
(2018) 07 GAU CK 0004
In the Gauhati High Court
Case No : Criminal Petition. 602 of 2016

Birobrata Paul And Anr.

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 10-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Protection of Women from Domestic Violence Act, 2005 — Section 12, 12(1), 18, 19,
20, 21, 22, 23(2), 26, 26(3)

Citation : (2018) 07 GAU CK 0004

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : N Sarmah, T R Sarma

Final Decision : Dismissed

Judgement

1. Heard Mrs. K. Deka, learned counsel for the petitioners. Also heard Mr. D. P. Borah, learned counsel representing the respondents.

2. This petition under Section 482 Cr.P.C. has been filed praying for setting aside the orders issuing process and the proceeding in Misc. Case

No.47/2016 under Section 12 of the Domestic Violence Act, 2005 pending in the Court of Sub-Divisional Judicial Magistrate (S) No.1, Kamrup (M), Guwahati.

3. The respondent No.2 herein is the wife of petitioner No.1. The respondent No.2 filed an application under Section 12 of the Protection of Women

from Domestic Violence Act, 2005 (hereinafter, for short, the Domestic Violence Act) alleging domestic violence and seeking relief of residence

order under Section 19, monetary relief under section 20, compensation order under section 22 as well as interim relief under section 23(2) of the

Domestic Violence Act. On receipt of the application the learned Judicial Magistrate by order dated 07.06.2016 issued notice to the respondents/petitioners and also called for a domestic incident report from the concerned officer fixing the next date on 21.06.2016. On the next date fixed i.e. on 21.06.2016 the present petitioner entered appearance through counsel and sought for time to file written statement and the domestic incident report was also received on that date. The next date was fixed for filing written statement by the present petitioner on his prayer. However, instead of filing written statement the respondent/petitioner has filed the present petition under section 482 Cr.P.C. praying for setting aside the abovementioned orders passed by the learned Magistrate and also for quashing the proceeding itself.

4. Learned counsel for the petitioners, Mrs. K. Deka, submits that the impugned orders passed by the learned Magistrate were bad for not considering the domestic incident report. Further contention of the learned counsel is that there were other proceedings pending including the divorce suit and criminal cases, as such the present proceeding was instituted only to harass the petitioners and therefore prayed for quashing the proceeding.

5. Mr. D. P. Borah, learned counsel representing the respondent No.2, referring to section 12 of the Domestic Violence Act and relying on a decision of this Court in the case Abhiram Gogoi vs. Rashmi Rekha Gogoi reported in 2011 (3) GLT 288, submits that for issuing process in a proceeding under Section 12 of the Domestic Violence Act, consideration of the domestic incident report is not a sine qua non. If a domestic incident report is before the Court, in that case the Magistrate is obliged to consider the domestic incident report before passing any order on such application.

Â This Court in Abhiram Gogoi (supra) observed as under :-

â??26.Â The question as to whether a Magistrate can pass an order, under Section 12, without a domestic incident report having been received from a Protection Officer can be well answered by referring to Section 9(1)(b) inasmuch as Section 9(1)(b) makes it clear that it is the duty of the Protection Officer to make a domestic incident report to the Magistrate upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and

to the service providers in that area. This shows that a domestic incident report comes into existence only when a complaint of domestic violence is received by a Protection Officer. If no complaint of domestic violence is received by a Protection Officer, the question of his submitting a domestic incident report does not arise. Since the scheme of the said Act, nowhere, imposes an obligation on an aggrieved person to necessarily approach a Protection Officer before making an application to a Magistrate for a maintenance order, it cannot be read into the scheme of the said Act that an application by an aggrieved person must necessarily be accompanied by a domestic incident report. The said Act makes it clear that an aggrieved person can directly make an application to a Jurisdictional Magistrate if she is subjected to domestic violence. The said Act, nowhere, obliges an aggrieved person to, first, make a complaint to a Protection Officer and, then, approach the Magistrate concerned. Section 12 takes care of a situation, if a situation so arises, where a Magistrate has before him, apart from an application, made by an aggrieved person, a domestic incident report. This does not mean that the absence of a domestic incident report denudes the Magistrate of his power to make a maintenance order.â??

6. Section 12 of the Domestic Violence Act provides that an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act. The proviso to sub-section (1) of Section 12 lays down that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

7. Here in the present case the application under Section 12 of the Domestic Violence Act was filed by the aggrieved person herself and acting on that petition the learned Magistrate issued notice and opportunity was given to the petitioner to file written statement. The learned Magistrate is also found to have called the domestic incident report, which was already received. As the present petitioners sought for adjournment to file written statement, an effective order was yet to be passed. At that stage the petitioner has approached this Court for quashing the proceeding basically on the two grounds as indicated above, viz., the domestic incident report was not considered and secondly, there were other proceedings including a divorce suit and a

criminal proceeding, instituted by the respondent No.2 against the petitioner, which were suppressed.

8. Apparently, no effective order was passed by the learned trial Court and the matter was at the stage of issuing process only. Section 12 of the

Domestic Violence Act has given a right to the aggrieved person to approach the Court under section

12 of the Act seeking relief provided under the Act and Section 26 of the Domestic Violence Act makes it clear that reliefs sought under the provision

of Sections 18, 19, 20, 21 and 22 are in addition and along with any other relief which may be sought by the aggrieved person in other civil or criminal

proceeding. Therefore, filing of a divorce suit or a criminal proceeding cannot be an impediment in filing an application under section 12 of the

Domestic Violence Act which is an independent proceeding provided under the statute. Section 26(3) of the Domestic Violence Act only imposes an

obligation on the aggrieved person to inform the Court about the relief, if any, obtained by her in any other proceeding. Though it has been contended

by the learned counsel Mrs. Deka, that the filing of the divorce suit and other proceedings were suppressed, the petition under section 12 itself

demonstrates in paragraph V under the heading "details of previous litigations" the petitioner has elaborately stated regarding all the litigations

pending between the parties and so there was apparently no question of suppressing the previous litigations.

9. Since the learned Magistrate has not passed any effective order and the petitioner being an aggrieved person is entitled to file an application under

section 12 of the Domestic Violence Act, the petitioner cannot be restrained from exercising her right provided by the statute only because she has

instituted a civil suit for divorce or other criminal proceeding as the statute has not created any bar against filing petition under Section 12 of the

Domestic Violence Act in view of the institution of divorce suit and other criminal proceeding. In that view of the matter, I am of the considered

opinion that the proceedings in the instant case does not call for interference in exercise of power under Section 482 of the Cr.P.C.

10. Since the learned trial Court has not passed any effective order, it will be in the fitness of the things to remand back the matter to the learned

Magistrate to adjudicate the same as per law. Accordingly, the petition is dismissed and the matter is remitted back to the learned trial Court for

disposal in accordance with law.