

(2023) 04 GAU CK 0027
In the Gauhati High Court
Case No : Criminal Petition No. 525 Of 2022

Dhanpati Das And Anr

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 21-04-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 294, 325, 506

Code Of Criminal Procedure, 1973 — Section 2(d), 482

Protection of Women from Domestic Violence Act, 2005 — Section 2(i), 3, 12, 18, 19, 20, 21, 22, 23, 25, 28(1), 28(2), 29, 31, 31(3)

Citation : (2023) 04 GAU CK 0027

Hon'ble Judges : Malasri Nandi, J

Bench : Single Bench

Advocate : K U Ahmed, B Sarma

Final Decision : Disposed Of

Judgement

1. Heard Mr. K.U. Ahmed, learned counsel for the petitioners. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State/respondent No.1 and Ms. M. Pathak, learned counsel for the respondent No.2

2. By filing an application under Section 482 Cr.P.C., the petitioners have sought for quashing of a proceeding of D.V. Misc. Case No.22/2020 pending in the court of learned JMFC, Kamrup, Hajo.

3. The brief facts of the case is that the respondent No. 2 as petitioner filed a petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter for brevity as D.V. Act) before the JMFC, Kamrup, Hajo, which was registered as D.V. Misc. Case No.22/2020. In the said case, the present petitioners were arrayed as respondents. The grievance in the said petition against the petitioners is that the respondent No.2 and her son were subjected to torture both physically as well as mentally by the present petitioners and the petitioners forcefully drove away the respondent No. 2 and her son in the year 1999 from her matrimonial home. In connection with the said incident, the

respondent No.2 lodged an FIR before the Hajo police station on 17.06.2019 which was registered as Hajo P.S. Case No.466/2019 under Section 294/325/506/34 IPC. In the said petition, the respondent No.2 prayed for relief/reliefs under Sections 18/19/20/21/23 of the D.V. Act along with an interim prayer of maintenance for herself and her son.

4. After registering the case, notices were issued to the present petitioners but the notices were not received by the petitioners in time due to Covid-19 pandemic as well as nationwide lockdown. It is alleged that during lockdown period on 01.07.2020, the learned trial court passed an ex-parte order against the petitioners whereby the petitioner No. 1 was directed to pay interim maintenance of Rs.2,000/-per month to the aggrieved person i.e. respondent No. 2. On receipt of the notice, the petitioners have filed their written statements whereby the petitioners stated that the respondent No.2 is not the wife of the petitioner No.1 and petitioner No.1 was not related with the birth of the child of the respondent No.2.

5. After appearing in the said D.V. Misc. Case No.22/2020, the petitioners filed an application under Section 25 of D.V. Act to revoke the ex-parte order dated 01.07.2020 but after hearing both parties, the said petition was rejected by the learned trial court on 20.11.2021 and directed to make payment to the respondent No. 2 as per order dated 01.07.2020.

6. By challenging the order dated 01.07.2020, the petitioners have preferred a revision petition before the court of learned Sessions Judge, Kamrup, Amingaon under Section 29 of D.V. Act however, after hearing both sides, the prayer in the criminal revision was dismissed by an order dated 25.04.2022 on the ground that there was no jurisdiction for interference with impugned order dated 01.07.2020.

7. On the other hand, the case of the respondent No. 2 who is the petitioner in D.V. Misc Case No.22/2020 is that she is the wife of the petitioner No.1 Dhanpati Das and they enjoyed their married life as husband and wife since 1995. The petitioner No. 1 brought the respondent No. 2 in his house to look after his small children in 1994 stating that his first wife Anjali Das had expired. On the same day, the petitioner No. 1 offered the respondent No. 2 the status of wife in presence of family members of both the families and also the villagers and got married respondent No.2.

8. It is further alleged that the petitioner had intentionally concealed the fact that his first wife was alive and started to lead conjugal life with respondent No.2 by offering her the status of legally married wife but in the year 2000, the first wife of the petitioner No.1 had appeared in the house of the petitioner No. 1, when the respondent No. 2 was carrying five months of pregnancy. On being asked, the petitioner No. 1 had disclosed that his wife had not died in reality but she was sent back to her parental home due to her ill health. Her children Nayanmani aged about 6 years and Barnali aged about 4 years in her husband's house. The petitioner No. 1 and his family members had intentionally concealed all those

facts from the respondent No.2 as the children of the petitioner No. 1 were property looked after by her.

