

GAHC010057682024



2024:GAU-AS:10121

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

Case No. : Crl.Pet./307/2024

TAMARANA BALA SAPTAGIRI
S/O LATE TAMARANA RAM BABU
R/O NARSIPATNAM
PEDDA BADDEPALLI, NEW MARKET YARD, VISAKHAPATNAM
ANDHRA PRADESH.

VERSUS

THE STATE OF ASSAM AND ANR
THROUGH THE PP, ASSAM

2:TAMARANA NAGMANI
D/O APPA RAO
PRESENTLY AT- FLAT-102
1ST FLOOR

RADHARAMAN HOUSE NO. 314
B.G. COLONY
MALIGAON
P.S. GOSHALA
GUWAHATI-781011
KAMRUP METRO
ASSA

Advocate for the Petitioner : MS. B CHOWDHURY,

Advocate for the Respondent : PP, ASSAM, MR J SINGH(R-2),MS. C SHARMA (R-2),MS. S
BHUYAN (R-2)

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 23.07.2024

Date of Judgment : 04.10.2024

JUDGMENT & ORDER (CAV)

Heard Ms. B. Chowdhury, learned counsel for the petitioner. Also heard Mr. J. Singh, learned counsel for the respondent No.2.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973, read with Article 227 of the Constitution of India praying for quashing of the proceeding registered as Misc. (D.V.) Case No. 148/2023 filed by the respondent No.2 before the Court of Judicial Magistrate First Class, Kamrup, seeking protection under Sections 18,19,20,22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act').

3. The brief facts of the case are as follows:

3.1. Respondent No. 2, as the petitioner, has initiated proceedings against the present petitioner under the Domestic Violence Act, seeking protection under Sections 18, 19, 20, 22, and 23 of the Act. This case has been registered as Misc. (D.V.) Case No. 148/2023, which has been filed by her solely to harass the present petitioner, and the petition does not disclose any prima facie case against him.

3.2. The petitioner married respondent No. 2 according to the Hindu Marriage Act of 1955, and their marriage was based on mutual love. They were wed at the Shimachalam Temple in Visakhapatnam, Andhra Pradesh, following Hindu rites and rituals. From August 2012 onward, the respondent No.2 resided at her

mother's house in Gajuwaka, as she had already conceived by that time. In November 2012, during her fifth month of pregnancy, she and her mother decided to go to Guwahati, and the present petitioner accompanied them. On 25.03.2013, respondent No. 2 gave birth to a baby boy and stayed at her father's residence.

3.3. In September 2013, the petitioner took his wife, respondent No. 2, to Gajuwaka, Andhra Pradesh, where her brother was employed. To accommodate her, the petitioner rented a place near her brother's house and began living there with her. However, respondent No. 2 soon began troubling the petitioner and even changed the rented premises while they were in Gajuwaka.

3.4. Subsequently, respondent No. 2 filed a domestic violence case against the petitioner, numbered Misc. (D.V.) Case No. 148/2023, in which she made false and concocted allegations against him, claiming that he forced her into undergoing multiple abortions between 2013 and 2017. The respondent failed to produce any documentary evidence to support her claims, which appear to have been made solely to harass him and damage his reputation.

3.5. Furthermore, the petitioner did his best to fulfill her wishes and even celebrated the birthdays of their two sons in a grand manner, as insisted by respondent No. 2. After the birth of their eldest son, in around September 2013, she returned from her father's place in Guwahati to Gajuwaka. To ensure respondent No. 2's comfort, the petitioner shifted their residence to a rented house near her brother's home in Visakhapatnam.

3.6. For three years of their marriage, the petitioner managed to secure a job in March-April 2015 in a private company. However, the demands of respondent No. 2 increased, and she pressured him to repeatedly move from Nathayapalem

to Samathanagar. Out of love and affection for his family, the petitioner complied. Their elder son was admitted to a school in Gajuwaka, but after the death of the petitioner's father due to kidney failure, he had to resign from his job and return to Narsipatnam.

