

**(2019) 01 GAU CK 0067**  
**In the Gauhati High Court**  
**Case No : Criminal Petition No. 350 Of 2016**

Monirul Islam And Ors

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

**Date of Decision :** 29-01-2019

**Acts Referred:**

Protection Of Women from Domestic Violence Act, 2005 — Section 12  
Code Of Criminal Procedure, 1973 — Section 397, 401, 482  
Indian Penal Code, 1860 — Section 498(A)

**Citation :** (2019) 01 GAU CK 0067

**Hon'ble Judges :** Rumi Kumari Phukan, J

**Bench :** Single Bench

**Advocate :** J Islam, S C Biswasr

**Final Decision :** Disposed Off

## Judgement

Rumi Kumari Phukan, J

1. Heard Mr. J Islam, learned counsel for the petitioner as well as Mr. S C Biswas, learned counsel for the respondent No. 2

2. The petitioners herein namely 1. Md. Monirul islam, 2. Hamida Begum 3. Nazrul Islam and Semina Parbin have been arrayed as a party respondent in the CR Case No. 489/2016 filed by the respondent No. 2 Rejina Ahmed, which is pending before the Court of learned JMFC, Barpeta and the said Court has issued notice to the present petitioners vide order dated 22.04.2016 to appear before the Court in connection with the aforesaid case filed under section 12 of Domestic Violence Act. Challenging the impugned order of issuance of notice, and the entire proceeding, the present petition u/s 482 of CrPC read with Section 397/401 of CrPC has been preferred for quashing and setting aside the aforesaid proceeding on the 3 (three) grounds. Firstly, that there was no any valid married between the petitioner No. 1 and the respondent No. 2. Secondly, that there was no specific allegation as against the rest of the petitioners Nos. 2 to 4 towards such domestic violence. Thirdly, that the party i.e. the petitioner No. 1 and

respondent No. 2 resided in a rented house so that can't any sort of act of domestic violence on the part of the other in-laws of the respondent No. 2.

3. Merit in the facts, it has been submitted by learned counsel for the petitioner that although there was a marriage between the petitioner No. 1 and respondent No. 2 as on 26.04.2013 before the Notary but they neither solemnized any social marriage nor cohabited in the house of the petitioner as a husband and wife. According to the petitioner No. 1 although he was ready to solemnize social marriage with the respondent No. 2 but being an unemployed youth, he was unable to marry her despite his willingness in the compelling circumstances. The respondent No. 2 with a view to compel to social marriage filed criminal case against him u/s 498(A) of IPC vide Barpeta PS case No. 300/2016, which was however compromised and thereafter petitioner No. 1 on 02.07.2015 took her to rented premises and begin to reside there but according to the petitioner on the ground above, there can't be any case of domestic violence against the petitioners more particularly, against the in laws i.e the respondent Nos. 2 to 4. But all of them have been robed in the said proceeding and the learned trial Court has issued notice to them to appear before the Court.

4. Challenging the aforesaid notice, the present petition has been preferred.

5. It is the contention of learned counsel for the petitioner that in the aforesaid proceeding u/s 12 of the DV Act, there is no specific allegation as against the petitioners so in terms of the decision rendered by Hon'ble Apex Court in (2015) 11 SCC 769 Pritam Ashok Sadaphule and Ors. Vs. State of Maharashtra and another, it has been contended that such a proceeding should be quashed and set aside. In an alternative submission, it has also been contended that at least apart from petitioner No. 1 rests of the petitioners should be exonerated from the said proceeding there being no proper allegation against them so as to face such proceeding.

