

(2013) 07 GAU CK 0017**Gauhati High Court****Case No:** Criminal Petition No. 53 of 2013

Bimal Mitra, Jyostna Mitra,
Shyamal Mitra and Mamoni
Mitra

APPELLANT

Vs

Ashalata Mitra (Baishya)

RESPONDENT**Date of Decision:** July 23, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 401, 482
- Penal Code, 1860 (IPC) - Section 498A
- Protection of Women From Domestic Violence Act, 2005 - Section 12, 18, 19, 20, 21

Citation: (2013) CriLJ 4110 : (2014) 1 DMC 81 : (2014) 1 GLD 73 : (2013) 4 GLT 1138**Hon'ble Judges:** B.D. Agarwal, J**Bench:** Single Bench**Advocate:** K. Sarma, Mr. D. Das, Ms. K.M. Sarma, K. Choudhury and Mr. M. Beria, for the Appellant; S. Bhuyan, for the Respondent**Final Decision:** Dismissed**Judgement**

B.D. Agarwal, J.

This application u/s 482 read with Section 397/ 401 of the Code of Criminal Procedure, 1973 has been filed by the accused persons praying for quashing the Complaint Case No. 281 of 2012 filed by the respondent u/s 12 of the Protection of Women from Domestic Violence Act, 2005 ("D.V. Act" in brief), which is pending in the court of learned Sub-Divisional Judicial Magistrate, Bijni. Heard Mr. K. Sarma, learned counsel for the petitioners and Mr. S. Bhuyan, learned counsel for the respondent. Also perused the complaint petition and other documents annexed with the criminal petition.

3. Mr. Sarma, learned counsel for the petitioner prayed for quashing of the domestic violence proceeding on two grounds. Firstly, according to the learned counsel since

the respondent has already filed a separate case u/s 498A of the Indian Penal Code, with the same allegation, a separate case under D.V. Act is not maintainable in law. Secondly, Mr. Sarma submitted that at least the case is not maintainable against the in-laws as the allegations are basically against the husband.

3. The complaint u/s 12 of the D.V. Act has been filed with the allegations that since after the marriage on 8.3.2012 all the accused persons inflicted mental torture by way of demanding dowry and also abused the complainant by using un-parliamentary words and filthy language. There is also an allegation of demand of dowry of Rs. 50,000/-.

4. The D.V. Act has been enacted with avowed objective to give effective protection to the victims of domestic violence since it was felt that general provisions of IPC were not sufficient and enough to address the grievances of married women in the marital home. u/s 3 of the Act, domestic violence includes verbal and emotional abuse by way of insult, humiliation etc. and also economic abuse. I have noted earlier that there is an allegation of demand of dowry and also misbehaving the complainant/respondent by way of using filthy language, involving her dignity. The allegation of emotional torture is equally against the in-laws. Hence, the criminal proceeding cannot be quashed against the in-laws at this stage.

5. With regard to the question whether a parallel proceeding u/s 498A of the IPC and also u/s 12 of the DV Act can continue the reply can be solicited from Section 26 of the Act. For better appreciation of this issue, Section 26 of the Act is reproduced below:

26. Relief in other suits and legal proceedings.- (1) Any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and alongwith any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

6. A bare reading of Section 26 clearly indicates that the reliefs that can be claimed under the DV Act by way of filing a complaint u/s 12 is in addition to the legal proceedings that may be initiated by an aggrieved person either in a civil court or in any criminal court.

7. Referring to Clause 8 of the complaint format, Mr. Sarma contended that at the time of preparing the complaint the "service provider" should inform the

victim/aggrieved person that she can also initiate a criminal proceeding by way of lodging an FIR and if the victim is not interested to file the FIR the said fact may be noted in the report. Mr. Sarma further submitted that as per the statutory rule the fact of previous litigation should also be mentioned in the complaint.

8. In my considered opinion, the fact of disclosing previous litigation itself admits the legal position that an aggrieved person can file a complaint u/s 12 of the Act in addition to other criminal or civil proceedings. I am also of the view that the requirement to inform the victim that she can also initiate a criminal proceeding is only to apprise the victim about her legal right about additional and alternative remedy. Besides this, under the DV Act a victim can seek various reliefs viz., protection order u/s 18, residential order u/s 19, monetary relief under Sections 20 and 22 and custody order u/s 21 etc. These reliefs cannot be granted in a proceeding u/s 498A of the IPC. Even if some of the reliefs can be sought for in a civil proceeding and that would also not be a bar for filing complaint u/s 12 of the DV Act. The only pre-condition is that if any such civil or criminal proceeding is initiated the same shall be reflected in the complaint and the result of such litigation should also be brought to the notice of the court. In view of above, I do not find any merit in this criminal petition. Resultantly, it is dismissed.