



GAHC010019072020

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.Rev.P./33/2020

MRS. GITIKA BARMAN
D/O LATE MUKUNDA BARMAN, W/O SRI SANJEEV BARMAN, R/O VILL-
PIPALIBARI, P.O.-SOLMARA, P.S.-BELSOR, DIST-NALBARI, ASSAM.

VERSUS

SANJEEV BARMAN
S/O SRI UPENDRAJIT BARMAN, VILL-RUPAIA BATHAN, P.O.-CHAMATA,
P.S.-BELSOR, DIST-NALBARI, ASSAM

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : MR. P THAKURIA

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT (CAV)

Date : 21-10-2022

1. This petition, under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, is filed by **Smti. Gitika Barman**, for quashing and setting aside the Judgment and Oder dated 19.11.2019, passed by the learned Sessions Judge, Nalbari in Criminal Appeal No. 06/2018. It is to be mentioned here that vide impugned Judgment and Oder dated 19.11.2019, learned Sessions Judge, Nalbari had set aside

the Judgment and Order dated 22.12.2017, passed by the learned Addl. Chief Judicial Magistrate, Nalbari in Misc. Case (DV) No. 654/2015, lodged under Sections 12/18/19/20/22/23 of the Protection of Women from Domestic Violence Act, 2005, where by the respondent (husband of the petitioner) was directed to pay a lump sum relief i.e. Rs. 1,75,000/ under the said Act.

2. The factual background, leading to filing of this petition, is briefly stated as under: -

“The petitioner had filed an application under Section 12/18/19/20/22/23 of the Protection of Women from Domestic Violence Act, 2005, against the respondent and his father, mother and brother, alleging inter-alia amongst others that her marriage was solemnized with the present respondent as per Hindu rites and rituals on 03.05.2015, and thereafter, they lived together as husband and wife at her matrimonial home at Rupaibathan. After 15 days, of the marriage the respondent left for his workplace. During the period of 15 days she found the respondent an arrogant person, suspicious, and greedy. He used to pass derogatory remarks about her streedhan properties. He also expressed his desire to purchase a new car and asked her to arrange money from her parents and when she reacted, the respondent rebuked her with filthy language, and he and his parents passed derogatory remarks about the articles she had brought from her parental abode. After 7 days of her

marriage, her father was diagnosed with cancer and she was informed by her younger brother and she then went to see her father in the first part of June, 2015. Then, in the month of July the respondent came home and stayed for 7 days and during that period he demanded Rs.5,00,000/ from her and he also showed his displeasure for keeping her scooter at her parents' residence and when she refused to bring money he slapped her. Then, on one day, the respondent informed her that he had affairs with a girl namely Kanaka Rajbanshi of Mangaldoi for last 10 years. However, that he want divorce from her and then she refused. Then the respondent had put three conditions to continue their conjugal relationship, and the same were-(i) She will not maintain her relationship with her relatives, parents, friends and family, (ii) She would not visit her father's residence and (iii) She will not use mobile and land phone. The respondent, though stayed for 7 days, he had avoided her totally and also stopped giving her any maintenance. Then as per direction of the respondent she stopped visiting her parental abode, then on 16.09.2015 her father in-law, mother in-law and brother-in-law asked her to visit her parental abode and when she refused they reacted angrily and assaulted her and took her to her parental house and dropped her there. Thereafter, the brother of respondent called her younger brother and threatened him and warned that they will face dire consequence if they send her to matrimonial home. Thereafter, on 12.10.2015, her younger

brother, her maternal uncle - Shri Mathura Barman and cousin brother went to the house of the respondent on 25.10.2015, and then her in-laws did not behaved with them properly and asked them not to send her to the matrimonial home again. Thereafter, on 25.10.2015, police went to her parental abode and inquired about her relationship with the respondent. Thereafter, she came to know that the respondent had filed a case against her father, brother, maternal uncle and police filed a report under section 107 Cr.P.C. Thereafter, being left with no other option, she approached the learned court below, by filing the D.V. Misc. Case No. 654c/2015, under Sections 12/18/19/ 20/22/23 of the Protection of Women from Domestic Violence Act, 2005. Then upon hearing both the parties the learned Addl. Chief Judicial Magistrate, Nalbari had directed the respondent (husband of the petitioner) to pay a lump sum relief i.e. Rs. 1,75,000/ as maintenance under the said Act. Then being aggrieved the respondent had preferred an appeal, being Criminal Appeal No. 06/2018, against the impugned Judgment and Order passed by the learned Addl. Chief Judicial Magistrate, Nalbari before the learned Sessions Judge, Nalbari. But, after the parties the learned Sessions Judge, Nalbari, vide impugned Judgment and Oder dated 19.11.2019, had set aside the Judgment and Order dated 22.12.2017, passed by the learned Addl. Chief Judicial Magistrate, Nalbari."