9. After arrival of the first wife of the petitioner No.1, they started to torture the respondent No.2 both physically as well as mentally. Ultimately, she was driven out from her matrimonial home. Finding no other alternative, she took shelter in the house of her parents and at that time she was about five month's pregnant. Subsequently, she gave birth to a male child but the petitioner did not provide any maintenance to her or her child. It is further alleged that the respondent No.2 and her child have sometimes visited the house of the petitioner No.1 but they were restrained from entering into the house of the petitioner No.1 by his first wife and his daughters. On 02.06.2019, the respondent No. 1 and her son went to the house of petitioner No. 1 to obtain photo copy of schedule caste certificate of the petitioner No. 1 and asked for some money for admission of her son in a college but the petitioner No. 1 had neither gave the schedule caste certificate nor gave any amount for admission. Rather both the petitioners along with her daughters assaulted the respondent No. 2 and her son and thereafter, the respondent No.2 lodged the FIR.

10. The respondent No. 2 also stated in her petition of D.V. Act that the petitioner No. 1 is a businessman having sufficient income and he has also landed property more than 20 bighas of cultivable land including valuable trees like bamboo etc. from which he earns Rs.1,30,000/- per month.

11. On the other hand, the respondent No. 2 has no income of her own. Considering the background of the case, the learned Magistrate has allowed the interim allowance to the respondent No.2 amounting to Rs.2000/- per month.

12. It has been submitted by the learned counsel for the petitioners that the petitioner No.2 is the wife of petitioner No.1, they are husband and wife and their marriage was held in the year 1994. After their marriage, they lived together and out of their wedlock, two children were born. But the petitioner No.1 has no relation with the respondent No.2. No marriage was held between the petitioner No.1 and the respondent No. 2. Hence, the petitioner No.1 is not liable to pay any maintenance allowance to the respondent No.2 as such, the interim order passed by the learned trial court is liable to be set aside.

13. It is also submitted by the learned counsel for the petitioners that the alleged incident occurred about 25 years back as alleged by the respondent No.2 and the impugned D.V. case was instituted after 25 years of the incident which is not tenable in the eye of law as such, the proceeding is illegal and liable to be set aside. It is further submitted that there was no domestic relationship between the petitioner No.1 and the respondent No.2 and no case of domestic violence is made out as stipulated under Section 3 of D.V. Act as such, the order dated 01.07.2019 is liable to set aside.

14. In support of his submissions learned counsel for the petitioners has placed reliance on the following case laws –

- a. (2010) 11 SCC 483 (Bharatha Matha & Anr. vs R. Vijaya Renganathan & Ors.)
- b. (1998) 1 SCC 530 (Yamunabai Anantrao Adhav vs Anantrao Shivram Adhav & Anr.)
- c. AIR 1990 HP 77 (Smti. Santosh Kumari vs Surjit Singh).

15. Per contra, the learned counsel for the respondent has argued that the respondent No. 2 got married to the petitioner No. 1. The petitioner No. 1 had neglected to maintain her and her son and to provide any maintenance to them and drove them out from his house. The respondent No. 2 has no income of her own. Finding no alternative, she has filed a case under Section 12 of D.V. Act

16. The learned counsel for the respondent No.2 also submitted that the reliefs sought for under Section 18 to 22 of the D.V. Act are purely civil in nature with no criminal liabilities, except for the fact that non-compliance of the order of the Court under the said Sections 18 to 22 would attract the penal provision of Section 31 of the D.V. Act as such, the procedure of Section 482 Cr.P.C. is not applicable in the case of D.V. Act

17. It is further contended by the learned counsel for the respondent No. 2 that the proceedings under Sections 18 to 22 of the D.V. Act are to be instituted upon an application by the aggrieved person or the protection officer and it is therefore, not a complaint as can be understood in the meaning and provision of Section 2 (d) of the Code of Criminal Procedure. That apart, none of the provisions of the Act speak of framing of charges or awarding punishment etc. which are the trademarks of a criminal trial.