3.7. After the birth of their second son in 2017, the family moved again to Samathanagar, Gajuwaka, to meet respondent No. 2's demands and to secure a better future for their sons. In May 2021, when respondent No. 2 suffered from COVID-19, the petitioner attended to her and covered all her medical expenses till her recovery. However, after this, she began to quarrel with him and started abusing his mother. When the petitioner objected to her behavior, she threatened him with dire consequences and stated that she would not allow him to live peacefully.

3.8. Subsequently, respondent No. 2 ceased verbal communication with the petitioner, and without his consent, she left his house with their two sons and moved to Guwahati, where she has since resided. The petitioner made many attempts to bring her back. On May 15, 2023, respondent No. 2 filed an FIR at the All Women Police Station, Panbazar, Guwahati, under Section 498-A of the IPC, making false and concocted allegations, which is still under investigation. The petitioner became aware of the FIR only after receiving a notice under Section 41-A of the Cr.P.C. from the All Women Police Station, Panbazar.

3.9. Despite this, he continued to try to convince respondent No. 2 to bring her back, and they temporarily stayed together, even celebrating the birthday of their younger son on 05.08.2023. However, respondent No. 2 then filed a complaint and initiated a case under the Domestic Violence Act, registered as D.V. Case No. 148/2023, only to harass the petitioner and damage his reputation. She also filed an interim application seeking an interim protection

order under Section 18 of the 2005 Act, making further false and baseless allegations against him.

4. Ms. Chowdhury, learned counsel for the petitioner, has submitted that the allegations brought in the petition are completely false and baseless. Hence, the petition cannot be sustained in the eyes of the law and will cause prejudice to the present petitioner. Accordingly, she prays that the petition deserves to be quashed on the grounds that it has been filed with false and baseless allegations against the petitioner. She further submitted that the interim application filed on 12.10.2023 is not only false and fraudulent but is also manifestly vexatious and constitutes a gross abuse of the process of law. Moreover, the authenticity of the prescription annexed to the petition is in doubt, as it does not contain the doctor's signature, and the QR code is also not authentic. The prescribed medicine consists of simple medications generally used for relief of pain and inflammation.

5. It is further submitted that there are a plethora of cases that have settled the proposition that where no prima facie case is made out and it appears that the criminal proceedings are initiated with mala-fide intention, then, it is a fit case for invoking the power under Section 482 of the Cr.P.C. for quashing the said proceedings. Accordingly, the learned counsel for the petitioner prays that this is a fit case wherein the petition under the D.V. Act filed by respondent No. 2, containing false and baseless allegations, is liable to be set aside and quashed, as it has been filed with the mala fide intention to harass the petitioner and constitutes an abuse of the process of law.

6. Furthermore, she submitted that the petitioner is still looking after his wife and children, transferring money to her account, and maintaining a good relationship with his in-laws. The plea of repeated abortions, as discussed

above, is also false and cannot be considered, as their two sons were born between 2013 and 2017. Thus, the claim made by respondent No. 2 is not believable at all. Until 2023, she lived with her in-laws and then only moved to Guwahati, after which she stopped verbal communication with the petitioner. Moreover, the petitioner is still ready and willing to accept his wife/respondent No. 2 along with their two children, as he continuing to transfer money for their maintenance. However, she lodged a complaint under the D.V. Act with false and concocted allegations against the petitioner, which is liable to be set aside and quashed.