3. Being highly aggrieved, the petitioner approached this Court for quashing and setting aside the impugned Judgment and Order, dated 19.11.2019, passed by the learned Sessions Judge, Nalbari in Criminal Appeal No. 06/2018, on the following grounds:-

(i) That, the learned appellate court had failed to consider the provisions of Protection of Women from Domestic Violence Act, 2005, and acted beyond jurisdiction and misread the evidence;

(ii) That, the learned appellate court had failed to consider the evidence of the petitioner's witness and only relied upon the evidence-in-chief of the respondent passed the impugned order;

(iii) That, the learned appellate court had failed to consider the provision of section 22 of the said Act where it is specifically provided that aggrieved person is liable to get compensation and damages for the injuries, including mental torture and emotional distress;

(iv) That, the learned appellate court had failed to consider the fact the learned trial court had passed the order of maintenance under section 20(3) of the said Act, instead it has held that the order was passed under section 23 of the Act;

(v) That, the learned appellate court had failed to consider the definition of 'Domestic Violence'

as provided in section 3(d) of the D.V. Act in its proper perspective and spirit;

(vi) That, the learned appellate court had failed to consider that the petitioner has no source of income and no shed to take shelter and that her father was a cancer patient and suffered demise, whereas, the respondent is a government employee working in SSB at Guwahati and his monthly salary is Rs.35,000/-Rs.40,000/ and in the given factual position a sum of Rs. 1,75,00/, being the compensation, is not a huge amount;

(vii) That, the learned appellate court had failed to consider the evidence of the petitioner in its true perspective;

(viii) That, the learned appellate court had failed to consider that the scope of section 20 of the DV Act is much wider than the section 125 Cr.P.C.

(ix) That, the learned appellate court had committed manifest illegalities and as such the same is required to be set at right by invoking the inherent jurisdiction of this court under section 482 Cr.P.C;

4. The respondent had not filed any affidavit in opposition/objection here in this petition.

5. I have heard Mr. J. I. Borbhuyan, learned counsel for the petitioners and also heard Mr. S. Barman, learned counsel for the respondent.

6. Mr. Borbhuyan, the learned counsel for the petitioner, besides reiterating the points mentioned here in above, also submits that section 20(3) of the Domestic Violence Act is an independent provision and in fact its scope is much wider than the section 125 Cr.P.C, and the learned court below had failed to consider the spirit and scope of the provision of Domestic Violence Act and also misread the evidence of the petitioner and set aside the order of the learned Addl. C.J.M. on the ground of getting maintenance under section 125 Cr.P.C, and holding that no domestic violence is committed. To bolster his submission Mr. Borbhuyan has referred two case laws, one of Hon'ble Supreme Court in **Rajnish Vs. Neha and Another**, reported in **(2021) 2 SCC 324**, and the other is Bombay High Court in **Shome Nikhil Danani vs. Tanya Banaon Danani Criminal Revision Petition No. 994/2018**. Mr. Borbhuyan further submits that impugned order suffers from manifest illegalities and if allowed to stand it will perpetuate injustice to the petitioner, and therefore, it is contended to allow this petition.

7. On the other hand, Mr. S. Barman, learned counsel for the respondent, has supported the Judgment and Order of the learned appellate court and submits that the learned appellate Court had set aside the impugned judgment and order of the learned Addl. Chief Judicial Magistrate, having found from the evidence on the record that no domestic violence appears to be committed by the respondent upon the petitioner, not because of the maintenance already granted to the petitioner under section 125 Cr.P.C. Therefore, it is contended to

dismiss this petition.

8. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the record of the learned courts below, and the case laws referred by Mr. J.I. Borbhuyan.

9. There is no quarrel at the Bar that the petitioner is the legally wedded wife of the respondent, and that the petitioner is living in her parental abode since July 2015. There is also no quarrel at the Bar that the petitioner has been receiving an amount of Rs. 5000/, per month from the respondent as per order in a proceeding under section 125 Cr.P.C. The learned Addl. Chief Judicial Magistrate, Nalbari, after considering the evidence, adduced by both the parties and hearing learned Advocates of both sides, and also keeping in mind the legislative intent behind enacting the Domestic Violence Act, arrived at the finding that the petitioner is subjected to 'domestic violence' as envisaged under section 3 of the Act. The learned Addl. Chief Judicial Magistrate also found that the evidence of the petitioner is clear and cogent in this regard and the evidence adduced by the respondent could not outweigh the same, and also found his evidence to be unbelievable. Thereafter, considering the maintenance, already granted to the petitioner, under section 125 Cr.P.C., the learned Addl. Chief Judicial Magistrate, arrived at a finding that the petitioner is entitled to monetary relief u/s 20(3) of the Act. Thereafter, the learned Addl. Chief Judicial Magistrate, prohibited the respondent committing domestic violence upon the petitioner and also directed him to pay lump sum

relief in the form of maintenance @ Rs. 1,75,000/ for her maintenance.

