

GAHC010065672023



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

Case No. : Crl.Pet./304/2023

ANOWAR HUSSAIN
S/O LATE AMIR ALI
R/O FLAT NO. 101, KAVERI APARTMENT, JURIPAR, GUWAHATI-22
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE LEARNED PP, ASSAM

2:SUFIA BEGUM
W/O ANOWAR HUSSAIN
R/O FLAT NO. 101
KAVERI APARTMENT
JURIPAR
GUWAHATI-22
DIST. KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER (CAV)

07.03.2024

Heard Mr. A.R. Bhuyan, learned counsel for the petitioner; Mr. R. J. Barua,

learned Addl. P.P. for the State respondent No. 1; and Mr. M.K. Das, learned counsel for opposite party No.2.

2. In this petition, u/s 482 of the Cr.P.C. the petitioner, namely, Anowar Hussain has prayed for quashing and setting aside the proceeding in Misc. Case No. 166/2021, u/s 12 of Protection of Women from Domestic Violence Act, 2005 instituted by the opposite party No. 2, pending before the court of learned Judicial Magistrate 1st Class, Kamrup (M) Guwahati.

3. It is to be noted here that Misc. Case No. 166/2021, u/s 12 of Protection of Women from Domestic Violence Act, 2005 is instituted by opposite party No. 2, Mustt. Sufia Begum.

4. The background facts leading to filing of the present petition is adumbrated herein below:

“The petitioner Md. Anowar Hussain got married with the opposite No. 2, on 09.04.1987, as per Islamic rights and rituals and thereafter, lived together as husband and wife at Six Mile, Darandha, Guwahati and out of their wedlock, a female child namely, Nilofar Hussain, born on 27.02.1989. After few years, marital discord surfaced between the petitioner and the opposite party and ultimately on 23.06.2020 the petitioner has divorced the opposite party by completing the rituals of Talaq-UI-Hasan, as per Islamic rights and rituals. But, the said divorce could not be registered at that point of time due to ongoing pandemic situation at the relevant time and the same was registered on 25.01.2023, and a Divorce Certificate was issued to him by the Muslim Marriage Registrar, Barpeta, Assam and that even after the rituals of Talaq-UI-Hasan, the opposite party No.2 and her daughter and son-in-law forced the petitioner to transfer his Flat No. 101 at 1st floor of Kaveri apartment in the name of his daughter and son-in-law and when the petitioner refused to do the

same, then he was subjected to both physical and mental harassment and he was assaulted on 20.10.2021, for which, he filed one FIR with the Dispur P.S. upon which Dispur P.S. Case No. 3851/2021, u/s 120(B)/ 387/ 342 of IPC has been registered. Thereafter, the opposite party No. 2 had instituted a proceeding under Domestic Violence Act before the Court of learned Judicial Magistrate 1st Class, Kamrup (M) alleging commission of domestic violence upon her wherein she prayed for amongst other to direct the petitioner to pay an amount of Rs.10,00,000/- to her being the compensation for damage and also for issuing direction to the petitioner not to alienate his property i.e. Flat No. 101, to any one and to stop domestic violence and not to aid or abate commission of any domestic violence act against the petitioner.

Upon the said proceeding the learned Court below has issued notice to the petitioner and on receipt of which the petitioner appeared before the learned Court below.”

5. Being aggrieved, the petitioner approached this Court on the following grounds:

(i) That, the provision of Domestic Violence Act is not applicable in the present case inasmuch as the petitioner has divorced the opposite party on 23.06.2020, and the same came to be registered on 25.01.2023 and existence of domestic relationship is the condition precedent for initiating a proceeding u/s 12 of Domestic Violence Act against the petitioner and as the same does not exist continuation of the proceeding before the learned Court below is nothing but an abuse of the process of the Court.

(ii) That, since the domestic relationship between the petitioner and the opposite party ceases to exist before filing of the application, the impugned proceeding being Misc. Case No. 166/2021 as well as the order

passed by the learned Court below is not maintainable.

