respondent No. 3- Pinky Paul and respondent No. 3- Pinky Paul used to command her, and that her husband- respondent No. 1- Bikash Paul, used to slap her and once respondent No. 1- Bikash Paul poured hot dal on her person on account of the same being little bit salty and her husband tortured her while she was carrying pregnancy and she has seen respondent No. 1- Bikash Paul and respondent No. 3- Pinky Paul involving in physical relationship in kitchen and also in bathroom and reported the matter to respondent No. 2- Biraj Paul, the husband of respondent No. 3, but, he paid no attention to the same and the respondent No. 1- Bikash Paul had no bonding with her and he also snatched away her mobile phone and even did not allow her to talk with her parents and the respondent No. 3- Pinky Paul taunt her and also use to slap her in front of her husband- respondent No. 1- Bikash Paul and her brother-in-law, respondent No. 2- Biraj Paul, and also doubt her for not bringing adequate dowry and thereafter on 10.07.2020, her husband driven her out from the matrimonial home while her father and elder sister came to her place."

3. Being aggrieved, the present petitioners who are the respondent Nos. 2 & 3 of the complaint in domestic violence case, approached this Court for striking off their names from the array of the respondents, on the ground that the learned Court below has passed the order dated 24.09.2020, by taking cognizance and issued notice, without there being any specific statement or concrete evidence of torture by the petitioners upon the respondent No. 2 (complainant), which is illegal and not tenable in the eye of law and that before passing the order, the learned Court below did not consider the domestic incidents report received from the Protection Officer and without proper enquiry, passed the order dated 24.09.2020, and the learned Court below also failed to apply judicial mind and without receiving proper report as provided under Section 12 of the Domestic Violence Act, 2005, took cognizance, and the allegations leveled in the petition is baseless, unworthy to be believed and fabricated and the order of taking cognizance is illegal, improper and therefore, it is contended to strike off their names from the petition.

4. I have heard Mr. F. H. Laskar, learned counsel for the petitioners and also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent and Ms. P. Chakrabarty, learned counsel for the respondent No. 2.

5. Mr. F. H. Laskar, learned counsel for the petitioners, submits that the petitioners are being aggrieved for being issued notice to them without any materials in the complaint under Section 12 of the Domestic Violence Act, 2005, and that there is no whisper against the petitioner No. 1 in the said complaint and though some allegations are made against the petitioner No. 2, yet, the same are wild allegation and fabricated and unworthy to be believed and as such, the name of the petitioner Nos. 1 & 2 may be struck off from the array of the respondents in the complaint case under Section 12 of the Domestic Violence Act, 2005, and the case may continue against the husband, who is the respondent No. 1 in the complaint case.

6. On the other hand, Ms. P. Chakrabarty, learned counsel for the respondent No. 2, submits that the petition under Section 482 Cr.P.C is not maintainable at this stage. Ms. Chakrabarty, submits that law is well settled in respect of quashing of the complaint or F.I.R and that this Court is not entitled to see whether the allegation made in the petition are true or false and roving enquiry is not permissible at this stage and further, Ms. Chakrabarty submits that trial is yet to commence and the trial Court may be allowed to proceed with the case and therefore, it is contended to dismiss the petition.

7. Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent No. 1, also subscribe the submission so advance by Ms. P. Chakrabarty, learned counsel for the respondent No. 2.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the record of the learned Court below.

9. It appears from the record of learned Court below that all the respondents entered appearance and submitted their written statements, which are pending for consideration by the learned Court below. Also, having carefully gone through the complaint under Section 12 of the Domestic Violence Act, 2005, I find that there was some substance in the submission of learned counsel for the petitioners that no specific averment/allegations of domestic violence is made against the petitioner No. 1, although some allegations are there against the petitioner No. 2, who has allegedly maintaining illicit relationship with the husband of the respondent No. 2. And in view of the allegation made against the petitioner No. 2, this Court left unimpressed by the submission of the learned counsel for the petitioner that no allegation of the domestic violence is made out against the petitioner No. 2 in the complaint lodged under Section 12 of the Domestic Violence Act, 2005. Though no specific assertion or allegation of the domestic violence is made against the petitioner No. 1, yet given the nature of relief being claimed by the respondent No. 2 in the complaint under Sections 18 & 20, and other reliefs, this Court is unable to record concurrence with the submissions so advance by the learned counsel for the petitioners that he should not be made a party here in this proceeding.

10. It is to be mentioned here that from a cursory perusal of the application under Section 12 of the Domestic Violence Act, 2005, it appears that the respondent No. 2 of this petition has claimed all the reliefs she is legally entitled to under the law equity and justice under the Domestic Violence Act, 2005, which are described herein below:

1. Protection Order under Section-18 of the Act:

a) That order be pass restraining the respondents from further act of Domestic violence.

b) That any such relief/reliefs be awarded in favour of the aggrieved party against the respondent, which the aggrieved party is legally entitled to law and Equality and Justice in the Courts of Law.

2. Monetary relief under Section- 20 of the Act.

a) An amount of Rs. 1,00,000/- (Rupees One lakh) only be awarded as a compensation for mental and physical assault, harassment and other such forms of cruelty on demand etc.”

b) Monthly allowance of Rs. 50,000/- (Rupees Fifty thousand) only should be given to aggrieved.

c) Son's monthly allowance Rs. 20,000/- (Rupees Twenty thousand) only should be given for school fees, uniforms, tuition fees, extracurricular activities and other expenditure of the child.

d) Aggrieved parents are of old age and was not able to run her and her son's expenses so interim maintenance of Rs. 20,000/- (Rupees Twenty thousand) only is needed because aggrieved's brother do not help financially to their parents as mentioned above.

e) Cost of the proceeding be awarded in favour of the aggrieved party.

f) Any of such relief/reliefs also be awarded in favour of the aggrieved and against the respondent, which the aggrieved party is legally entitled in Law, Equity and Justice in the Court of Law.

3. Compensation Order under Section 22 of the Act.

a) Respondent be directed to pay an amount of Rs. 2,00,000/- (Rupees Two lakhs) only for their act of domestic violence towards the aggrieve.

b) Any of such relief/reliefs also be awarded in favour of the aggrieved and against the respondents, which the aggrieved is legally entitled to in Law, Equity and Justice in the Court of Law.

11. Further, it appears that the case is pending in the initial stage before the learned Court below and at this stage the facts are hazy and this Court while dealing with the petition under Section 482 Cr.P.C cannot embark into a roving

enquiry as to the truthfulness of allegation made in the complaint. Therefore, and also in view of the submission of the learned counsel for the respondents, this Court is of the view that the extra-ordinary power under Section 482 Cr.P.C cannot be invoked to strike off the names of the petitioners from the array of the respondents in the complaint case under Section 12 of the Domestic Violence, Act, 2005, so preferred before the learned Court below by the respondent No. 2.

12. In the result, I find no merit in this petition and accordingly, the same stands dismissed. Stay, if any granted earlier, stands vacated. The matter is remanded to the learned Court below with a direction to proceed in accordance with law.