18. In support of his submissions learned counsel for the respondents has relied on the following case laws –

- a. 1992 Supp(1) SCC 335 (State of Haryana & Ors. vs Bhajanlal & Ors.)
- b. (2017) 5 SCC 533 (Ram Kishan Fauji vs State of Haryana & Ors.)
- c. (2016) 2 SCC 705 (Krishna Bhattacharjee vs Sarathi Choudhury & Anr.)
- d. 2004 Legal Eagle (SC) 60 (State of W.B. & Ors. vs Sujit Kumar Rana)
- e. AIR 1962 SC 574 (The Dargah Committee, Ajmer vs The State of Rajasthan & Anr.)
- f. (2016) 11 SCC 774 (Kunapareddy @ Nookala Shankar Balaji vs Kunapareddy Swarna Kumari & Anr.)
- g. AIR 1965 SC 1818 [S.A.L. Narayan Row & Anr. vs Ishwarlal Bhagwandas & Anr. (in C.A.No. 1003 of 1963) N.D. Mehrotra & Anr. vs Vrajlal Kewaldas (in C.A. No. 1004 of 1963)]
- h. AIR 1950 Bombay 397 (V.B. D'monte vs Bandra Borough Municipality)
- i. (2022) 2 Gau LR 723 (Monjit Talukdar vs Rita Talukdar & Anr.)

19. On careful analysis of the points in issue raised by the learned counsel for the respondent No. 2, on the question of maintainability of this instant petition under Section 482 Cr.P.C., what can be understood is that the main thrust was that the proceedings under the D.V. Act. are purely civil in nature and the reliefs contemplated under Sections

18 to 22 are civil reliefs with no criminal liabilities and as such, the enquiry is not a trial of criminal case, which will attract the provision of Section 482 Cr.P.C. Hence, this petition is not maintainable and is liable to be rejected.

20. Section 482 Cr.P.C. provides for inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code and the proceeding under the D.V. Act being governed by the procedure under the Cr.P.C. and it would be profitable to look into the scope and ambit of the Court's power under Section 482 Cr.P.C. On this point, the Apex Court in a catena of judgments has clearly spelt out the scope and ambit of Section 482 Cr.P.C some of which are reproduced herein.

21. In the case of *Gorige Pentaiah v. State of A.P.* reported in (2008) 12 SCC 531, it was held that-

"Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court."

22. Inherent powers under Section 482 Cr.P.C. can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice.

23. On a bare look at the provision, it reveals that inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

24. In the case of *R.P. Kapur v. State of Punjab* AIR 1960 SC 866, the Hon'ble Supreme Court has summarized some categories of cases where inherent powers can and should be exercised to quash the proceedings:

"(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage."

25. In the case of *State of Karnataka v. L. Muniswamy & Others*, reported in (1977) 2 SCC 699, it was observed that the wholesome power under Section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.

26. In another case *Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandrojirao Angre & Others*, reported in (1988) 1 SCC 692, it was held that:

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

27. Reverting back to the present case, on the contention of the petitioner that the application under D.V. Act filed by the respondent No. 2 against the petitioner is a counterblast to wreak vengeance on the petitioner, this Court is unable to accept the same as because on perusal of the application under Section 12 of the D.V. Act filed by the respondent No. 2 which would reveal that the respondent No. 2 has specifically and clearly made several averments citing allegations of

physical and mental torture towards her by the petitioners herein and as such, the said allegations, instances of which will be conveyed through a proper affidavit, has to be proved, which is possible only if the said proceedings under the D.V. Act would continue further and the same cannot be shifted at this stage, in exercise of the inherent power under Section 482 Cr.P.C. It also appears that the petitioner No. 1 has denied the marriage with the respondent No. 2 which is also required to be proved in the proceeding under D.V. Act by adducing evidence of both the parties.

28. It is to be reminded that the inherent power of the court as far as Section 482 Cr.P.C. is concerned, it is to be exercised only in the rarest of the rare case. This Court finds that the circumstances cited by the petitioners herein seeking indulgence of this Court in this respect does not qualify to warrant interference by this Court. Accordingly, this Court finds that the petitioners have not been able to make out a case for exercise of inherent power by this Court under Section 482 Cr.P.C.

