
(2025) 12 GAU CK 1698
In the Gauhati High Court
Case No : Crl.Pet. Of 141 Of 2024

Tuleswar Gogoi And 3 Ors

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 03-12-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482

Citation : (2025) 12 GAU CK 1698

Hon'ble Judges : Sanjeev Kumar Sharma, J

Bench : Single Bench

Advocate : R.S Chauhan, R.S Mishra, S.H Borah

Final Decision : Dismissed

Judgement

Sanjeev Kumar Sharma, J

1. Heard Md. R.S Chauhan, learned counsel for the petitioner. Also heard Ms. S.H Borah, learned Addl. Public Prosecutor for the State of Assam and Mr. R.S Mishra, learned counsel for the respondent No. 2.

2. This criminal petition has been filed for quashing of the impugned proceedings as well as the impugned order dated 02.08.2023 passed by the Ld. Additional Chief Judicial Magistrate, Dibrugarh in D.V Case No. 18dv/2022 granting interim maintenance of Rs. 10,000/- to the respondent/wife.

3. The facts of the case briefly stated is that on 16.02.1985, the petitioner and the respondent got married and out of their wedlock one girl child was born and after living together for some years the respondent/wife let her matrimonial home and started residing at her parental home.

4. As per the version of the respondent/complainant wife, she was driven out of her matrimonial house after being subjected to mental as well as physical torture and since then she and her daughter has been living with her brother.

5. Upon the application filed by the respondent/complainant wife, notice was

issued to the present petitioner/opposite party and after hearing both parties, the following impugned order was passed (order dated 02.08.2023)

"Petitioner is present.

Respondent No. 1 Sri Tuleswar Gogoi is present.

Co-respondents namely Sri Khandeswar Gogoi, Sri Keshab Gogoi and Smti.

Boby Dutta are absent with step showing cause vide petition No. 2864/2023.

Heard. The prayer is allowed.

Today is fixed for order on petition No.2075/2023 and cross-examination of P.W.s.

Heard both sides on the point of granting interim maintenance. Perused case record.

Seen petition number 2075/23 filed by the petitioner thereby praying granting interim maintenance on ground that the petitioner does not have any sufficient means to maintain herself. It has been further stated that the petitioner is facing tremendous financial crisis and that respondent No. 1 does not provide any maintenance to her.

Heard the petitioner. I have gone through the main petition.

Taking into account the financial condition of the aggrieved person, I am of the view that it is a fit case where interim maintenance can be granted. Hence, the prayer for granting interim maintenance to the petitioner is hereby allowed for her livelihood.

I have gone through the affidavit disclosing the assets and liabilities of both the parties. The aggrieved person is a dependent and she has no means of income whereas respondent no. 1 is a Businessman having Tea Plantations.

Considering all, this court directs the respondent No. 1 to pay monthly interim maintenance of Rs. 10,000/- to the petitioner per month, for her livelihood. The respondent No. 1 shall pay monthly interim maintenance since the date of filing the instant petition.

Fixing 14/09/2023 for cross-examination of P.W.s/Payment."

6. I have heard learned counsel for the petitioner as well as learned counsel for the respondent. The Hon'ble Supreme Court in Shaurabh Kumar Tripathi V. Vidhi Rawal reported in AIR Online 2025 SC 382 has held as follows :

"When it comes to exercise of power under Section 482 of the CrPC in relation to application under Section 12(1), the High Court has to keep in mind the fact that the DV Act, 2005 is a welfare legislation specially enacted to give justice to those women who suffer from domestic violence and for preventing acts of domestic violence. Therefore, while exercising jurisdiction under Section 482 of the CrPC for quashing proceedings under Section 12(1), the High Court should be very

slow and circumspect. Interference can be made only when the case is clearly of gross illegality or gross abuse of the process of law. Generally, the High Court must adopt a hands-off approach while dealing with proceedings under Section 482 for quashing an application under Section 12(1). Unless the High Courts show restraint in the exercise of jurisdiction under Section 482 of the CrPC while dealing with a prayer for quashing the proceedings under the DV Act, 2005, the very object of enacting the DV Act, 2005, will be defeated. We must also note here that against an order passed by a learned Magistrate, there is an appeal provided under Section 29 to the Court of Session. In contrast, generally, there is no remedy of appeal available against an order taking cognisance of an offence or an order issuing process. This is another reason why the High Court should exercise caution when exercising its inherent jurisdiction to quash proceedings under Section 12 of the D.V. Act, 2005.”

7. On a bare perusal of the impugned order, it appears that the Ld. Magistrate has passed the impugned order after hearing both sides and having gone through the disclosure affidavits of assets & liabilities of both the parties and upon coming to the conclusion that the aggrieved person i.e. the present respondent is a dependent and has no means of income whereas the present petitioner is a businessman having tea plantations.

8. Therefore, it is the considered view of this Court that no case of gross illegality or abuse of the process of law is discernible upon a perusal of the impugned order and therefore, there is no scope for any departure from adopting a hands off approach while dealing with such kind of proceedings under the D.V Act as laid down by the Hon’ble Supreme Court in Shaurabh Kumar Tripathi V. Vidhi Rawal Supra. Moreover, no explanation has been offered as to why the impugned order could not have been challenged in an appeal u/s 29 of the D.V Act before the Court of Ld. Sessions Judge, Dibrugarh and as to what compelled the petitioner to rush to the High Court with an application u/s 482 Cr.P.C invoking the inherent jurisdiction of the Court when remedy, by way of an appeal, was available to the petitioner.

9. Considering the above, I do not find any merit in the present application and accordingly, the same stands dismissed.