

GAHC010118472015



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

Case No. : WP(C) 4053/2015

1:MR. MANOJ GARG and 4 ORS
S/O LT. SATYANARAYAN GARG, NEHA APARTMENT, BLOCK-VI, FLAT
NO.6803, ATHGAON, P.O. and P.S. BHARALUMUKH, GHY-1, ASSAM

2: SANJEEV GARG
S/O LT. SATYANARAYAN GARG
R/O KUSHUL SADAN
K.C. CHAUDHARY ROAD
CHATRIBARI
P.O. and P.S. BHARALUMUKH
GHY-8
ASSAM

3: BABITA GARG
W/O MR. MANOJ GARG
R/O NEHA APARTMENT
BLOCK-VI
FLAT NO.6803
ATHGAON
P.O. and P.S. BHARALUMUKH
GHY-1
ASSAM

4: ARCHANA GARG
W/O MR. SANJEEV GARG

5: DRAUPATI GARG
W/O LT. SATYANARAYAN GARG
BOTH ARE THE R/O KUSHUL SADAN
K.C. CHAUDHARY ROAD
CHATRIBARI
P.O. and P.S. BHARALUMUKH
GHY-8
ASSA

VERSUS

1:THE STATE OF ASSAM AND 5 ORS
REP. BY THE CHIEF SECY. GOVT. OF ASSAM, ASSAM SECRETARIAT,
DISPUR, GHY-6

2:THE CHIEF SECY. GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GHY-6

3:THE COMMISSIONER and SECY.
DEPTT. OF SOCIAL WELFARE
ASSAM
SECRETARIAT
DISPUR
GHY-6

4:THE DY. SECY. TO THE GOVT. OF ASSAM and SPIO
DEPTT. OF SOCIAL WELFARE
ASSAM
SECRETARIAT
DISPUR
GHY-6

5:THE DIRECTOR
SOCIAL WELFARE DEPTT.
UZANBAZAR
GHY-1
ASSAM

6:HEMI BORAH
DISTRICT SOCIAL WELFARE OFFICER K CUM PROTECTION OFFICER
UNDER DV ACT
2005
BELTOLA
GHY-28
ASSA

Advocate for the Petitioner : MR.A.Satar

Advocate for the Respondent : GA, ASSAM

BEFORE

HON BLE MR. JUSTICE PRASANTA KUMAR DEKA**ORDER****Date : 27-04-2018**

Heard Mr.A.Sattar, learned counsel appearing for the petitioners. Also heard Mr.S.Mitra, learned counsel appearing for the respondent No.6 and Mr.T.C.Chutia, learned Additional Senior Govt. Advocate appearing for the State.

2. Being aggrieved by way of an order purportedly issued by the learned Additional Chief Judicial Magistrate (Addl.CJM), Kamrup(Metro) at Guwahati dated 20.1.2014 passed in Misc.Case No.201^m/2013(under D.V.Act,2005) and allegedly manipulated by the Protection Officer, respondent No.6 by introducing certain direction to the Officer-in-Charge, Bharalumukh Police Station to enter into the business premises of the petitioners run under the name and style M/s Indian Builders Centre situated at S.J.Road, Athgaon, Guwahati and as per the said alleged direction of the learned Addl.CJM, Kamrup (M), the police entered into the business establishment of the petitioners and removed them therefrom and put in possession Ms. Punam Rani Garg, the complainant in the said Misc.Case No.201^m/2013, this petition is filed by the petitioners for a direction to grant sanction to prosecute the respondent No.6 under Section 34 of Protection of Women from Domestic Violence Act,2005(D.V.Act, 2005)

3. It is submitted that having noticed the said manipulation purportedly at the instance of the said respondent No.6, the petitioner brought the same to the notice of the learned Addl.CJM, Kamrup(M) whereafter vide order dated 11.3.2014 directed the complainant Ms.Punam Rani Garg to hand over the possession of the said business premises within three days back to the petitioners. The said order dated 11.3.2014 was put to challenge in Crl. Appeal No.1/2014 which was dismissed by the learned Sessions Judge, Kamrup(M) at Guwahati vide judgment dated 18.3.2014. On dismissal of the said Crl.Appeal No. 1/2014, the learned Addl.CJM vide order dated 19.3.2014 ordered for implementation of the order dated 11.3.2014 through the police. As against the said judgment in Crl.Appeal No. 1/2014, the complainant in Misc.Case No. 201^m/2013 preferred Crl. Petition No. 114/2014 before this Court and vide an interim order further proceeding of the said Misc.Case No. 201^m/2013 was

stayed.

