

Gauhati High Court

Rahul Biswas vs Khusbu Das on 17 January, 2019

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GAHC010012912018

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

Case No. : CrI.Rev.P. 32/2018

1:RAHUL BISWAS  
S/O- SRI NIRMAL KUMAR BISWAS,  
R/O- SATGRAM RAIL LINE,  
NARANGI, GUWAHATI- 71

2: RAJ MALLIK @ BISWAS  
S/O- SRI NIRMAL KUMAR BISWAS  
R/O- SATGRAM RAIL LINE  
NARANGI  
GUWAHATI- 71

3: ANITA MALLIK@ BISWAS  
W/O- NIRMAL KUMAR BISWAS  
R/O- SATGRAM RAIL LINE  
NARANGI, GHY- 7

VERSUS

1:KHUSBU DAS  
D/O- PRASANTA DAS,  
R/O- KADAMONI RLY COLONY, DIBRUGARH TOWN,  
P.O, P.S AND DIST- DIBRUGARH, ASSAM

Advocate for the revision petitioners:

Mr. S. Dutta, Sr. Counsel,  
Ms. N. Modi and

Mr. C. Sharma.

Advocate for the respondent:

Mr. R. Chakravorty and

Mr. M. Chaliha.

BEFORE  
HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing & judgment: 17.01.2019.

JUDGEMENT AND ORDER (ORAL)

Heard Mr. S. Dutta, learned standing counsel for the revision petitioner. Also heard Mr.R. Chakravorty, learned counsel appearing for and on behalf of the respondent.

2. The petitioner herein challenges the order passed by the learned Sessions Judge, Dibrugarh in Criminal Appeal No.9(2)/2017, whereby the learned appellate Court has modified the interim maintenance award passed by the learned trial Court in Case No.22 C/2014.

3. Necessary fact that emerges from the documents annexed is that the petitioner No.1 herein married the respondent on 08.03.2008 and thereafter due to marital discord, she returned back to her parental house and filed the maintenance petition and with the allegation that the petitioner/husband tortured her and ousted her from the matrimonial house on 25.08.2008, vide Case No.110 M/2008. On the other hand, the petitioner also filed a Civil Suit being No.F.C.(Civil) No.123/2009 for restoration of the conjugal right. Then the respondent/wife returned to her marital home with a hope to continue the marital life but that has not happened and ultimately she was again tortured by her husband for which she was brought back to her parental home and she is residing in her parental home since 14.08.2013. After the said incident, the respondent/wife herein filed a divorce petition being the T.S. (D) No.11/2015, before the Addl. District Judge (FTC) and as the petitioner/husband did not contest the same and agreed for the divorce, hence the learned trial Court by its order dated 04.07.2015, decreed the suit for divorce with a direction to the present petitioner to grant maintenance of Rs.2,000/- per month from the day of order, to be deposited in the account of the respondent/wife.

4. It may be mentioned here that prior to filing of the Divorce Case, the respondent/wife also filed one petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short 'the D.V. Act'), praying for different sort of reliefs being Case No.26/2014 along with a petition under Section 23(2) of the D.V. Act, praying for interim maintenance but as no such relief was granted, the respondent/wife again filed another petition dated 26.12.2016, praying for some interim maintenance with submission that the petitioner/husband though has been directed in the aforesaid T.S. (D) No.11/2015 to pay maintenance of Rs.2,000/- per month but the husband has not paid the Page No.# 3/6 maintenance to the respondent/wife for several months for which she has been suffering from severe financial crisis.

5. The LCR reveals that the Court has taken up the subsequent petition dated 26.12.2016 for hearing whereas no order was passed on the earlier petition and passed the impugned order dated 27.03.2017 however reduce the amount to Rs.2,000/- per month, wherein the learned Trial Court has discussed all the matters on record and also about the earlier Divorce Case along with the

permanent alimony in the nature of monthly maintenance of Rs.2,000/-, to be paid by the petitioner/husband.

6. Primarily the Court persuaded by the submission of learned counsel for the respondent/wife that she has not been paid the maintenance as directed by the Court in the Divorce Suit and the petitioner is facing hardship for non-payment of such maintenance, the Trial Court directed to pay the monetary relief @ Rs.3,000/- per month to the respondent/wife from the date of order. The Appeal was preferred by the husband/petitioner before the Appellate Court in terms of the Section 29 of the D.V. Act and the learned Appellate Court upheld the aforesaid order of the Trial Court. Both the Courts have also relied upon the decision of the Apex Court in *Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori* and another reported in (2015) 1 SCC (Crl) 241, where in the Hon'ble Apex Court has held that the relief under D.V. Act can be obtained despite the decree of divorce between the parties, vide para 30 quoted below:

"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 is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005."