7. In support her submission, Ms. Choudhury, learned counsel for the petitioner relies on the decision of the Hon'ble Supreme Court in the case of ***State of Karnataka vs. L. Muniswamy & Others***, reported in **(1977) 2 SCC 699**. She emphasized paragraph 7 of the judgment, which reads as follows;

“7....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the 56 inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

8. She further submits that proceedings under the D.V. Act can be quashed if, prima facie, they do not disclose a case and if they are not tenable in the eye of

the law. In this context, she relied on the decision passed by the Hon'ble High Court of Bombay in the case of ***Dhananjay Mohan Zombade and Ors. vs. Prachi*** in Criminal Application No. 312/2023, decided on 18.07.2023. She emphasized paragraphs 10, 12, 17, 18, and 19 of the judgment. Paragraph 12 of the said judgment reads as follows:

“12. No doubt, the provisions of Section 482 of the Code of Criminal Procedure cannot be invoked as a matter of course. The Hon'ble Apex Court in the case of *Gian Singh vs. State of Punjab*, (2012) 10 SCC 303, has held that if the High Court finds that any proceedings is abuse of process of Court then in that case, non-invocation of provisions of Section 482 of the Code of Criminal Procedure would not be justified. It needs to be recorded that merely because the enactment of DV Act is to provide for more effective protection of the right of woman, it would not mean that a proceedings which is palpably not tenable shall be allowed to be continued. If it is allowed so, then it will be nothing less than sheer abuse of process of Court. Thus, in the considered view of this Court, the present application for quashment of proceeding under DV Act is maintainable.”

9. She further relied on another decision of the Hon'ble Apex Court in the case of ***Madhavrao Jiwajirao Scindia & Others vs. Sambhajirao Chandrojirao Angre & Others***, reported in ***(1998) 1 SCC 692***, wherein paragraph 7 of the judgment states that:

“7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

10. On the other hand, Mr. Singh, learned counsel for respondent No. 2, submitted that this is not the appropriate stage for filing a petition to quash the entire proceeding. The petition for interim relief is still pending before the

learned Trial Court, and the petitioner can submit all the evidence and raise the relevant issues at the time of the hearing of the interim relief application filed by respondent No. 2. Therefore, the validity of the petition for interim relief can be challenged before the appropriate forum. He further submitted that the petitioner has already taken the plea in the written statement filed before the learned Trial Court, which may be considered by the Trial Court during the hearing of the interim application. The petitioner will get the ample opportunity to oppose the application and present arguments before the learned Trial Court.

11. It is further submitted that there is sufficient material that may be established during the hearing of the case to show how respondent No. 2 was subjected to mental, physical, and even sexual abuse. Additionally, within the 12 years of their marriage, there were five abortions, which is life-threatening for respondent No. 2. Thus, she was subjected to both mental and physical torture during the period she stayed with the petitioner. Respondent No. 2 is still residing in rented premises with her two minor children, which the petitioner also admitted in paragraph 6 of his written statement. Accordingly, he submits that this is not a fit case to quash the entire proceeding by invoking the power under Section 482 of the Cr.P.C. at this stage, as no order has been passed in interim application filed by the respondent No.2. Hence, the present petition is not maintainable and is liable to be dismissed.

12. After hearing the submissions made by the learned counsels for both sides, I have perused the case record and the annexures filed along with the petition. It is seen that respondent No. 2 has already filed a case under Section 498-A of the IPC against the present petitioner, alleging mental and physical torture. In addition, she lodged a complaint before the learned Trial Court under the Domestic Violence Act, which has been registered as Misc. Case No. 148/2023.

In this case, she also brought some allegations of mental and physical torture and also sought interim relief along with other reliefs.

13. The petition for interim relief is still pending before the learned Trial Court. The petitioner has filed a disclosure statement of assets and liabilities, and respondent No. 2 has also been directed to furnish her own disclosure statement. However, before any order passed on interim application, the present petition has been filed by the petitioner to set aside and quash the entire proceeding under the D.V. Act, alleging that it has been initiated with false and concocted allegations and with *mala fide* intention to harass the petitioner.

14. The case of the petitioner is that, after their marriage, he tried his best to provide all comforts in the life of respondent No. 2. He claims that on several occasions he even shifted his residence from one place to another, apart from his rented premises, to ensure a comfortable life for his wife/respondent No. 2 and their minor sons. He maintains a cordial relationship with his in-laws, who supported him until respondent No. 2 filed the case. He submits that he has been maintaining his wife and children and has happily celebrated birthday parties, marriage parties, and other occasions with respondent No. 2. According to him, the allegations of repeated abortions made by respondent No. 2 are false and concocted, as their two children were born between 2013 and 2017, during which time she alleged repeated abortions by the petitioner.