6. Learned counsel for the respondent has vehemently opposed such contention raised by the learned counsel for the petitioner that it is an initial stage while petitioner has come forward for quashing the petition, as the respondent No. 2 is to establish her case by producing evidence and her petition u/s 12 of the DV Act prima facie constitute all the allegations against all the respondents so as to make out a case for seeking relief under the law. Quashing of such proceeding at the threshold without giving an opportunity to the respondent/wife, which certainly cause prejudice to the case of the respondent and she will deprive of proving her case in due manner. It is also contended that there is an admittedly marriage again between the parties and contention about living together and the respondent/wife is entitled to sought for relief under the provision of the Domestic Violence Act, even if there was no social marriage between the parties. So far as the contention raised it has been submitted that the respondent/wife has indicated the affairs indulged by all the respondents alleging about bad treatment, torture and it is a specific allegation that she was ousted from their shared household by all the respondents as on 13.05.2015 by inflicting her

injury. That being so, the petitioners now cannot escape from such allegation that they were not implicated by the respondent towards their conduct.

7. Referring to the petition u/s 12 of the DV Act, which is under challenge, it has been contended by learned counsel for the respondent that in her petition the respondent No. 2 has elaborated all the affairs between the parties since marriage deed as on 26.04.2013 till day took rented premises on 02.07.2015 and according to the allegation, she was ousted from the house on 02.01.2016. Accordingly it has been submitted that it is not a fit case to quash the entire proceeding as has been sought for and the citation referred by learned counsel for the petitioner is of no help in the present case which refers to the offence u/s 498A where ingredients of the criminal offence is to be set forth by the complainant but in the present case it relates to a case of domestic violence which bears the matter of civil dispute and in both the matter is totally different.

8. I have gone through the rival contention of learned counsel for both the parties and the entire matters on record and the LCR.

9. Evidently, present petition has been preferred at the initial stage where the notice has been issued to the respondent. Fact to be noted that at the time of issuance of such notice and initiation of proceeding, the learned trial Court has obtained a domestic incident report from the protection officer and on being satisfied with the report that there are ground to proceed against the respondent u/s 12 of the Domestic violence Act, the learned trial Court has issued notice to the respondent to appear and to answer as to why relief sought for by the accused person, should not be granted vide order dated 22.04.2016. That being the position, it is discernible that the learned trial Court after due exercise of its judicial mind has issued notice to the respondents. On the other hand, petitioner (respondent in the proceeding) is in a position to submit their answers/written statement as to why the relief sought for by the accused person should not be granted. Quashing the case at the threshold in the present circumstances, will not be proper.

10. As regards other fact regarding validity of marriage and the relation between the parties, resides as a husband and wife in the shared household etc is a matters of facts, which can be ascertained by adducing evidence from both the parties and same cannot be ascertained only on submission of a party unless specifically brought on record. It is trite to say that dispute relating to facts cannot be proved unless it is tested by a cross-examination.

11. After going through the entire record and the pleadings before this Court, it is found that that the respondent No. 2 in her petition has specifically mentioned about certain incident i.e. on 13.05.2015 and 02.01.2016 that all the present petitioners assaulted and driven her out from the premises for which neither she could come back to her shared household or the rented premises for which she has taken shelter in her parental house. Obviously, specific allegation has been made against the present petitioners and not on vague allegation, as has been

contended by learned counsel for the petitioner. The decision relied on by the petitioner is of no help to the matter in hand as it relates to an occurrence under the Domestic Violence Act on the definition of Domestic violence Act is different than that of criminal offences u/s 498A of IPC. I am unable to persuade myself to accept the contention raised by the petitioner before this Court. The petitioners are still in a position to appear before the Court and to raise their grievances that the respondent/wife is not entitled to any relief as sought for by way of written statement and the learned Court is in a position to consider such matter in accordance with law.

12. Invoking of provision Sec. 482 of CrPC at this stage will not proper as it will deny the case of the respondent/wife who has sought for certain relief from the Court and the learned Court to adjudicate the matter by given an opportunity to both sides. Accordingly present petition stands disposed of with a direction to the petitioner to appear before the Court on or before 20.02.2019 and the learned trial Court will proceed with the matter in accordance with the law. Return the case diary.