7. I have heard the submission of learned counsels for both parties at length.

8. The learned counsel for the petitioner has basically referred to the proviso of Section 12(2), which is quoted below for ready reference:

"12. Application to Magistrate.--(1)..... (2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the Page No.# 4/6 decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) ....."

9. Accordingly it has been contended that as the petitioner already been directed to pay the maintenance in the decree of divorce which he has paid regularly and in the circumstances similar

relief under Section 23 of the Act, cannot be granted by the trial Court as well as, the Appellate Court has not appreciated the above aspects in proper perspective of law. The learned counsel for the respondent has however contended that the scope and ambit of Section 12 of the D.V. Act is wide enough, where the Court can provide adequate relief, as has been provided under the D.V. Act, including any relief that has been mentioned from Section 17 to Section 23 of the D.V. Act.

10. I have considered the submission of learned counsels for both parties and gone through the provisions of the D.V. Act itself. In the light of the aforesaid decision referred above as well as the provisions of the statute itself, there is no dispute that one can invoke the provisions of the D.V. Act despite Civil Court decree of divorce, if such incident of domestic violence, subsists prior to the filing of the petition.

11. Now our consideration would be whether the interim maintenance can be granted by the Court in terms of Section 23 of the D.V. Act in the present case while there is another subsisting order of maintenance from the Court of competent jurisdiction and the petitioner husband is under the obligation to pay the same? On due consideration of the pleadings between the parties and the perusal of the LCR it reveals that the respondent wife filed the aforesaid petition under Section 23(2) of the D.V. Act with the allegation that she has not been paid the maintenance amount that was granted at the time of granting divorce which has caused much inconvenience to her. As there was no dispute on the said aspect, the learned Trial Court would have taken note of the said matter and could have directed the petitioner husband to obey the order of the Civil Court. But the learned Trial Court passed the impugned order dated 27.03.2017, in view of submission that the respondent wife is suffering from hardship for non-payment of such interim maintenance and held that the petitioner/husband should pay the interim maintenance @ Rs.3,000/- per month. Although the learned Appellate Court reduced the amount to Rs.2,000/- but the things remain that both the forums has justified the interim maintenance to the respondent wife.

12. The aim and objective of the legislature while incorporating the provisions of Section 23 of the D.V. Act, is that the wife in destitute should be provided some interim relief so as to protect her from Page No.# 5/6 vagrancy and destitution and it is an extremely interim measure, not on merit. In the instant case also if we peruse the record, it shows that the respondent wife while filing the petition under Section 12 of the D.V. Act, has also filed a petition for granting interim maintenance and this way or that way, that petition was not disposed of and the subsequent petition that was filed on 26.12.2016, was entertained by the Court. But in the meantime, the Divorce Case which was filed subsequently was also disposed of on 04.07.2015, by granting some maintenance to her. In this aspect, it can be held, that there was no necessity for granting an order on the part of the Court for granting interim maintenance, as she has already been redressed by the order of the Civil Court.

13. While passing an order under any Act, one should bear in mind the aim and object of provisions of the Act, so that neither party can be deprived of such benevolent provisions and/or to frustrate the provisions of the Act itself. In the given case, although in view of marital dispute the respondent/wife, can sought for any sort of relief as has been incorporated in her petition but so far as the interim relief is concerned, the Court is to be persuaded, not at the submission of the parties but the legal provisions as such, which has not been adhered to by the Trial Court. The necessity of

passing an order under Section 23(2) of the D.V. Act does not arise in the given background but as it appears that the same matter has been entertained by the Trial Court and also affirmed by the Appellate Court, which is not at all proper.

14. Taking into account the entire matters on record, it appears that the order of both the forums are irregular and liable to be interfered into. Accordingly the order passed by the Trial Court as well as the Appellate Court as mentioned above, so far as the interim maintenance is concerned, is hereby quashed and set aside. However the petitioner herein is hereby directed to continue to pay the maintenance that was directed by the Civil Court along with arrear and the respondent wife can take recourse if such amount is not paid along with arrear before the Trial Court (Civil Court) where the alimony was granted. Moreover as another matter is still open for the respondent/ wife to contest the case by adducing evidence, so she can prove the income of the respondent husband in due manner (while the divorce case was disposed of without assessment of income) and the learned Trial Court will be at liberty to pass adequate monetary relief on the basis of the evidence on record, as per law.

15. With the findings and discussions as above, let the LCR be returned to the learned Trial Court with a copy of this judgment, with direction to both the parties to appear before the trial court on 12.02.2019 and the learned Trial Court is to dispose of the case at the earliest.

16. With the above direction, the revision petition stands disposed of.

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