
(2017) 01 GAU CK 0059
In the Gauhati High Court
Case No : Crl. Pet. 1003 of 2014

WG. CDR. Sherokh Rashid Hazarika

APPELLANT

Vs

Jafrina Hazarika

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2017) 171 AIC 720 : (2017) CriLJ 1393 : (2017) 2 Crimes 453 :
(2017) 1 GauLT 224

Hon'ble Judges : Mrs. Rumi Kumari Phukan, J.

Bench : Single Bench

Advocate : Mr. B.K. Singh, Advocate, for the Petitioner; Mr. B. Sarma Addl. PP
and Mr. A.M. Bora, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mrs. Rumi Kumari Phukan, J. (CAV) - By this revision the petitioner has prayed for quashing of the DV-C/No.11DV of 2014 pending in the Court of learned Sub-divisional Judicial Magistrate (Sadar), Tinsukia U/S 12 of the Protection of Woman From Domestic Violence Act, 2005 including the order dated 18.11.2014 whereby the petitioner has been directed to pay maintenance @ Rs.15,000/- per month to the wife (respondent no.1) by the aforesaid ex-parte order.

2. The petitioner/respondent got married on 28.10.1996 as per Moslem Sorihat and out of the wedlock two daughters were born to them but eventually the relation terminated into a formal divorce on 4.9.2013 as per Sorihat Law. The parties to the marriage as a matter of fact got separated far back on 23.3.2013 and formal divorce certificate was awarded on 4.9.2013. On approach by the respondent for getting maintenance for herself and her two minor daughters, the Air Force Authority directed the petitioner to pay the maintenance of Rs.22,800/- per months to the two daughters of the parties with effect from the month of February, 2014 and the said amount was directed to be deducted from the petitioner's salary. It may be mentioned that the petitioner was working as the

Wing Commander in the Indian Air Force and the aforesaid order was made in accordance with Section 91 (1) of the Air force Act and the amount is so deducted, is being credited to the bank account of the respondent.

3. The respondent no.1 thereafter filed a petition for maintenance before the Principal Judge, Family Court, Kamrup vide F.C.(Criminal) No. 653/2013 praying for maintenance for herself and two daughters and on objection filed by the present petitioner that the respondent is not entitled to get maintenance in view of the divorce between the parties, the respondent withdrawn the said petition with a submission that proper petition will be filed as per provision of Muslim (Protection of Rights on Divorce Act, 1986) for the relief of the divorce but the respondent subsequently filed the aforesaid DV-C/No.11DV of 2014 regarding Domestic Violence with various allegations pertaining to the period 2007 and 2011 which is far remote affairs and thereafter the courts by the impugned ex-parte order has directed the present petitioner to make a monthly maintenance of Rs.15,000/- to the respondent. The aforesaid order as well as the DV proceeding is stated to be bad in law inasmuch as the petitioner has already divorced the respondent and also offered the Meher amount to which she did not accept and has filed the case with false allegation after more than one year of divorce.

4. The contention of the learned counsel for the petitioner mainly on the ground that as there was divorce between the parties in the year 2013 and as such filing of petition under Domestic Violence Act after the divorce is not maintainable. In this context the learned counsel for the petitioner also referred the decision reported in (2011)12 SCC 588 *Indrajit Singh Grewal v. State of Punjab*; 2013 (3) GLT 344 {*Meraj Alom (Alhaz Dr. Md.) v. State of Assam & another*}; (2014) 10 SCC 736 (*Juveria Abdul Mozid Patni v. Atif Iqbal Mansoori and anr*);

5. On the other hand the learned counsel for the respondent has vehemently objected against the above contention that has been raised by the petitioner and placing reliance to the decision of *Juveria Abdul Mozid Patni v. Atif Iqbal Mansoori and another* (supra), it has been submitted that as per the latest pronouncement of the Hon'ble Apex Court in the aforesaid decision, a petition filed by the divorce wife under the aforesaid Act is maintainable.

6. Due consideration is given to the aforesaid submission and also gone through the citations referred above. Needless to say, the latest pronouncement of the Apex Court will prevail on the subject in hand. For better appreciation let us reproduce the relevant portion of the judgment in *Juveria Abdul Mozid Patni v. Atif Iqbal Mansoori and another* (supra):

"7. Before this Court parties have taken similar pleas as that has been taken before the lower courts. According to the appellants cause of action i.e. the Domestic violence took place much before the divorce, therefore, FIR was filed and hence appellants is entitled for relief under /Domestic Violence Act, 2005. The protection officer has already submitted the report holding that Domestic

violence was committed by the first respondent upon the appellant.

8. On the other hand according to the counsel for the first respondent after dissolution of marriage no relief can be granted under Domestic Violence Act, 2005. In his support reliance was placed on the decision of this Court in *Indrajit Singh Grewal v. State of Punjab*.

9. The question that arise for our consideration are -

(i) Whether the divorce of the appellant of the first respondent has taken place on 9.5.2008 and

(ii) Whether the divorce woman can seek relief against her ex-husband U/S 18 to 23 of Domestic Violence Act, 2005?"

7. In the aforesaid decision while discussing all different aspects of the aforesaid Act like definition of domestic relationship, shared household and the definition of domestic violence and all other reliefs U/S 12 to 23 of the Domestic Violence Act it has been categorically held as below:

"19.3 Section 2(s) defines "share household"

2(s) share household means a household where the person aggrieved lives or act any stage has lived in a domestic relationship either singly or along with the respondent and include such a household whether owned or tenanted either jointly by the aggrieved person and the respondent or owned or tenanted by either of them in respect of which either of the aggrieved person or the respondent or both jointly or singly have any right, title and interest or equity and include such a household which may belong to the joint family of which respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

Therefore, if the person aggrieved (wife) herein at any stage has lived in a domestic relationship with the respondent husband herein in a house the person aggrieved can claim share household.

23(d) - the monetary relief as stipulated U/S 20 is different from maintenance, which can be in addition to an order of maintenance U/S 125 Cr.P.C or any other law. Such monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person and child of aggrieved person as a result of domestic violence, which is not dependent on the question whether the aggrieved person on the date of filing the application U/S 12 is in a domestic relationship with the respondent.

24..... "22" compensation order ????.

23 power to grant interim ex-parte order????..(h)

Therefore it is well within the jurisdiction of Magistrate to grant the interim relief as he deemed just and proper, if the Magistrate is satisfied that the application is prima facie discloses that the respondent is in committing, or has committed an

act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence.

27. In *V.D. Bhanot v. Sabita Bhanot*, this Court held that conduct of parties even prior to coming into force of the protection of woman from Domestic Violence Act, 2005 would be taken into consideration while passing an order U/S 18,19, and 20 thereof. The wife who has shared a household in the past but was no longer residing with her husband and can file a petition U/S 12 if subjected to any act of domestic violence.

30. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person entitled under the Domestic Violence Act, 2005 including monetary relief U/S 20, child custody U/S 21, compensation U/S 22 and interim or ex-parte order U/S 23 of the Domestic Violence Act, 2005.

31. Both the session judge and the High Court failed to notice the aforesaid provisions of the Act on the fact that the FIR was lodged much prior to the alleged divorce between the parties and are being holding that the petition U/S 12 was not maintainable.

8. In view of the proposition set forth by the aforesaid decisions there can be no dispute that the divorcee cannot file a petition under the provisions of Domestic Violence Act, 2005. The submission of the learned counsel for the petitioner that there being no any case pending under Section 498(A)IPC (that has been indicated in the aforesaid (para 31) of the judgment) the same is not applicable to the respondent holds no good.

9. There is no merit in the petition and it is not a fit case to invoke the jurisdiction Under Section 482 Cr.P.C to quash the aforesaid proceeding. However, the submission of the petitioner that he has retired from service w.e.f. 28.2.2016 can be made before the trial Court for due consideration of the Court while assessing all the related matter before the Court.

10. The petition stands dismissed accordingly.