

(2012) 04 GAU CK 0015
In the Gauhati High Court
Case No : Criminal Rev. Petition No. 5 of 2011

Sh. R. Lalremthanga Petitioner	Vs	APPELLANT
Smt. Lalbiakmawii		RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2012) 2 GLD 849

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : N. Sailo and Mrs. Dinari T. Azyu, for the Appellant; L.H. Lianhrima, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

Ujjal Bhuyan, J.—This criminal revision petition has been filed challenging the judgment and order dated 10-06-2011 passed by the learned Additional District and Sessions Judge-I, Aizawl in Criminal Appeal No. 2 of 2011 dismissing the appeal filed by the petitioner and upholding the order dated 07-03-2011 passed by the learned Judicial Magistrate, First Class-V, Aizawl in DVC- Criminal Complaint No. 3 of 2011. The facts of the case may be briefly noted.

2. The petitioner and the respondent were married on 18-10-1979. Out of their wedlock, they have 5(five) children, 4(four) daughters and 1(one) son. After 31(thirty one) years of marriage, the parties divorced as per Mizo customary practice.

3. On 04.01.2011, the respondent filed a complaint under the Protection of Women from Domestic Violence Act, 2005 (briefly, the Domestic Violence Act) about an incident of domestic violence which had taken place on 20-10-2010 and also about a series of incidents which had taken place earlier.

4. The learned Magistrate called for a report from the protection officer. On perusal of the report received and after hearing the parties, the learned

Magistrate passed an order on 07-03-2011 whereby it was held that domestic violence had taken place and that the proceeding u/s 12 of the Domestic Violence Act was justified. Holding that the allegations against the petitioner were well established, the learned Magistrate passed protection order u/s 18(d) of the Domestic Violence Act against the petitioner. Also considering the condition of the aggrieved person and taking into consideration the relevant factors, the learned Magistrate also passed maintenance order u/s 20(d) of the, Domestic Violence Act by directing payment of monthly maintenance amount of Rs. 7,000/- (Rupees seven thousand) only to the aggrieved person i.e. the respondent herein. Since the petitioner is an employee of the Soil and Water Conservation Department, Govt.. of Mizoram, the Cashier of the said department was directed to make the said deduction from the salary of the petitioner and to deposit the same in the bank account of the respondent.

5. Aggrieved by the aforesaid order, the petitioner filed an appeal u/s 29 of the Domestic Violence Act before the Court of Session, Aizawl, which was registered as Crl. Appeal No. 2 of 2011. The learned Addl. District and Sessions Judge-I, Aizawl after hearing the parties dismissed the appeal.

6. Heard Mr. N. Sailo, learned Sr. counsel for the petitioner as well as Mr. L.H. Lianhrima, learned amicus curiae for the respondent.

7. Mr. Sailo, learned Sr. counsel for the petitioner submits that the parties having already separated by way of divorce, the learned Magistrate was not justified in passing the maintenance order. He further submits that there was no proper application of mind to the facts of the case and consequently, the maintenance order is not justified. According to him, if the respondent wanted maintenance, the proper course of action for her would have been to file a petition u/s 125 of the Criminal Procedure Code (Cr PC). His further submission is that the learned lower appellate Court also failed to consider the matter in the proper perspective and the same has occasioned denial of justice. Resisting the submissions made on behalf of the petitioner, learned amicus curiae submits that the proceeding before the learned Magistrate under the Domestic Violence Act was fully justified and within jurisdiction and that there is no infirmity in the decision of the learned Magistrate, which was rightly upheld by the learned lower appellate Court. He, therefore, seeks dismissal of the revision petition.

8. On appeal, the learned lower appellate Court did not find any infirmity with the view taken by the learned Magistrate and recorded as under :

On hearing the submission of both side and on perusal of materials available on record as well as the case record of the Id Magistrate. I am of the opinion that there is not any ground to interfere with the order. It appears that the appellant promise in writing to pay the above amount to the respondent and it was contested that the appellant was compelled and force to promise at the Aizawl PS. However, if it was written by force the appellant may challenge the promised and he did not do so and it seems to me that he wrote the promise willingly.

The appeal is dismissed.

9. The phenomenon of domestic violence in India is a serious- matter which has assumed alarming proportion. In order to meet the situation, the Domestic Violence Act has been enacted to provide for more effective protection to the vulnerable women who are victims of domestic violence, which has been given a wide meaning under the Domestic Violence Act. Section 2(a) defines "aggrieved person", which means any woman who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. "Respondent" has been defined to mean any adult male person who is or has been in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought relief. "Domestic relationship" has been defined in Section 2(f), which means a relationship between two persons who live or have, at any point of time, lived together in a shared household (emphasis is of the Court), when they are related by consanguinity marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

10. As can be seen from the above, the expression domestic relationship has been given a wide meaning to ensure that vulnerable women who would otherwise have been deprived of effective legal protection, are brought within the purview of the Domestic Violence Act by virtue of this definition. It would mean, in the opinion of this Court, a relationship between two persons, who had lived together in the past in a shared household either by way of marriage or by a relationship which is in the nature of marriage.

11. Under Sections 18, 19 and 20 of the Domestic Violence Act, the learned Magistrate has the power to pass protection orders, residence orders and to grant monetary reliefs. While granting monetary reliefs, the learned. Magistrate is required to take into account the loss suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence, which may include loss of earning, medical expense/ loss suffered due to destruction, damage or removal of any property etc. u/s 20(d) of the Domestic Violence Act, the learned Magistrate has the competence to grant maintenance to the aggrieved person as well as her children which may an order u/s 125, Cr PC or in addition to order of maintenance u/s 125, Cr PC or maintenance granted under any other law. While providing monetary relief, the jurisdictional Magistrate is required to ensure that the same is adequate, fair, reasonable and consistent with the standard of living to which the aggrieved person is accustomed. Such monetary relief can be either by way of a lump sum payment or monthly payment of maintenance, as the nature and circumstances of the case may require.

12. Having noticed the legal provisions as indicated above, this Court is of the considered opinion that there is no infirmity in the decision taken by the learned Magistrate, which has been rightly upheld by the learned lower appellate Court. In view of the clear legal provision under the Domestic Violence Act, the

submissions made on behalf of the petitioner cannot be accepted. It is also seen from the last a certificate of the petitioner, which is on record, his monthly salary is more than rupees twenty seven thousand. There is no ground to interfere with the decisions of the lower authorities in a revisional proceeding. Consequently, this revision petition is dismissed. The interim order passed by this Court on 24-10-2011 stands vacated.

13. Registry to send the LCR.

14. No cost. Before parting with the record, this Court would like to place on record its appreciation of the assistance rendered by the learned amicus curiae, Mr. L.H. Lianhrima, whose fees is quantified at Rs. 10,000/-.