

IN THE COURT OF THE SESSIONS JUDGE : KAMRUP(M)

AT GUWAHATI

Present: Md. M. Ahmed,

Sessions Judge,
Kamrup(M), Guwahati.

Misc. Appeal (Crl.) No. 8 of 2014

The appeal has been filed challenging the order dated 19.07.2014 passed by the learned Judicial Magistrate First Class, Kamrup (M) at Guwahati, in Case No. 117^m of 2013 under Section 23 of the Protection of Women from Domestic Violence Act, 2005.

Mrs. Monalisa Sarma

..... **Appellant**

- Vs -

Mr. Chiranjeet Bhattacharyya

Mr. Samiran Bhattacharjee

Mrs. Sangita Bhattacharjee (Mamu)

..... **Respondents**

Date of Argument : 22.02.2017

Date of Judgment : 08.03.2017

Advocates who appeared in this case are:

Sri H.S.Kalsi : Learned Advocate for the appellant.

Sri A. Talukdar : Learned Advocate for the Respondents.

J U D G M E N T

1. This order relates to an application filed under Section 29 of Protection of Women from Domestic Violence Act, 2005 challenging the order dated 19.07.2014 passed by the learned Judicial Magistrate 1st Class, Kamrup(M), Guwahati Smti S. Chanda.

2. The appellant is one Monalisa Sarma, resident of Nirupama Housing Complex, A-3, Japarigog, R.G. Baruah Road, P.S. Geetanagar in the district of Kamrup(M), Assam. Respondents are Mr. Chiranjeet Bhattacharyya, (her husband), son of Late Rohini Charan Bhattacharjee, Mr. Samiran Bhattacharjee, (her brother in law/brother of her husband) and Smti. Sangita Bhattacharyya @ Mamu, wife of Sri Samiran Bhattacharjee. The appellant has alleged that she is the victim of domestic violence and she filed an application as the aggrieved party before the learned court below along with an affidavit under Section 23 of the Protection of Women from Domestic Violence Act, 2005, which was registered as Misc. Case No. 117^m/ 2013. According to the appellant, the DIR i.e. Form No, 1 and 2 was filed before the learned Magistrate. The learned trial court took cognizance of the matter and accordingly issued notice to the respondents. Pursuant to that, the respondents appeared in the instant case and filed their respective written statements and objections. It is further contended that in continuation of her earlier affidavit under Section 23 of the Protection of Women from Domestic Violence Act, 2005 the appellant/petitioner has filed additional documents in support of her claim and relief sought by her. The learned trial court upon hearing both the parties was pleased in not passing any interim relief order on the ground that no prayer has been made at the initial stage of filing of petition as the records did not reflect the standard of living to which the aggrieved party was accustomed. It is contended that on 22.07.2016 her newly engaged learned counsel had to leave the country due to sudden death of his brother in Africa. After return of the learned counsel of the aggrieved party from Africa, he suffered from neurological and orthopedic problems due to which delay took place in filing this appeal.

3. On being highly aggrieved and dissatisfied with the order dated 19.07.2014, passed by the learned Judicial Magistrate 1st Class, Kamrup(M), at Guwahati the appellant prefers the present appeal on various grounds. According to her, the impugned order dated 19.07.2014 is bad in law and facts and the same is not maintainable in the eye of law being illegal, arbitrary, biased and the same is the result of non application of the judicial mind of the learned court. As such the impugned order dated 19.07.2014 is liable to be reconsidered. It is further contended that the learned court below failed to comprehend the object of enactment of the Protection of Woman from Domestic Violence Act, 2005 and scope the various provision of the Act. It is further contended that the procedural law exists to secure ends of justice and not to frustrate it by endless technicality and procedures should be hand-maid of justice to advance and further interest of justice. It is also contended that the learned trial court could suo-motu grant maintenance, even if it is not claimed. It is also contended that if a person withholds vital information, presumption arises against him that had he disclosed the information, same would have been adverse to him. It is also contended that the proceedings under the act are summary one in nature and it does not require lengthy trial engaging both parties for quite a long time. Rather the object of the act is to provide effective protection of rights to woman guaranteed in the constitution. It is further contended that the learned trial court has taken a strong note against the appellant as reflected in the order dated 19.07. 2014. The appellant/petitioner is a victim of domestic violence and has filed an application seeking protection and relief along with an affidavit under Section 23 of the Protection of Women from Domestic Violence Act, 2005 before the learned trial court seeking protection from domestic violence and depriving the appellant/respondent from interim relief. As such not passing interim relief order by the learned trial court on the ground that the aggrieved person has not prayed earlier cannot be grounds for rejecting her prayer of interim relief. It is further contended that not passing restraining orders and payment for maintenance, the learned trial court has exposed the aggrieved-victim for further harassment and violence already perpetrated upon her by the respondents. It is also contended that the respondent-husband is the exclusive owner of the flat in which the respondent-wife is residing and the parking space allotted to that particular flat is exclusively reserved for her husband ; hence she is entitled to