(iii) That, the petitioner and opposite party No. 2, being Muslim is governed by the provision of Muslim Personal Law i.e. Muslim Personal (Shariat) Application, 1937 and the petitioner has already executed the Talaq as per the Shariat law and the validity and legality of the same here is not been questioned, it cannot be said that there existed any domestic relationship between the opposite party No. 2 and the petitioner and that the opposite party No. 2 has instituted the proceeding suppressing the fact in the year, 2021 that she has already been divorced on 23.6.2020 and as such the proceeding instituted under the Domestic Violence Act is not maintainable and therefore, it is contended to set aside and quashed the same.

6. Mr. Bhuyan, learned counsel for the petitioner submits that the Misc. Case No. 166/2021, instituted by the opposite party No. 2 before the learned Judicial Magistrate 1st Class, Kamrup (M) is not maintainable as the petitioner has divorced the opposite party No. 2 long back on 23.06.2020, and got the same registered on 25.01.2023, pursuant to which a Divorce Certificate dated 25.01.2023, which is annexed with the petition, being Annexure No.3, was issued to him. Mr. Bhuyan, further submits that the opposite party No. 2 has instituted the Misc. Case No. 166/2021, before the learned Court below in the year 2021 and at that point of time, there was no domestic relationship between the petitioner and opposite party No. 2, and as existence of such domestic relationship is the condition precedent for instituting a proceeding u/s 12 of the Domestic Violence Act and as there was no domestic relationship between the petitioner and the opposite party No. 2, the proceedings instituted by her, before the learned court below is nothing but an abuse of the process of the Court and therefore, Mr. Bhuyan contended to allow this petition, by setting aside and quashing the proceeding of Misc. Case No. 166/2021. Mr. Bhuyan has also referred to a decision of Honourable Supreme Court in ***Inderjit Singh Grewal Vs. State of Punjab and***

another reported in **(2011) 12 SCC 588**, to contend that unless the Divorce Certificate is cancelled or set aside by a competent court the same will stand.

7. On the other hand, Mr. M. K. Das, learned counsel for the opposite party No. 2 submits that though the petitioner has claimed that he had divorced the opposite party on 23.06.2020, the same came to be registered only on 25.01.2023 and a certificate was issued on that day but, the proceeding of Misc Case No. 166/2021 was instituted by the opposite party No. 2 before the learned Court below, in the year, 2021 and as such it cannot be said that there was no domestic relationship between the petitioner and the opposite party No. 2, at the time of filing the petition. Mr. Das, further submits that even for the sake of argument, if it is conceded that there was no domestic relationship after 23.06.2020, between the petitioner and opposite party No. 2, yet, it is an un-denying fact that there exists domestic relationship between the petitioner and opposite party No.2 prior to 23.06.2020.

8. Referring to two decisions of Hon'ble Supreme Court in **Prabha Tyagi Vs. Kamlesh Devi** reported in **2022 Live Law (SC) 474** and another decision of Hon'ble Supreme Court in the year 2014 and in **Juveria Abdul Majid Patni Vs Atif Iqbal Mansoori and another** reported in **(2014) 10 SCC 736**, Mr. Das submits that even at the time of filing the petition there exist no domestic relationship between the petitioner and the opposite party No. 2, yet, the opposite party No. 2 is entitled to file and maintain the petition as there exist domestic relationship prior to the date of divorce and that she was subjected to domestic violence for the said period also and therefore Mr. Das contended to dismiss the petition.

9. Before delving a discussion into the points raised by learned Advocates of both the parties, it would be appropriate to understand the definition of 'aggrieved person' and 'domestic relationship'. It is to be noted herein that the 'aggrieved person' is defined in Section 2(i) of the Act as under:

(i)'Aggrieved person' means any women who is, or has been in a

'domestic relationship' with the respondent and who alleged to have been subjected to any act of domestic violence by the respondent.

(ii) And 'domestic relationship' is defined in Section 2(b) of the Act and it means a relationship between the two person who live or have, at any point of time, lived together in a shared household when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as joint family.

10. And while dealing with the issue in the case of ***Prabha Tyagi*** (***supra***) in paragraph No. 52 Hon'ble Supreme Court has held as under:

“There should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-à-vis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an 'aggrieved person' is not in a domestic relationship with the respondent in a shared house hold at the time of filing of an application u/s 12 of the Domestic Violence Act but has at any point of time, lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application u/s 12 of the Domestic Violence Act.”

