

GAHC010080492026



undefined

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

Case No. : Crl.Pet./1550/2025

ASHOK AGARWAL
SON OF LATE SRI MAHABIR PRASAD AGARWAL
RESIDENT OF FLAT NO. A001
RELIAABLE ACACIA APARTMENT BEHIND IBBLUR LAKE
NEAR MAY FLOWER SCHOOL BELLANDUR
BENGALURU 560 103

MOBILE NO. 9900154604

2: SITA DEVI
WIFE OF LATE SRI MAHABIR PRASAD AGARWAL
RESIDENT OF FLAT NO. A001
RELIAABLE ACACIA APARTMENT BEHIND IBBLUR LAKE
NEAR MAY FLOWER SCHOOL BELLANDUR
BENGALURU 560 103 MOBILE NO. 636091986
SITA DEVI
VERSUS

SMT PUJA GARG
DAUGHTER OF SRI RAJDHARI PRASAD MALLAH
PRESENTLY RESIDING AT HOUSE NO 2B
RADHA NIKETAN
FATASHIL AMBARI
GUWAHATI 781 009

Advocate for : MR C GARG
Advocate for : MR. B CHAKRABORTY appearing for SMT PUJA GARG

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 04.08.2026

Heard Mr. G. Bordoloi, learned counsel for the petitioners. Also heard Mr. B. Chakraborty, learned counsel for the respondent.

2. In this petition, under Section 528 of the BNSS, 2023, the petitioner has prayed for quashing the proceeding of Domestic Violence Case No. 214/2025, pending before the Court of learned Judicial Magistrate, First Class, (JMFC) No. 6, Kamrup(M), Guwahati, under Sections 12/18/19/20/22/23 of the Protection of Women from Domestic Violence Act, 2005, and the consequential reliefs including stay of the proceeding before the learned JMFC.

3. It is to be mentioned here that the Domestic Violence Case No. 214/2025, was instituted by the respondent herein, before the Court of learned JMFC, for (i) emotional, verbal and psychological abuse, (ii) economic abuse, (iii) physical abuse, and (iv) sexual abuse, seeking (a) a protection order under Section 18 (e) of the Act, 2005; (b) a residence order under Section 19(1)(d), 19(1)(f) of the D.V. Act, 2005; (c) monetary reliefs under Section 20 (1) (a) (b) (d), Section 20 (2) and Section 20 (3) of the Act, 2005, @ Rs.2,20,000/- per month; (d) a compensation order under Section 22 of the Act, 2005, @ Rs.30,00,000/-, (e) to retain custody of their minor son under the provisions of the Act, 2005; and (f) any other relief(s).

4. Mr. Bordoloi, learned counsel for the petitioners submits that this present petition is preferred for quashing the aforementioned proceeding

pending before the Court of learned JMFC, on the ground that marriage between the parties fell apart due to the petitioner No. 1 being diagnosed with Limb-Girdle Muscular Dystrophy (LGMD) 2A and due to his medical condition, the health, more particularly muscle strength of the petitioner No. 1 deteriorated over the time as LGMD is progressive in nature and also on the ground that it is an undisputed position that there has been irretrievable breakdown of marriage between the parties, and that the respondent herein is presently living in Guwahati, whereas the petitioners are living in Bangalore, and under such circumstances, he has contended to allow this petition.

5. Mr. Bordoloi also submits that though some other grounds have also been mentioned in the petition, yet he is harping on this ground only, and that the petitioner No. 1 suffers disability of 80% and he lost his job and he has no income at present, and that the respondent herein has instituted several other proceedings also under different provisions of law against the petitioner No. 1. Mr. Bordoloi also submits that the petitioner has been paying regular maintenance to her also, and under such circumstances, he submits that the question of domestic violence does not arise.

6. Per contra, Mr. Chakraborty, learned counsel for the respondent submits that this present petition is not maintainable as the petitioners have failed to demonstrate any justifiable reason to quash this present proceeding. He also submits that it is a fact that the respondent herein had instituted other proceedings against the present petitioners, but in exercise of her right granted under the said Acts, she had instituted those proceedings and the present proceeding has been instituted under

the D.V. Act, seeking reliefs mentioned in the petition, which is annexed with the petition as Annexure-16, at page No. 207 of the petition.

5.1. Mr. Chakraborty has also referred to a decision of Hon'ble Supreme Court in the case of **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Ors., in Criminal Appeal No. 330 of 2021**, and submits that in the said case, taking note of several other decisions of Hon'ble Supreme Court, including the decision in **State of Haryana and Ors. vs. Bhajan Lal and Ors.**, reported in **1992 Supp (1) SCC 335**, wherein it has been held that the power of quashing should be exercised in rarest of rare cases and at the initial stage the proceeding should not be quashed. It is the further contention of Mr. Chakravarty that the present petition is not at all maintainable and the petitioners have failed to demonstrate any sufficient cause, and therefore, he has contended to dismiss the petition.

6. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record, and also perused the Domestic Violence Case No. 214/2025, as well as the decision referred by Mr. Chakraborty, learned counsel for the respondent.

7. It is to be noted here that in the case of **M/s Neeharika Infrastructure Pvt. Ltd. (supra)**, in paragraph No. 23, Hon'ble Supreme Court has dealt with the issue of quashing a complaint/FIR/proceeding and granting of interim order of stay. Some of the points, relevant in the case in hand are extracted herein after:-

i)

-
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).
 - v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
 - vi) Criminal proceedings ought not to be scuttled at the initial stage;
 - vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

-
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

-
- xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;
 - xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

8. It is also to be noted here that in the case of **Bhajan Lal (supra)**, in paragraph No. 102, it has been held as under:

“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 Act concerned (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 Act concerned, 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.”

9. Thus, it is well settled that at the time of considering of quashing the complaint or FIR, the Court is not required to consider on merits whether or not the merits of the allegations make out an offence. The Court has to permit the proceeding to go on.

10. The instant proceeding is initiated by the respondent herein, who is the wife of the petitioner, under the D.V. Act, claiming some relief(s), in exercising her right, as stated herein above from the petitioner. She has exercised her right to access to justice under the said Act and the said proceeding is pending at the initial stage.

10.1. The said proceeding is sought to be quashed by the petitioner herein only on the following grounds that :-

- (i) The marriage between the parties fell apart due to the petitioner No. 1 being diagnosed with Limb-Girdle Muscular Dystrophy (LGMD) 2A and due to his medical condition.
- (ii) It is an undisputed position that there has been irretrievable breakdown of marriage between the parties,
- (iii) The respondent herein is presently living in Guwahati, whereas the petitioners are living in Bangalore,

10.2. Having examined these grounds in the light of the propositions laid down in the case of **M/s Neeharika Infrastructure Pvt. Ltd. (supra)**, and also in the case of **Bhajanlal (supra)**, this Court is of the considered opinion that none of the above grounds are sufficient to quash the proceeding at this initial stage. The petitioner has failed to demonstrate any other justifiable grounds from the record. If such proceeding is quashed at this stage, it would violate her right to access

to justice itself and which amount to violation of her right, as guaranteed under Article 21 of the Constitution of India.

11. It is worth mentioning in this context that in the complaint, which is being sought to be quashed by the petitioners herein, the respondent has clearly demonstrated a prima facie case, which requires proper adjudication and no case for interference of the same could be demonstrated by the petitioners herein this stage.

12. Accordingly, this Court finds this petition devoid of substance and the same stands dismissed, leaving the parties to bear their own costs.

JUDGE

Comparing Assistant