park her car in that place without any hindrance from any corner. As such the prayer of the appellant may be treated to have been refused arbitrarily. It is further contended that the learned trial court has failed to appreciate that the respondent No.2 (brother-in-law of the appellant) has given his flat on rent and the tenant of the respondent No.2 has started parking their cars in the space exclusively allotted to the aggrieved persons' husband i.e. respondent No.1. It is also contended that the learned trial court has failed to appreciate that Protection of Domestic Violence Act, 2005 is a social legislation and perpetrator's violence act usually occurs within the four walls. As such, without the application of judicial mind the learned trial court rejected the provisions of Section 23 of the Domestic Violence Act, 2005, vide order dated 26.08.2011, leaving the appellant/aggrieved victim at the mercy of the respondents. It is also contended that the respondents are highly influential people having political clout and control over administration due to which the appellant/aggrieved victim failed in getting relief from any forum nor any protection and help from the police administration. The learned trial court failed miserably to exercise the judicial power granted by the statutes for protection of the victim for domestic violence perpetrated by the respondents. It is also contended that the trial court has committed gross illegality or irregularity in failing to exercise its jurisdiction vested under Section 23 of the Protection of Women from Domestic Violence Act, 2005, which clearly provides 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."

4. In the instant case, it is contended, the learned trial court in its impugned order dated 28.11.2011 has recorded that there is no merit in the instant affidavit. As such the impugned order dated 19.07.14 is bad in law, perverse and is liable to be set aside and quashed.

5. On the other hand the respondents by filing written objection has submitted that the appellant had filed the instant appeal against the respondent No. 2 and 3 (against the order dated 19.07.2014 in C.R. (DV) No. 117^m /2013 whereby the learned court rejected all the prayers made by the appellant/aggrieved party with an observation that "at this stage the full trial is required for the same". Thereafter O.P./ respondent Nos. 2 and 3 has filed an appeal before the learned appellate Court which was registered as Criminal Appeal No. 102/2015 against the order dated 14.09.2015. At the time of argument of the said appeal, the learned counsel appearing for the respondent Nos. 2 and 3 submitted that the trial court case is long pending and respondent No. 2 and 3 sought early disposal of the case, but the present appellant/aggrieved party (Crl. Appeal No. D.V. No. 08/2014) filed one after another filed adjournment petition for submitting evidence. The trial court allowed the same mechanically, so the respondent Nos. 2 and 3 prayed to the learned Appellate Court to direct the trial court to record the evidence as per order dated 07.07.2014 and 19.07.2014 of C.R. (DV) No. 117^m /2013

6. I have gone through the appellate court's order and it is seen that the learned appellate court has observed that "lower case record shows that the aggrieved woman has taken several dates for evidence". Accordingly the learned appellate court ordered as such "So, the parties are directed to appear before the learned trial Magistrate on 14.09.2016 and on that day the trial Magistrate after consulting the parties or their engaged advocates fix date for evidence of the aggrieved woman. I want it make it clear that within three months from 14.09.2016 the hearing of the witnesses for the aggrieved party must be completed". Accordingly, the appeal was allowed as per adjournment and order dated 30.08.2017.

7. Upon attentive perusal of the case record it has appeared that the learned trial court has delivered the judgment on 06.12.2016 in connection with

Misc. Criminal (DV) No. 117^m /2013 with an observation that the aggrieved party miserably failed to prove her case and as such she is not entitled to any reliefs as claimed for. Thus, with the passing of the judgment and final order this appeal preferred by the aggrieved party has become infractious. The only remedy available before the aggrieved party is filing a fresh appeal against the judgment and order dated 06.12.2016 ; the present appeal filed by the appellant has become inoperative/inactive in the light of the above mentioned facts and circumstance of the case. Accordingly, this appeal stands dismissed.

8. Send a copy of this judgment be forwarded to the learned court below.

9. Signed, sealed and delivered in the open court on this 8th March, 2017 at Guwahati.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati

Dictated & corrected by me.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati