

GAHC010132372020



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

**Case No. : Crl.Pet./483/2020**

NILAKANTA MALAKAR @ SANTO AND 4 ORS.  
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2: DEBAKANTA MALAKAR

3: NISHINDRA MALAKAR

4: ANITA MALAKAR  
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5: NIBEDITA MALAKAR @ ANAMIKA

VERSUS

THE STATE OF ASSAM AND ANR.  
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SMTI MIRA MALAKAR

**Advocate for the Petitioner** : MR H R CHOUDHURY

**Advocate for the Respondent** : PP, ASSAM

**:: BEFORE ::**

**HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN**

**ORDER**

25.04.2022

Heard Mr. H.R. Choudhury, learned counsel for the petitioner as well as the learned Addl. Public Prosecutor, Assam representing the State respondent no.1. Also heard Ms. Debashree Saikia, Legal Aid Counsel for respondent no.2.

**2.** The petitioners herein has been arrayed as party respondents in Misc. (Domestic Violence) Case No.301/2018 filed by the respondent no.2 under Section 12 of the *Protection of Women from Domestic Violence Act, 2005* and the learned trial court on receipt of such petition took cognizance of the matter and vide order dated 02.07.2018 passed *ex parte* maintenance order in favour of the respondent no.2 directing the petitioners to pay sum of Rs.4,500/- (rupees four thousand five hundred) until further order(s) or final disposal of the case.

**3.** Challenging the aforesaid order, the present petitioners have come up before this Court with the instant petition under Section 482/401 CrPC contending that the said *ex parte* order is bad in law, inasmuch, such order has been passed without hearing the petitioners' side and there is no *prima facie* material to show that the respondent no.2 was subjected to domestic violence by the petitioners herein (all in-laws and husband), as because the respondent no.2 only remained only for few months in her matrimonial house and after returning fromthere, she filed the petition before the court below after one year of her return.

**4.** Legal Aid Counsel Ms. Debashree Saikia appearing for respondent no.2, has vehemently opposed the prayer contending that the court has ample power to pass such *ex parte* order under Section 23(2) and 28(2) of the PWDV Act, 2005 on being satisfied about the *prima facie* case and has been rightly done by the learned trial court, which reveals from the impugned order itself.

**5.** So far as regard other facts as to whether such domestic violence was inflicted upon the respondent no.2/wife, is not a subject matter of trial and such matter cannot be decided in such petition. Legal Aid Counsel Ms. Saikia supporting the case of the respondent no.2 has also referred to the decision passed by this Court in Cri.Rev. P./86/2020 (Monjit Talukdar vs. Rita Talukdar and Ors.), wherein this Court has already held that for drawing a proceeding under Section 12 of the DV Act, DIR is not compulsory and the court has the ample power to pass an *ex parte* order to provide such monetary relief and the present case is squarely covered by the observation/ conclusion that has been reached by this Court.

**6.** Gone through the documents as has been annexed by the parties and it is found that the respondent no.2/wife has filed the aforesaid petition (Misc.

(Domestic Violence) Case No.301/2018) narrating all detail of the incident in her matrimonial home and the learned trial court also made observation in the order itself that the petitioner/respondent no.2 herein has *prima facie* made out a case that she was subjected to such domestic violence in her matrimonial house. So far as regard the domestic incident report (DIR), this Court has categorically discussed and held in the decisions so referred that DIR is not compulsory to initiate a proceeding under DV Act on the basis of the complained filed by the wife, which I do not propose to repeat here.

**7.** On the other hand, it is also noted that under Section 23 (2) of the DV Act, the Court has ample power to pass *ex parte* order on being satisfied all about the matter and such power of the Court cannot be frustrated by any other submission of facts that the respondent no.2 has filed the case on frivolous grounds. There being no indication of domestic violence as per Section 29 of the Act, aggrieved person can challenge every order passed by the trial court but instead of doing the same, the petitioners have come forward with the petition under Section 482/401 CrPC to challenge the *ex parte* order, which is also not permissible as there is alternative remedy to challenge the aforesaid order.

**8.** It is also noted that the learned trial court has given liberty to the petitioners to file their objection for modification of the order by filing written statement. That being so, the petitioners have the liberty to sought for modification of the order before the learned trial court but same was not done. On a query made by this Court, it is submitted that the case is now at the evidence stage, fixing for cross-examination of witnesses of the respondent side. Learned trial court is in a position to decide the matter in entirety. Right of a wife to get the maintenance/interim maintenance cannot be frustrated on the pretext of faulty conduct of his wife unless the same is proved in due course of

hearing. Of course, in case of monetary relief, it is the husband who has to comply the same by providing maintenance but not other in-laws who are also petitioners in the instant case.

**9.** Accordingly, it is directed that the petitioner no.1 Sri Nilakanta Malakar @ Santo will provide maintenance as directed by the learned trial court till the matter is finally decided by the court.

**10.** Having regard to the matters on record and the proposition of law, as discussed above, this Court is of the opinion that it is not a fit case to invoke the provision of Section 482/401 CrPC. There being no any illegality in the order dated 02.07.2018 so passed by the learned trial court, the present petition stands dismissed.

**JUDGE**

**Comparing Assistant**