4. On the other hand, the petitioners being aggrieved against such action of the respondent No.6 vide their representation dated 1.4.2014 sought for sanction from the respondent authorities to prosecute the respondent No.6 as per Section 34 of the Protection of Women from Domestic Violence Act, 2005. On the basis of said representation it was intimated to the petitioner No.1, written by the Secretary, Govt of Assam, Social Welfare Department wherefrom it came to the knowledge of the petitioners that the Director, Social Welfare Department, Assam was requested to conduct an enquiry and to submit a report to the department within one month from 7.4.2014. The petitioners alleged that no action was initiated following which they are compelled to file this writ petition thereby seeking the sanction as sought for by the petitioners vide their representation.

5. The respondent No.5, the Director, Social Welfare Department through his affidavit-in-opposition dated 21.11.2015 brought on record that after the enquiry, it came to the findings that the respondent No.6, Mrs Hemi Borah instead of serving the order dated 20.1.2014 passed by the learned Addl.CJM, Kamrup, Metro referred hereinabove, without discussing the matter with the higher authorities, out of her own volition, prepared a notice dated 12.2.2014 wherein she on her own incorporated certain direction and directed Officer-in-Charge, Bharalumukh P.S. to put the complainant in Misc.Case No. 201^m/2013, Ms.Punam Rani Garg into the business establishment of the petitioners under the name and style M/s Indian Builders Centre and it has been held that such direction was beyond the purview of the order dated 20.1.2014 passed by the learned Addl.CJM, Kamrup(M). On the strength of said direction as per notice dated 12.2.2014, the police personnels from Bharalumukh P.S. put Ms.Punam Rani Garg into the possession of said building premises under the possession of the present petitioners.

6. The respondent No. 6 also filed an affidavit-in-opposition thereby taking her stand that she was not aware with respect to such notice dated 12.2.2014 and took her stand that no sanction be granted as the same is beyond the jurisdiction of the D.V.Act, 2005 and that too u/s 35 of the said Act. It is further stated in her affidavit-in-opposition that she misunderstood the intent and purpose of the order passed by the learned Addl.CJM dated 20.1.2014.

7. Considered the submission of the learned counsels. Section 34 of Protection of Women from Domestic Violence Act, 2005 stipulates that no prosecution or other legal proceedings shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

8. Mr.Sattar submits that a gross offence has been perpetrated by the respondent No. 6 on the basis of which the present petitioners were thrown out of their business premises and had that order remained as passed by learned Addl.CJM, such eviction of the petitioners from their business premises would not have arisen. The Protection Officer is appointed by the State Government. It is further submitted that the duty and function of the Protection Office are stipulated u/s 9 of the said Act, 2005 wherefrom it is very much apparent that the Protection Officers are to assist the Magistrate in the discharge in his office within the D.V.Act, 2005. Further Section 9 sub-Section 2 clearly stipulates that the Protection Officer shall be under the control and supervision of the Magistrate and shall perform the duties imposed on him by the Magistrate and the Government under the said D.V. Act of 2005. Accordingly, Mr.Sattar submits that the said respondent No.6 had gone beyond her jurisdiction and issued notice dated 12.2.2014 without their being any such direction to put the complainant in Misc.Case No. 201^m/2013 in possession of the business premises. Under such circumstances the act of the Protection Officer can be termed to be an offence within the parameter of Section 34 of the DV Act, 2005.

9. Non-granting of the sanction by the respondent State is a clear act on its part to protect the respondent No. 6 from being prosecuted owing to the said alleged offence. Accordingly a duty is cast upon the respondent State to enquire the matter and accord the sanction as sought for by the petitioners, if it is within the satisfaction zone of the authority concerned to grant such sanction.

10. Mr.Chutia submits that as the petitioners have sought for sanction an enquiry is to be conducted by the competent authority and on the strength of outcome of the said enquiry, it is the authority to decide whether the sanction can be granted or not.

11. The submission of Mr.Mitra cannot be considered while disposing of this application inasmuch the submission of Mr.Mitra can very well be placed before the authority during the

enquiry and the acceptance of the same is up to the authority.

12. Keeping in view the submission and counter submission and on perusal of the records and the act of learned Addl.CJM, Kamrup,Metro dated 11.3.2014 and subsequent order dated 19.3.2015 for implementation of the direction dated 11.3.2014 through police which is a point prima-facie to be taken into consideration, in my opinion the competent authority is to examine the matter and pass a speaking order thereby disposing of the representation of the petitioners dated 1.4.2014 seeking for the sanction as aforesaid. Any observations made in this writ petition shall not be considered while considering the issue of sanction by the competent authority. The competent authority is at full liberty to go for an enquiry keeping in view the necessary ingredients required for granting such sanction as per the prevalent law.

Accordingly, this writ petition stands disposed of.

JUDGE

Comparing Assistant