11. From a bare perusal of the definition and also further law laid down in the aforesaid decision, it appears that if a woman was in a domestic relationship with the respondent at any point of time and lived together in a shared household when they were related by marriage in the meaning as assigned in Section 3 of the Act, she can file a petition u/s 12 of the Act, if domestic violence is perpetrated upon her.

12. Again in the case of **Juveria Abdul Majid Patni** (supra) Hon'ble Supreme Court in paragraph No. 25 has held that :-

“It is not necessary that relief available under Sections 18, 19, 20, 21 and 22 can only be sought for in a proceeding under the Domestic Violence Act, 2005. Any relief available under the aforesaid provisions may also be sought for in any legal proceeding even before a Civil Court and Family Court, apart from the Criminal Court, affecting the aggrieved person whether such proceeding was initiated before or after commencement of the Domestic Violence Act.”

In paragraph No.18 of the said judgment, it is further held that:-

“Even if it is presumed that the appellant has taken 'Khula' (divorce) on 9.5.2008 and first respondent is no more the husband, the question arises that in such case whether the erstwhile wife can claim one or other relief as prescribed u/s 18, 19, 20, 21 and 22 and interim relief u/s 23 of Domestic Violence Act, 2005 if domestic violence had taken place when the wife lived together in shared house hold with her husband through a relationship in the nature of marriage.”

13. Now, coming to the facts in the case in hand, we find from the Annexure No.1, i.e. application under Section 12 of Protection of Women from Domestic Violence Act, filed by the opposite party No.2 seeking relief u/s 18, 19, 22 and 23 of the Act, that the marriage between the petitioner and opposite party No. 2 was solemnized on 09.04.1987, and thereafter, they lived together as husband and wife at Six mile, Dharandha, Guwahati and out of their wedlock, on 27.02.1989, a female child namely, Nilufar Hussain was born and till 2015, everything was going smoothly between the petitioner and the opposite party, and thereafter, in the year 2016, 2017 and till 2021,

the petitioner continued to perpetrate domestic violence upon the opposite party on account of the illicit relationship being maintained by the petitioner with a lady, namely, Rahima Begum. In paragraph No.15 of the petition, it has been categorically stated that the cause of action arose from the month of February, 2016 when the opposite party first came to know about the petitioner roaming with a lady namely, Rohima Begum and all other subsequent dates till filing of the petition. It is an admitted fact that the petitioner and opposite party lived together as husband and wife having got married on 09.04.1987. The opposite party No.2 has instituted the proceeding u/s 12 of Domestic Violence Act in the year 2021 and as such there exists domestic relationship between the petitioner and the opposite party. Though the petitioner claimed having divorced the respondent on 23.06.2020, yet, the same came to be registered only on 25.01.2023 and having gone through the Divorce Certificate Annexure-7, at Page No. 27 of the petition, I find that it has been mentioned in the said certificate that the opposite party was divorced on 15.01.2023 and the same was registered on 25.01.2023. Thus, the own document of the petitioner has not supported his claim that he had divorced the opposite party on 23.6.2020.

14. Even for the sake of argument, if we accept that the petitioner had divorced the opposite party on 23.6.2020, yet it appears from the Annexure-1, the petition filed before the learned Judicial Magistrate 1st Class, Kamrup (M) Guwahati upon which Misc. Case No. 166/2020 came to be registered, that the petitioner has perpetrated domestic violence upon the opposite party and the cause of action arose from the month of February, 2016 when the opposite party has first come to know about roaming of the petitioner with a lady namely, Rohima Begum and as such she is entitled to file a petition claiming relief u/s 18,19,22 and 23 while the 'domestic relationship' between the petitioner and the opposite party, admittedly exist, till 23.06.2020. And as such and in view of the ratio laid down in the case laws discussed here in above, as referred by Mr. M. K. Das, learned counsel for the opposite party No. 2, the petition u/s 12 of the D.V. Act filed by the opposite party No. 2 is maintainable.

15. I have carefully gone through the case law ***Inderjit Singh Grewal*** (supra) referred by Mr. Bhuyan, learned counsel for the petitioner and I find that the ratio laid down in the aforesaid case, would not advance the case of the petitioner.

16. In view of above facts and circumstances, this Court is of considered opinion that the present petition is devoid of merit, and accordingly, the same stands dismissed.

17. The parties have to bear their own cost.

JUDGE

Comparing Assistant