15. On the other hand, respondent No. 2 contends that due to the mental and physical torture inflicted upon her, she was compelled to file two cases: one before the All Women Police Station in Panbazar, registered under Section 498-A of the IPC, and another for interim relief and protection under the D.V. Act.

16. Upon perusal of the complaint petition, it appears that, prima facie, the

respondent No.2 has made a case of domestic violence against present petitioner. However, at the same time, the petitioner has filed a written statement/objection denying all the allegations against him and outlining the efforts he made to provide a comfortable life for his wife and children, as well as how he has tried to accommodate the demands of respondent No. 2. Further, it is noted that the prayer for interim relief is still pending before the learned Trial Court, and no order has been passed in that regard.

17. This Court is not supposed to conduct a mini-trial while dealing with a petition under Section 482 of the Cr.P.C. The petitioner can present his pleas and grievances before the learned Trial Court, where he has already contested the case by filing his written statement. The learned Trial Court will be the appropriate forum to dispose of the matter, considering the pleas of both parties.

18. More so, it is view of the Hon'ble Apex Court that while exercising the power under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. In this regard, a decision of ***Hon'ble Apex Court in the case of Central Bureau of Investigation Vs. Aryan Singh etc, reported in (2003) SCC online 379***, can be relied on wherein, the paragraph Nos. 9, 10, 11 & 12 of the said judgment, reads as under:

“9. Having gone through the impugned common judgment and order passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under [Section 482](#) Cr.P.C. and/or in exercise of the powers under [Article 226](#) of the Constitution of India.

10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or

quashing of the criminal proceedings, while exercising the powers under [Section 482](#) Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under [Section 482](#) Cr.P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".

11. One another reason pointed by the High Court is that the initiation of the criminal proceedings / proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been chargesheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings / proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.

12. In view of the above and for the reasons stated above, when the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings, the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and the same deserves to be quashed and set aside.

19. Furthermore, Section 482 of the Cr.P.C. states three conditions under which the inherent powers may be exercised by the High Court:

- i. To give effect to an order under the Criminal Procedure.
- ii. To prevent abuse of the process of the court.
- iii. To secure the ends of justice.

20. While exercising the power under Section 482 of the Cr.P.C., the High Court is not to enter into the appreciation or re-appreciation of the evidence. Instead, the Court will determine whether the continuation of the criminal proceedings would result in an abuse of the process of the Court and whether the cause of justice would be defeated if the proceedings are allowed to continue.

21. The Hon'ble Supreme Court in the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.**, reported in **1992 Supp (1) SCC 335**, has held as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just*

conclusion that there is sufficient ground for proceeding against the accused.

- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

22. However, in the instant case, it cannot be said that the petitioner has failed to establish a prima facie case against respondent No. 2, nor does it appear that any offence has been constituted to justify quashing the entire proceeding. Additionally, it cannot be concluded that the proceedings were initiated solely with *mala fide* intention or with an ulterior motive to wreak vengeance on the petitioner. The petitioner will get the ample opportunity to contest the interim prayer before the learned Trial Court and will also have the chance to produce evidence on his behalf and to exhibit all relevant documents. However, it cannot be held that respondent No. 2 has prima facie failed to establish her case against the petitioner for setting aside or quashing of the D.V. Act proceedings at this stage.

23. In view of above, this Court is of the opinion that it is not a fit case for invoking the power under Section 482 of Cr. P. C. for quashing the Misc. (D.V.) Case No. 148/2023 filed by the respondent No.2 before the Court of Judicial Magistrate First Class, Kamrup, seeking protection under Sections 18,19,20,22 and 23 of the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act'). Thus, this criminal petition stands dismissed.

24. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant