Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 1 of 2021

Date of Decision: 04.03.2021

Masood Khan Vs. Smti. Millie Hazarika

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. S. Sarma, Adv.
For the Respondent(s) : Mr. S. Sen, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

1. Proceedings in C.R. Case No 204 (S) of 2020 between the parties herein with the Respondent No. 2 (The Respondent No. 1, State of Meghalaya has since been struck of from these proceedings vide Order dated 18.01.2021) as the Aggrieved Person and the Petitioner herein as the Respondent, which is an application under Section 12 of the Protection of Women from Domestic Violence, Act, 2005 (hereinafter referred to the DV Act, 2005) pending before the Court of the Learned Magistrate, Shillong is under question in this instant petition filed by the Petitioner/Respondent under Section 482 of the Code of Criminal Procedure, 1973.

2. The background of the dispute lies in the fact that the Petitioner herein and the Respondent No. 2 were married on 09.10.2000 in Dibrugarh, Assam, and thereafter lived together as husband and wife at their matrimonial home at Dibrugarh.

3. From the facts and circumstances as revealed from this petition, it appears that differences and misunderstanding have cropped up in the relationship between the two to the extent that, when the Respondent No. 2 sometime in September 2019, went on a tour to the United Kingdom after staying for a few days at Mumbai for the birth of the child of her sister and on return to Mumbai on 11.01.2020, never came back to her matrimonial home at Dibrugarh.

4. On 23.09.2020, the Respondent No. 2 had issued a legal notice upon the Petitioner containing certain allegations with threat of initiation of criminal proceedings, to which the Petitioner in his reply dated 16.10.2020 has refuted such allegations and has expressed his desire to continue his marital relationship with her.

5. The Petitioner has also filed an application for restitution of conjugal rights on 15.12.2020 in the Court of the Principal Judge, Family Court at Kamrup, Guwahati being numbered as F.C Civil Case No. 732/2020 (Masood Khan v. Millie Hazarika). However, a few days later on or about 16.12.2020 the Respondent No. 2 filed a Divorce case being Mat (Divorce) Case No. 15(H)2020 (Smti Millie Hazarika v. Shri Masood Khan) before the Court of the District Judge, Shillong

6. The Petitioner has also filed a suit for partition on 17.12.2020 being T.S No. 16 (H) 2020 (Masood Khan v. Millie Hazarika) in the Court of the learned Assistant District Judge, East Khasi Hills, Shillong.

7. On 22.12.2020 the Respondent No. 2, has filed a petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 (D.V Act, 2005)in the Court of the Chief Judicial Magistrate, East Khasi Hills, Shillong numbered as C.R Case No. 204 (S) of 2020 against the Petitioner herein.

8. The said domestic violence case appears to have been endorsed to the Court of the learned Judicial Magistrate (Smti D.M.K.S. Shadap) who vide

order dated 06.01.2021 in C.R Case No. 204 (S) of 2020 has passed an order granting exparte interim protection u/s 18 of the DV Act, 2005 inter alia, prohibiting the Petitioner herein/accused from the following:

i) Committing any act of Domestic Violence.

ii) Aiding or abetting in the commission of the acts of domestic violence.

iii) Attempting to communicate in any form whatsoever with the aggrieved person including personal, oral or written or electronic or telephonic contact.

iv) Alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent including any other property held either jointly by the parties or separately by them without the leave of the court.

v) Causing violence to the family members, dependents, other relatives of the aggrieved person or any person who gives the aggrieved person assistance from domestic violence.

9. As stated above, the Petitioner being aggrieved with the order dated 06.01.2021, has preferred this instant petition under Section 482 Cr.P.C with a prayer to quash the proceedings of the said C.R Case No. 204 (S) of 2020.

10. The Respondent No. 2 has accordingly entered appearance through the learned counsel, Mr. S. Sen who at the outset, has challenged the maintainability of this instant application under Section 482 Cr.P.C.

