

(2018) 06 GAU CK 0066
In the Gauhati High Court
Case No : Criminal Petition 251 of 2016

Mrs. Manjila Khatoon Alias Manjula Khatoon And Anr.	APPELLANT
Vs	
Md. Nurul Islam And Anr	RESPONDENT

Date of Decision : 14-06-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 125, 200, 482
Indian Penal Code, 1860 — Section 380, 448
Protection of Women from Domestic Violence Act, 2005 — Section 12, 18, 19, 20, 22
Indian Penal Code, 1860 — Section 380, 448, 498A

Citation : (2018) 06 GAU CK 0066

Hon'ble Judges : AJIT BORTHAKUR, J

Bench : Single Bench

Advocate : S. Chauhan, B. Haldar, T. K. Mishra

Final Decision : Disposed Off

Judgement

1. Heard Mr. S. Chauhan, learned counsel for the petitioners and Mr. B. Haldar, learned counsel for the respondent No. 1. Also heard Mr. T. K.

Mishra, learned Addl. Public Prosecutor for the State respondent No. 2.

2. By this petition under Section 482 Cr.P.C., the petitioners, namely, Ms. Manjila Khatoon @ Manjula Khatoon and Md. Mahram Ali have prayed for

quashing C. R. Case No. 1151c/2015 under Sections 380/448 IPC, pending in the Court of learned Judicial Magistrate, First Class, Sankardev Nagar,

Hojai.

3. The petitionersâ?? case, in a nutshell, is that on 28.04.2008, the petitioner No. 1, namely, Ms. Manjila Khatoon @ Manjula Khatoon got married to

the respondent No. 1, namely, Md. Nurul Islam on 28.04.2008 by executing registration in the Office of the Muslim Register and Kazi and resumed

their marital life as husband and wife. However, the petitioner No. 1 started facing mental and physical cruelty perpetrated on her by the in-laws and the respondent No. 1-her husband, on demand for dowry. On 30.11.2008, the petitioner No. 1 was ousted from her husband's house and in the result, she has taken shelter at her parental home. The petitioners have further contended that in the month of March, 2009, in the compelling situation, the petitioner No. 1 filed a Misc. Case being No. 7 of 2009 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'DV Act') in the Court of learned Sub-Divisional Judicial Magistrate (M) (for short, 'SDJM') at Sankardev Nagar, Hojai, Nagaon praying for reliefs under Sections 18, 19, 20 & 22 of the said Act against the respondent Nos. 1 and 5 and others therein and accordingly, the learned Magistrate by judgment and order, dated 03.02.2011, passed for appropriate reliefs. The monetary relief provided under Section 22 of the DV Act awarded by the learned magistrate has not been complied with and the learned Appellate Court in Crl. A. No. 14/2011 also dismissed the appeal of the respondent No. 1 in this regard. In the meantime, the petitioner No. 1, who at the relevant time, was studying in College, to meet her educational expenditures, filed M.R. Case No. 38/2009 under Section 125 Cr.P.C. against the respondent No. 1 praying for maintenance, wherein, the learned trial Judicial Magistrate by an ex-parte judgment and order, dated 11.02.2011, directed the respondent No. 1 to pay @Rs.2, 000/-, per month, from the date of the said order to her, which has also not been complied with. On the other hand, the father of the respondent No. 1 and his two sons preferred a criminal revision being No. 423 of 2012 against the order passed in Misc. Case No. 07 of 2009, aforementioned, to this Court which was partly allowed with a modified direction to pay rent @Rs.1, 000/-, per month, as directed by the learned Court below vide judgment and order, dated 14.03.2014. However, the respondent No. 1 did not pay the maintenance amount due to the petitioner No. 1 which accumulated to Rs.90,000/- in 45 (forty five) months. The petitioner No. 1 found one LIC policy being Number 4A0651734 of Hojai Branch to be matured on 28.11.2014 and since the respondent No. 1 was avoiding the Court despite of his knowledge that the petitioner apprehended that the respondent No. 1 will take the entire amount of LIC, in such circumstance, petitioner No. 1 filed WP (C) 5984/ 2014 praying for directing the LIC to retain the amount and pay her

maintenance from the said amount and accordingly, the High Court by interim order, dated 24.11.2014, directed the Hojai Branch of LIC not to make payment to anyone, without the leave of the Court. The petitioners have contended that the respondent No. 1 before communicating the said order of the High Court withdrew the amount pre-maturely to avoid payment of maintenance. According to the petitioners, the petitioner No. 1 received two documents, namely, one declaration of Talque executed on 03.02.2016 which was received on 09.02.2016 and another is a undated letter received on 05.02.2016, whereby she was informed that except the amount of Mohar, petitioner No. 1 will get the maintenance for the iddot period only. The respondent No. 1 further stated in the declaration of Talque that filing of case under Section 498 A IPC against him amounted to cruelty. Another letter sent by the Qaji of Chief Qaji, Hojai stated that she is entitled only to maintenance for the iddot period. It is the further contention of the petitioners that in the complaint petition, in question, the respondent No. 1 admitted that the petitioner No. 1 is his married wife, but falsely stated that the petitioner No. 1 and the respondent No. 1 are mutually separated. On the other hand, the allegation of entering into his house and committing theft on 30.11.2008 is absolutely false and assuming that there is a little truth, then also the respondent filed complaint after 7 years. The petitioners have contended that the respondent No. 1 never approached Police and filed any FIR, for the said alleged offence. The allegation of making any attempt to settle the matter and that there was any demand made to return anything are false and misleading.

4. Mr. S. Chauhan, learned counsel for the petitioners submits that the petitioner No. 1 being the wife of the complainant/ respondent No. 1, herein, she has every right of egress and ingress and access to whatever the complainant had/ has and as such, Section 448/380 IPC are not applicable in case of a married wife and as such, being filed with a malafide intention, the complaint case being C. R. Case No. 1151/15 is liable to be quashed.

5. Mr. Chauhan further submits that the date of alleged occurrence was 30.11.2008 and as the complaint case was filed in the month of September, 2015, that is, after expiry of seven years without any explanation for the inordinate delay, makes the complaint case liable to be quashed at the threshold.

6. Mr. B. Haldar, learned counsel appearing for the respondent No. 1 submits that admittedly the petitioner No. 1 was married to the respondent No. 1

on 27.04.2008 and their marital relation subsisted till 30.11.2008 and pursuant to their mutual understanding they lived separately due to domestic

differences and ultimately, she left for her parental home. Mr. Haldar further submits that in the absence of his wife, the petitioner No. 1, herein, the

respondent No. 1 went to Mumbai for his occupation keeping his house under lock and key, but the petitioner no. 1 on 30.11.2008 broke open the door

of the house and took away his valuable academic testimonials, PRC, Cheque book, bank account passbook, land documents, LIC policies etc.,

without his knowledge. It is also the submission of Mr. Haldar that during the period of the absence of the respondent No. 1, the petitioner No. 1 filed

several false criminal cases including petitions under Section 125 Cr.P.C.; Section 12 of the DV Act and under Section 498A IPC, with a view to

extract money and after return from Mumbai in the month of October, 2014, having learnt he filed the complaint as the afford for an amicable

settlement of the disputes failed.

7. Mr. T. K. Mishra, learned Addl. Public Prosecutor appearing for the State respondent No. 2 submits that the complaint petition suffers from

unexplained delay of about seven years from the date of the alleged occurrence that happened to be allegedly committed by the complainant's

own wife, which appears to be fatal. Mr. Mishra submits that the petitioner No. 1 and the respondent No. 1 are constantly pursuing criminal litigations

against each other which are rooted in their domestic differences. Mr. Mishra further submits that perusal of the statements recorded under Section

200 Cr.P.C. reveals that the respondent No. 1, in fact, did not file the relevant documents and his wife also claimed to have not taken away those

documents and therefore, in the facts and circumstances of the case, the complaint petition need not be allowed to continue and the same may be

quashed in the interest of justice to both the parties.

8. In the leading case of State Vs. Bhajan Lal, reported (1992) Supp (1) 335, the Apex Court indicated the illustrative categories which calls for

exercise of inherent power under Section 482 Cr.PC. These are:

â??(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their

entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence,

justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by

a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing

efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudgeâ??.