29. The Protection of Women from D.V. Act is a legislation enacted to shield the rights of women which are enshrined and guaranteed under the Constitution of India, besides paving way to deal with the matters connected to and arising out of the family disputes in an effective and efficacious manner.

30. When the provisions contained in the said legislation i.e., the D.V. Act are looked into, it is very clear that the proceedings that would be conducted are more civil in nature. The protection orders that would be granted under Section 18, the residence orders that would be granted under Section 19, the monetary reliefs that would be granted under Section 20, the custody orders that would be granted under Section 21 and the compensation orders that would be granted under Section 22, would be based on applications that would be filed by the aggrieved persons, the domestic incident reports and the defence taken by the respondents therein. All those proceedings are civil in nature. No doubt, Section 28 (1) of the Act of 2005 lays down that the proceedings shall be governed by the provisions of Code of Criminal Procedure. However, it is specifically mentioned under Section 28(2) of the Act of 2005 that the Court is empowered to lay down its own procedure for disposal of the applications filed by the aggrieved persons or the Protection Officers. May be due to the fact that the power to deal with the domestic violence cases is given to the Magistrate, the litigant public are under the impression that the proceedings initiated under the Act of 2005 are purely criminal in nature.

31. Section 2(i) of the Act of 2005 states that "Magistrate" means Judicial Magistrate of First Class or the Metropolitan Magistrate, as the case may be, exercising jurisdiction under the Code of Criminal Procedure. However, as indicated earlier, the proceedings under the Act of 2005 are more civil in nature. Section 31 of the Act of 2005 is the only provision which makes the breach committed within the purview of the Act of 2005 punishable. As per Section 31 of the Act of 2005, breach of a protection order or an interim protection order is a

punishable offence. Further, Section 31(3) of the Act of 2005 empowers the Magistrate to frame charges under Section 498-A IPC or any of the provisions of the India Penal Code or the Dowry Prohibition Act while framing charge for the offences punishable for breach of the protection order or interim protection order. May be due to that reason i.e., to deal with the offence committed by breaching the protection order or an interim protection order and the connected offences punishable under the Indian Penal Code and the Dowry Prohibition Act, the legislature by all its wisdom has empowered the Judicial Magistrate of First Class to deal with the matters pertaining to other provisions and for issuance of required orders as enumerated under Sections 18 to 22 of the Act of 2005. That does not mean that the entire proceedings that would be conducted by the Magistrate under the Act of 2005 are criminal in nature. Thus, when the orders that would be granted in domestic violence cases, basing on the material produced, are civil in nature, it has to be seen how far it is justifiable on part of the parties against whom the aggrieved person or the Protection Officer has initiated proceedings to seek quash of proceedings under Section 482 Cr.P.C.

32. Law is well settled that in a petition filed under Section 482 Cr.P.C. the High Court is required to examine whether its intervention is required for prevention of abuse of law or otherwise to secure the ends of justice. It is only in extremely extraordinary cases that the Courts can exercise its jurisdiction conferred under Section 482 C.P.C. to quash the proceedings under the Protection of Women from Domestic Violence Act, 2005.

33. On perusal of the impugned order passed by the learned trial court, this Court finds that the same has been passed by a court of competent jurisdiction. Under Section 23 of D.V. Act, the aggrieved person is entitled for ex-parte maintenance order and as such, on this count, order dated 01.07.2020 cannot be said to be faulted. Apparently that has not been called abuse of the process of the court which warrants any interference by this Court under Section 482 Cr.P.C.

34. In the case in hand, the ground shown by the petitioners is that the respondent No.2 is not the legally married wife of the petitioner No. 1 or there was ever any domestic relationship between the petitioner No.1 and the respondent No. 2 etc. are required to be proved by adducing evidence which is possible only in trial. Therefore, this Court is of the view that the petition filed for quashing of proceedings is unsustainable.

35. In the present case, having regard to the modus operandi adopted by the petitioners and projected in the case as referred to in their petition, this Court has no hesitation in holding that it is not a fit case to exercise of the jurisdiction under Section 482 Cr.P.C.

36. In view of the above, I find no merit in the petition and it is dismissed accordingly. The learned trial court shall now proceed with the case without being influenced by any observations made by this Court.

37. With the above observations, the criminal petition stands disposed of

accordingly.