11. It may be mentioned that this Court vide Order dated 18.01.2021 in Crl. M.C. No 1 of 2021 has suspended the operation of paragraph (iv) of the order dated 06.01.2021 wherein the learned Magistrate had imposed a restraint upon the Respondent/Petitioner herein from operating his bank account including

any property owned singly by him or jointly or separately by the parties to the lis, until further orders.

12. Accordingly, this Court at the first instance would first deal with the issue of maintainability and depending on the outcome thereof would decide this application finally.

13. Ms. S. Sarma, learned counsel for the Petitioner has submitted that this application under Section 482 Cr.P.C is directed against the impugned Order taking cognizance dated 06.01.2021 passed by the learned Judicial Magistrate First Class, Shillong.

14. Maintaining that the proceedings in question are governed by the procedure under the Code of Criminal Procedure, Section 28 of the DV Act, 2005 was referred to in this connection to submit that under the said section, it has been provided that all proceedings under Sections 12, 18, 19, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure and for this, a man has to stand trial.

15. It was also submitted that even assuming that Section 482 Cr.P.C is not applicable, this petition can easily be transformed into an application under Article 226 or 227 as label of a petition is immaterial for the High Court to examine the case in exercise of its inherent power as can be seen from the case of ***Madhu Limaye v. The State of Maharashtra: (1977) 4 SCC 551*** towards the last part of paragraph 10 wherein, it was held that *"……The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."*

16. Yet again, in the case of ***Pepsi Foods Ltd. & Anr v. Special Judicial Magistrate & Ors: (1998) 5 SCC 749***, the Hon'ble Supreme Court at paragraphs 12 & 13 has observed that:

*"**12.** The Code provides the procedure as to how a complaint can be filed and how the court will proceed in the matter. (The words "court" and "magistrate" are synonyms here.) Since for an offence under the Act imprisonment for a term exceeds two years it would be a case tried as warrant case. One if the modes by which a court can take cognizance of an offence is on filing of a complaint containing facts which constitutes such offence. A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate (Sections 190 and 200 of the Code). If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be a warrant case, he may issue a warrant, or, if he thinks fit, summons for causing the accused to be brought or to appear before him on a date fixed by him [sub-section (1) of Section 204]. Whenever a Magistrate issues a summons, he may, if he sees reasons so to do, dispense with the personal attendance of the accused and permit him to appear through his pleader [sub-section (1) of Section 205]. In the present case though it was a warrant case the first respondent issued summons but he did not dispense with personal attendance of the accused. Chapter XIX-B of the Code provides for trial of warrant cases instituted on a complaint. We may note Sections 244 and 245 falling under this Chapter:*

> *"244. Evidence for prosecution. – (1) When, in any warrant case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.*
>
> *(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.*
>
> *245. When accused shall be discharged. – (1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.*
>
> *(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."*

> ***13***. *Section 246 and other sections provide for the procedure where the accused is not discharged and they are not relevant for our purpose. Section 482 of the Code saves inherent powers of the High Court and this section is as under:*
>
> > *"482. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

17. Reference is also made to the judgment of the Hon'ble Supreme Court in the case of ***Rajesh Sharma & Ors v. State of Uttar Pradesh & Anr: (2018) 10 SCC 472*** and more particularly paragraph 16 which reads as under:

> ***"16***. *Function of this Court is not to legislate but only to interpret the law. No doubt in doing so laying down of norms is sometimes unavoidable, Sahara India Real Estate Corpn. Ltd. V. SEBI, (2012) 10 SCC 603. Just and fair procedure being part of fundamental right to life, State of Punjab v. Dalbir Singh, (2012) 3 SCC 346; interpretation is required to be placed on a penal provision so that its working is not unjust, unfair or unreasonable. The Court has incidental power to quash even a non-compoundable case of private nature, if continuing the proceedings is found to be oppressive, Gian Singh v. State of Punjab, (2012) 10 SCC 303. While stifling a legitimate prosecution is against public policy, if the proceedings in an offence of private nature are found to be oppressive, power of quashing is exercised."*

18. Ms. Sarma has gone on to submit that the petition filed by the Respondent No. 2 under the provisions of the DV Act, 2005 was;

18.1 Firstly, instituted as a counterblast to the application of the Petitioner herein for restitution of conjugal rights. Relevant citations referred to by the learned counsel in this regard are:

i) Suresh Kumar Goyal & Ors v. State of Uttar Pradesh: (2019) 14 SCC 318 at paragraph 13

ii) ***Anupriya Pal & Ors v. State of Uttar Pradesh & Anr: (2019) 14 SCC 643 at paragraph 8***

iii) ***Eicher Tractor Limited & Ors v. Harihar Singh & Anr: (2008) 16 SCC 763 at paragraph 14***

18.2 Secondly, that vagueness pervades the entire complaint, even to the extent that the Respondent No 2/Petitioner has failed to give her complete residential address in the complaint.

18.3 Thirdly, that not one instance of abuse was cited in the said complaint and the same is bereft of any basis and the allegations made against the Petitioner are absurd. The case of ***M.N. Ojha & Ors v. Alok Kumar Srivastav & Anr: (2009) 9 SCC 682*** at paragraph 30 was also relied upon by the learned counsel for the Petitioner in this regard.

> ***"30.*** *Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint."*

18.4. Fourthly, that on economic abuse, it is seen that all the paragraphs in the said complaint beginning from paragraph 2.2 to the last has belied her claim that she was having no substantial income, except for a meagre sum of ₹ 15,000/- she received as rent from her Guwahati apartment, when in fact, the same is in her name and must be valued at more than a crore. Further, the Respondent No. 2 has also given a list of eight (8) bank accounts, which by a

rough estimate must be about half a crore, besides this, it is admitted that she has in her account at Axis Bank, Guwahati a balance of ₹ 18,98,751/-.

19. The use of the words 'taking cognizance' and 'accused person' in the impugned order was also stressed upon by the learned counsel for the Petitioner to say that for taking cognizance of a matter, application of mind is a sine qua non which the learned Magistrate has failed to exercise. Paragraph 48 of the case of ***Sunil Bharti Mittal v. Central Bureau of Investigation: (2015) 4 SCC 609*** was referred to in this regard, wherein the Apex Court has held that:

> ***"48.*** *Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not."*

20. Submitting that the said proceedings initiated by the Respondent No. 2 in the said DV proceedings are vexatious qua the Petitioner herein, the case of ***Ravinder Singh v. Sukhbir Singh & Ors: (2013) 9 SCC 245*** at paragraph 24 was cited to plead that it is the paramount duty of the court to protect innocent person.

> ***"24.*** *The word "vexatious" means "harassment by the process of law", "lacking justification" or with "intention to harass". It signifies an action not having sufficient grounds, and which therefore, only seeks to annoy the adversary. The hallmark of a vexatious proceeding is that it has no basis in law (or at least no discernible basis); and that whatever the intention of the proceeding may be, its only effect is to subject the other party to inconvenience, harassment and expense, which is so great, that it is disproportionate to any gain likely to accrue to the claimant; and that it involves an abuse of process of the court. Such*

proceedings are different from those that involve ordinary and proper use of the process of the court."

21. Finally, the learned counsel for the Petitioner has submitted that this instant application under Section 482 Cr.P.C. is maintainable, inasmuch as, the specific provision of Section 28 of the DV Act, 2005 has clearly provided that the procedure for proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 are governed by the provisions of the Code of Criminal Procedure and the application of the Respondent No. 2 before the learned Magistrate is one under Sections 12, 18, 19, 20, 21, 22 and 23 of the DV Act. Reliance in this regard was placed in the case of ***Satish Chander Ahuja v. Sneha Ahuja: (2021) 1 SCC 414*** particularly at paragraphs 138 and 139. The same are reproduced herein below:

"138. *The proceedings under the DV Act, 2005 are proceedings which are to be governed by the Code of Criminal Procedure, 1973.*

139*. The procedure to the followed by the Magistrate is provided under Section 28 of the DV Act and as per Section 28 of the DV Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973. Even sub-section (2) of Section 28 provides that the Magistrate can lay down his own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23. However, for other proceedings, the procedure is to be followed as per the provisions of the Code of Criminal Procedure, 1973. The procedure to be followed under Section 125 shall be as per Section 126 CrPC which includes permitting the parties to lead evidence. Therefore, before passing any orders under the DV Act, the parties may be permitted to lead evidence. However, before any order is passed under Section 12, the Magistrate shall take into consideration any domestic incident report received by him from the protection officer or the service provider. That does not mean that the Magistrate can pass orders solely relying upon the domestic incident report received by him from the protection officer or the service provider. Even as per Section 36 of the DV Act, the provisions of the DV Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force. Even the Magistrate can also pass an interim order as per Section 23 of the DV Act."*

22. Per contra, the Respondent No. 2 appearing through Mr. S. Sen, learned counsel has stiffly opposed the submission and contentions of the learned counsel for the Petitioner and has reiterated that the reliefs sought for under Sections 18 to 22 of the DV Act, 2005 are purely civil in nature with no criminal liabilities, except for the fact that non-compliance of the order of the Court under the said Sections 18 to 22 would attract the penal provision of Section 31 of the DV Act 2005.

23. To add weight to his contention on the issue of maintainability, Mr. Sen has led this Court to the history behind the legislation of the Protection of Women from Domestic Violence Act, 2005, particularly pointing to the Object of the Act which is *"An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto".* Reliance in this regard was placed in the case of ***Indra Sarma v. V.K. V. Sarma: (2013) 15 SCC 755*** at paragraphs 16 and 53 which reads as follows:

> ***"16.*** *"Domestic violence" is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna Accord, 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. The UN Committee on Convention on Elimination of All Forms of Discrimination Against Women in its general recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India. Presently, when a woman is subjected to cruelty by husband or his relatives, it is an offence punishable under Section 498-A IPC. The civil law, it was noticed, did not address this phenomenon in its entirety. Consequently, Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the DV Act.*
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> ***53****. Live-in relationship, as such, as already indicated, is a relationship which has not been socially accepted in India, unlike many other countries. In Lata Singh v. State of U.P. (2006) 5 SCC 475, it was observed that a live-in relationship between two*

consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral. However, in order to provide a remedy in civil law for protection of women, from being victims of such relationship, and to prevent the occurrence of domestic violence in the society, first time in India, the DV Act has been enacted to cover the couple having relationship in the nature of marriage, persons related by consanguinity, marriages, etc. We have few other legislations also where reliefs have been provided to woman placed in certain vulnerable situations."

24. Mr. Sen has further submitted that in the case of ***Kunapareddy Alias Nookala Shanka Balaji v. Kunapareddy Swarna Kumari & Anr: (2016) 11 SCC 774***, the Hon'ble Supreme Court had observed that the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e. aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498A of the Indian Penal Code and held that proceedings of the domestic violence are predominantly civil in nature.

25. Again, Mr. Sen has gone to great length to impress upon this Court that there is no dimension of any criminal law involved in proceedings under Section 18 to 22 of the DV Act, 2005, inasmuch as, the heading under Chapter IV of the said Act, which prescribes the procedure for obtaining orders and reliefs would show that the expression "Relief" was used in contrast to the expression "Offence" as can be found under the Indian Penal Code. This, according to Mr. Sen established the fact that Sections 18 to 22 of the DV Act, 2005 does not admit any criminal liability prescribing any punishment and the relief contemplated are purely civil and therefore, the proceedings before the Court are civil in nature.

26. The other limb of argument advanced by Mr. Sen is that the proceedings under Sections 18 to 22 of the DV Act, 2005 are to be instituted upon an application by the aggrieved person or the protection officer and it is therefore, not a complaint as can be understood in the meaning and provision of Section

2 (d) of the Code of Criminal Procedure. This apart, none of the provisions of the Act speak of framing of charges or awarding punishment etc. which are the trademarks of a criminal trial, it is further submitted.

27. Referring to the case of ***Dr. V.K. Vijayalekshmi Amma and Anr v. Bindu V. & Ors: 2009 SCC Online Ker 6448***, Mr. Sen has submitted that the Kerala High Court has held that in view of the alternative remedy expressly available under the Act, it was not for this Court to invoke the extraordinary jurisdiction under Section 482 of the Code of Criminal Procedure, to quash a proceeding initiated under Section 12 (1) of the Act.

28. Again, the case of ***Giduthuri Kesari Kumar & Ors v. State of Telengana Rep. by Public Prosecutor & Anr: 2015 SCC Online Hyd 18***, was cited, wherein the Hon'ble High Court has dismissed an application under Section 482 Cr.P.C as not maintainable and has observed that the DV Act, 2005 is a remedial statute where the offender was not liable to any penalty as none of the provisions of the DV Act, 2005 has direct penal consequences except for Section 31 which is an offence under the Act for breach of protection order or of an interim protection order by the respondent. Here too, it was observed that DV proceedings conducted till passing of the orders under Sections 18 to 22 were only civil in nature to provide a civil remedy and that it was a civil comfit wrapped with a criminal wrapper.

29. Two other citations were referred, viz; the case of ***Latha P.C. and Anr v. State of Kerela Rep. by the Public Prosecutor & Ors: 2020 SCC Online Ker 4238***, wherein the High Court relying in the case of ***Vijayalekshmi (supra)*** has held that a petition under Section 482 Cr.P.C seeking quashing of domestic violence proceedings was not maintainable and also in the case of ***Dr. P. Pathmanathan & Ors v. Tmt. V. Monica & Anr***, where the Madras High Court has expressed similar opinion, however has further held that a petition under Article 227 of the Constitution may still be maintainable, if it is shown that the proceedings before the Magistrate suffers from a patent lack of jurisdiction.

Mr. Sen has however candidly admitted that the decisions cited above are not binding on this Court, but have only persuasive value.

30. On the reliance of the Petitioner in the case of ***Satish Chander Ahuja (supra)***, Mr. Sen has submitted that in the said case, the Hon'ble Supreme Court was not considering the maintainability of Section 482 Cr.P.C application vis-à-vis domestic violence proceedings. In fact, the bench has carefully issued a clarification on this issue at paragraph 146 of the same, which reads as follows:

> ***"146.*** *We make it clear that in the present case we are called upon to examine the consequences and effect of orders passed under Section 19 of the DV Act, 2005 on civil proceedings in a court of competent jurisdiction. Thus, our consideration and exposition are limited qua orders passed under Section 19 of the DV Act only i.e. a conflict between orders passed in a criminal proceeding on a civil proceeding."*

31. The argument of the learned counsel for the Petitioner that in the alternative, this application can be treated or converted into one under Article 227 of the Constitution and reliance placed in the case of ***Pepsi Foods Ltd. (supra)*** was countered by Mr. Sen who has submitted that the decision in the case of Pepsi Foods was on facts which were dissimilar to the facts in the present case and the Hon'ble Court has held that a writ petition under Article 226 was not maintainable, but in the specific facts decided to treat it as a petition under Article 227 and 482.

32. On careful analysis of the points in issue raised by the learned counsel for the Respondent No. 2 on the question of maintainability of this instant petition under Section 482 Cr.P.C., what can be understood is that the main thrust was that the proceedings under the DV Act, 2005 are purely civil in nature and the relief contemplated under Sections 18 to 22 are civil reliefs with no criminal liabilities and as such, the enquiry is not a trial of criminal case, which will attract the provision of Section 482 Cr.P.C. Hence this petition is not maintainable and is liable to be rejected.