10. But, vide impugned Judgment and Order, dated 19.11.2019, the learned Sessions Judge, Nalbari in Criminal Appeal No. 06/2018, had overturned the Judgment and Order dated 22.12.2017, passed by the learned Addl. Chief Judicial Magistrate, Nalbari, mainly on two grounds. Firstly, that the petitioner had failed to establish the fact of 'domestic violence' in a clear and cogent manner and that she has already been given Rs.5,000/ as maintenance, and that her evidence does not point out that she, with the said amount, her standard of living could not be maintained, and as such the lump sum amount granted her under section 23 of the Domestic Violence Act is unsustainable.

11. It is to be mentioned here that section 20(3) of the Domestic Violence Act provides for monetary relief. It read as under:-

“20. Monetary reliefs.—

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to-

- (a) the loss of earnings;
- (b) the medical expenses;
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for the aggrieved person as well as her

children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

12. The learned Addl. Chief Judicial Magistrate vide order dated 22.12.2017, had granted lump sum amount of Rs. 1,75,000/ to the petitioner, considering the fact that she had already been granted monthly maintenance @ Rs. 5,000/, and further considering the fact that the monetary relief granted under the Domestic Violence case should be adequate, fair and reasonable and also consistent with the standard of living to which the petitioner is accustomed with. However, it appears that the learned Addl. Chief Judicial Magistrate had, out of confusion, mixed lump-sum payment with that of monthly payments of maintenance, as provided under sub-section 3. It needs to be mentioned here that both have different implication. But, it can easily be deciphered from the language employed by the learned Magistrate in the Judgment and Order dated 22.12.2017, that in fact it is lump-sum payment, as provided under section 20(3) of the said Act.

13. But, the learned Sessions Judge has misread the provision, as if it was under section 23 of the Domestic Violence Act. It is to be noted

here that section 23 of the said Act provides for power to grant interim and ex parte orders, which read as under:-

“23. Power to grant interim and ex parte orders.—

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is 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, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.”

14. It needs to be mentioned, it appears that the Judgment and Order passed by the learned Addl. Chief Judicial Magistrate is not an ex-parte order under section 23, as held by the learned Sessions Judge in the impugned Judgment and Order. Therefore, the finding so recorded by the learned Sessions Judge, Nalbari in this regard suffers from manifest illegality and it requires interference of this court.

15. Further, I find that the learned Additional Chief Judicial Magistrate had rightly held that from the evidence of the petitioner it appears that the respondent had committed ‘domestic violence’ upon the petitioner as provided in section 3 of the said Act. Be it mentioned here that section 3 of the said Act defined ‘Domestic Violence’ as under:-

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any

person in whom the aggrieved person is interested.

(iv) “economic abuse” includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

16. It is worth mentioning in this context that the Protection of Women from Domestic Violence Act, 2005, was enacted with the objective of providing more effective protection of the rights of women guaranteed under the Constitution, to those women who are victims of

violence of any kind, occurring within the family. While the finding, so recorded by the learned Addl. Chief Judicial Magistrate, Nalbari in respect of committing 'domestic violence' upon the petitioner by the respondent, is examined in the light of the definition of 'Domestic Violence' as provided in section 3 and also in the light of the legislative intent behind enacting the said Act, this court is of the view that the conclusion so arrived at, appears to be justified and born out of the facts and circumstances on the record. In that view of the matter, the finding, so recorded by the learned Sessions Judge, appears to be unjustified and if allowed to stand, then the same will perpetuate injustice to the petitioner. It appears that the learned Sessions Judge has misread the evidence and also overlooked the material evidence, adduced by the petitioner and arrived at a perverse finding. When the learned courts below have overlooked material evidence this court has to exercise its revisional jurisdiction to set it right. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Menoka Malik vs. State of West Bengal**, reported in **(2019) 18 SCC 712**.

17. It is to be mentioned here that section 20(3) of the Protection of Women from Domestic Violence Act, 2005, is independent of the provision of Section 125 of the Code of Criminal Procedure. It is (section-20) is in addition to maintenance under section 125 Cr.P.C. Mr. J. I. Borbhuyan, the learned counsel for the petitioner had rightly pointed this out during argument and I find substance in the same. And the ratio, laid in the case laws **Rajnesh** (supra) and in **Shome**

Nikhil Danani (supra), referred by him, also supported his contention. In the case of **Rajnesh** (supra) Hon'ble Supreme Court has, in no uncertain terms, held as under:-

“It is well settled that a wife can claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the DV Act and Section 125 Cr.P.C., or under HMA. It would however, inequitable to direct the husband to pay maintenance under each of the proceedings, independents of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.”

17. In view of above discussion and finding, I find sufficient merit in this petition and accordingly, the same stands allowed. The impugned Judgment and Order dated 19.11.2019, passed by the learned Sessions Judge, Nalbari in Criminal Appeal No. 06/2018, stands set aside and quashed. Consequently, the Judgment and Oder dated 22.12.2017, passed by the learned Addl. Chief Judicial Magistrate, Nalbari in Misc. Case (DV) No. 654/2015, stands restored. Stay, if any, granted earlier, stands vacated. The parties have to bear their own costs.

JUDGE

Comparing Assistant