9. In *Nagawwa Vs. Veeranna Shivalingappa*, reported in (1976) 3 SCC 736, the Apex Court had formulated the following guidelines for quashing of

an FIR/ complaint:-

â??(i) where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make

out absolutely no case against the accused or the complainant does not disclose the essential ingredients of an offence which is alleged against the

accused;

(ii) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient grounds for proceeding against the accused;

(iii) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based on no evidence or on materials which are wholly irrelevant or inadmissible; and

(iv) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like??.

10. Perusal of the complaint in C. R. Case No. 1151/15 of the Court of learned Sub-Divisional Judicial Magistrate (M), (for short, 'SDJM')

Sankardev Nagar, Hojai, filed by the complainant/ respondent No. 1, herein, reveals the allegation that on 30.11.2008, his wife-the petitioner No. 1, herein, who lived with him till 30.11.2008, accompanied by her father- the accused No. 2 and brothers/ the accused Nos. 3 & 4, went to his house and breaking the lock of the door of his house took away his HSLC admit card, certificates, mark sheets, HS Admit Card, certificates, mark sheets, registration card, TDC Part-I admit card, mark sheet, PRC, Bank account Pass book, cheque book, land documents, LIC policies and other articles on 30.11.2008, when he was away in Mumbai in connection with his occupation. The said complaint further revealed that in absence of him, the petitioner No. 1 filed several criminal cases against him to put him in harassment. It was further alleged that in the month of October, 2014, he came back home and having learnt about the said incident filed the complaint case as his all efforts for an amicable settlement failed. The learned SDJM recorded the statement of the complainant/ respondent No. 1, herein, as CW. 1 under section 200 Cr.P.C. and on being prima facie satisfied took cognizance of the offences under Sections 448/380 IPC against the petitioners and another, namely, Md. Mujibur Rahman.

11. The perusal of the aforesaid statement of the complainant recorded under Section 200 Cr.P.C. reveals that on 30.11.2008, the complainant/ the respondent No. 1, herein, i.e. the husband sent her to her father's house and on the same day, he left for Mumbai. After about 10 days, he came to know from his father Lt. Rajab Ali that his wife and her father came to his house and took away the articles. In 2014, when he returned home, he

did not find his bank pass book, his educational certificates, driving license, two LIC policies and perfume license of his brother and came to know that

his wife/ petitioner No. 1, herein, and her father took away those articles. When he sent his brother to bring the articles, his wife delivered those

articles saying that she did not have those articles. It was only from WP (C) No. 5984/ 14, he came to know that those documents were with his wife.

Therefore, he filed the complaint case as he did not find the documents.

12. Be it mentioned here that the object of examining the complainant and his witnesses under Section 200 Cr.P.C. is to ascertain the truth or

falsehood of the complaint and to determine whether there is a prima facie case against the person (s), who, according to the complainant has

committed an offence. Perusal of the above statement of the complainant/ respondent No. 1, herein, it is noticed that he came to know about the

alleged incident over phone from his father Lt. Rajab Ali, after he left for Mumbai. However, the complainant did not take any step to file any FIR

against his wife and her father and waited till his return in the year, 2014, that is, after seven years of unexplained delay, which is, in fact, fatal to the

case of the complainant. On the other hand, in his statement, he stated that he filed the case as he did not find the documents at home and came to

know from the said writ petition that the documents were with his wife. There is no denying the fact that several criminal cases mentioned above have

been filed by the petitioner No. 1 against the complainant, which culminated in effecting Talque by the complainant on her on the ground of cruelty

meted out against him. On such evidence adduced by the complainant in support of the complaint petition, this Court finds that there was no

justification in taking cognizance of the offences alleged of against the petitioners as at their face value there was absolutely no case against them

disclosing the essential ingredients of the offences and further, the entire incident appears to be absurd. Therefore, applying the principles laid in the

cases of Bhajan Lal (Supra) and Nagawwa (Supra), the complaint case being C. R. Case NO. 1151c/2015 is hereby quashed, as prayed for.

With the above direction, the petition stands disposed of.