33. The argument of the learned counsel for the Respondent No. 2 in the opinion of this Court are valid as regard the nature and relief contemplated under the DV Act 2005, particularly those seen in Sections 18 to 22 which are civil in nature and can be sought for before any civil court, family court or a criminal court as provided under Section 26 of the said DV Act. However, the learned counsel has failed to notice that in Section 26 of the DV Act, the aggrieved person apart from a civil court or a family court, can seek the reliefs stated above even from a criminal court and in doing so, the aggrieved person would subject herself to the jurisdiction of a criminal court following the procedure of the Criminal Procedure Code.

34. In fact, Section 28 of the DV Act 2005 specifically provides that all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 as well as Section 31 shall be governed by the provisions of the Code of Criminal Procedure, though liberty was also given to the court to lay down its own procedure.

35. The applicability of the said provision of Section 28 of the said DV Act in criminal proceedings was emphasized by the Hon'ble Supreme Court in the case of ***Satish Chander Ahuja (supra)*** at paragraphs 138 and 139 where it has restated that the procedure to be followed shall be under the Code of Criminal Procedure.

36. The learned counsel for the Respondent No. 2 has submitted that the Hon'ble Supreme Court in the said case of ***Satish Chander Ahuja (supra)*** at paragraph 146 of the same has pointed out that only Section 19 of the DV Act, 2005 has been singled out for consideration and exposition to examine the conflict between orders passed in a criminal proceeding on a civil proceeding and as such, it is maintained that the observation of the Court at paragraphs 138 and 139 are limited to this extent.

37. This Court is not in agreement with the submission of the learned counsel for the Respondent No. 2 on the observation of the Hon'ble Supreme Court in the said case of ***Satish Chander Ahuja (supra)*** to say that it is limited, when it is clearly seen that the Hon'ble Supreme Court has clearly spelt out its

position on the nature of proceedings under the DV Act, 2005 being governed by the procedure under the Code of Criminal Procedure which is only a reiteration of the stated provision of Section 28 and as such, the relief or remedy may be civil in nature, but the procedure to be followed under the DV Act, particularly for proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 as well as under Section 31 has to be governed by the provisions of the Code of Criminal Procedure. Even reference to paragraph 146 would also show that Section 19 of the DV Act which is under consideration, is one of the section indicated above to be governed by the procedure of Code of Criminal Procedure.

38. It is also a fact that Section 482 Cr.P.C provides for inherent power on the High Court to make such order as may be necessary to give effect to any order under the Code and as stated above, proceedings under the DV Act being governed by the procedure under the Cr.P.C, therefore the logical conclusion would be that an application under Section 482 is maintainable qua order passed under Sections 12, 18, 19, 20, 21, 22 and 23 of the DV Act.

39. With due respect, the decisions of the Hon'ble Kerala High Court and the Madras High Court cited above and relied upon by the learned Counsel for the Respondent No 2, as far as the procedural aspects under the DV Act is concerned, would not stand the test in the light of the decision of the Hon'ble Supreme Court in the case of ***Satish Chander Ahuja (supra).***

40. Consequently, this Court finds that this instant petition under Section 482 Cr.P.C is maintainable. The submission and contention of the parties on the issue of consideration of converting this instant petition into one under Article 227 and the authorities referred thereto would therefore not require any decision or observation by this Court under the circumstances.

41. On the merits of this petition, at the outset, it would be profitable to look into the scope and ambit of the Court's power under Section 482 Cr.P.C. On this point, the Apex Court in a catena of judgments has clearly spelt out the scope and ambit of Section 482 Cr.P.C some of which are reproduced herein.

42. In the case of ***Gorige Pentaiah v. State of A.P: (2008) 12 SCC 531*** at paragraph 12 of the same, it was held that:

> ***"12.*** *This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 Cr.P.C. can be exercised:*
>
> *(i) to give effect to an order under the Code;*
> *(ii) to prevent abuse of the process of court, and*
> *(iii) to otherwise secure the ends of justice.*
>
> *Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute."*

43. In the same case of ***Gorige Pentaiah (supra***) at paragraphs 13 to 18, the Apex Court has gone on to discuss on decided cases, as far as application of the inherent power of the High Court is concerned. For better elucidation, the same are reproduced below:

> ***"13.*** *Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In Connelly v. Director of Public Prosecutions, 1964 AC 1254, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in Director of Public Prosecutions v. Humphrys, 1977 AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the Judge has the power to intervene. He further mentioned that the courts' power to prevent such abuse is of great constitutional importance and should be jealously preserved."*

14. *In R.P. Kapur v. State of Punjab, AIR 1960 SC 866, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:*

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

15. *The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.*

16. *This Court in State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699 observed that the wholesome power under Section 482 CrPC entitles the High Court to quash a proceeding when 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 High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The Court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.*

17. *In Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466, in a landlord and tenant matter where criminal proceedings had been initiated, this Court observed in SCC at p. 467, para 1 as under:*

> *"1. A frustrated landlord after having met his waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous."*
>
> *The Court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The Court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.*
>
> ***18.*** *This Court in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692 observed in para 7 as under: (SCC p. 695)*
>
> *"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."*

44. In the case of ***State of Haryana v. Bhajanlal: (1992) Supp 1 SCC 335*** at paragraphs 102 and 103, the Apex Court has drawn up some guidelines in some categories of cases by way of illustration to circumscribe the exercise of inherent power under Section 482 Cr.P.C. to prevent abuse of the process of any court or to secure the ends of justice. The same are reproduced herein below:

> ***"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 channelised 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.

103. *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon*

an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

45. Under the facts and circumstances of this case, this Court finds that the above cited authorities cannot be applied to the dispute between the parties as far as exercise of inherent power of this Court is concerned.

46. On the contention of the Petitioner that the application under the DV Act, 2005 filed by the Respondent No. 2 against the Petitioner is a counterblast to wreck vengeance on the Petitioner, this Court is unable to accept the same as a perusal of the application under Section 12 of the DV Act, 2005 filed by the Respondent No. 2 which was annexed as Annexure-19 of this petition would reveal that the Respondent No. 2 has specifically and clearly made several averments citing allegation of physical and verbal abuse against her by the Petitioner herein and as such, the said allegations, instances of which will be conveyed through a proper affidavit, has to be proved, which is possible only if the said proceedings under the DV Act progressed further and the same cannot be stifled at this juncture in exercise of the inherent power of this Court.

47. Again, on perusal of the impugned order, this Court finds that the same has been passed by a court of competent jurisdiction and as such, on this count, the same cannot be faulted. It is also seen that that has not been any apparent abuse of the process which warrants interference of this Court under Section 482 Cr.P.C.

48. However, only on a limited point, this Court is hereby called upon to interfere with the impugned order to secure the ends of justice. The direction at paragraph (iv) of the said order dated 06.01.2021 wherein the learned Magistrate has directed that *"(iv) Alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent including any other property held either jointly by the parties or separately by them without the leave of the court"* requires to be modified, inasmuch as, the alienation of

any assets or operation of any bank account of the Petitioner herein/Respondent which is solely in his personal account shall not be interfered with in the said DV proceedings before the said learned Magistrate at Shillong.

49. It is to be reminded that the inherent powers of the High Court as far as Section 482 Cr.P.C. is concerned is to be exercised only in the rarest of rare case, this Court finds that the circumstances cited by the Petitioner herein seeking indulgence of this Court in this respect does not qualify as such to warrant interference by this Court. Be that as it may, the Petitioner, overall is not left without remedy as the provision for appeal is very much available under the said DV Act, 2005.

50. Accordingly, this Court finds that the Petitioner has not been able to make out a case for exercise of inherent power by this Court under section 482 Cr. P.C., except to the extent indicated above.

51. This petition is partly allowed.

52. Matter disposed of. No cost.

Judge

Meghalaya
04.03.2021
"D. Nary, PS"