

**IN THE COURT OF THE ADDL. SESSIONS JUDGE
AIZAWL JUDICIAL DISTRICT : MIZORAM**

Present : Vanlalenmawia,
Addl. Sessions Judge

**Criminal Revision Petition No. 38 of 2014
Arising out of Crl. Complaint No. 129 of 2012**

Sri Lalrinkima Tochhawng
S/o V.L.Zakapa (L)
R/o Sikulpuikawn, Aizawl, MizoramPetitioner

-Versus-

Smt. Nemkhawneihi
D/o Dokholala,
C/o K.C. Zauva (LRM Building)
R/o Ramhlun, Aizawl, Mizoram.Respondent

APPEARANCE

1. For the petitioner : Shri H. Laltanpuia, Advocate.
2. For the respondent : Shri J.C. Lalnunsanga, Advocate.

Date of Hearing : 6.02.2015

Date of Order : 9.02.2015

ORDER

1. The present Criminal Revision Petition was preferred against the Judgment & Order dated 13.5.2014 passed by the learned Judicial Magistrate First Class, Aizawl District in Criminal Complaint No. 129 of 2012. By the Judgment & Order, the petitioner herein was directed to pay maintenance at a lump sum of Rs. 25,000/- (Rupees twenty five thousands) only to the respondent under Section 20 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter stated as 'the

Act') and he was further directed to pay a compensation an amount of Rs. 90,000/- (Rupees ninety thousands) only within a period of two months from the date of the Judgment & Order passed the learned Judicial Magistrate First Class. In the Judgment & Order, the petitioner was also ordered to comply with the above direction/order failing which punitive action might be taken against him.

2. I heard Shri H. Laltanpuia, learned Counsel for the petitioner as well as Shri J.C. Lalnunsanga, learned Counsel appearing for the respondent.

3. The brief case, in short, is as follows: Smt. C. Zodinpuui who was duly appointed as Protection Officer (Aizawl East) under the Act, forwarded Domestic Incident Report (hereinafter stated as 'the DIR') dated 20.7.2012 to the learned Chief Judicial Magistrate, Aizawl District in Form No. 1 as provided under sub-section 1 (b) of Section 9 and Section 37 (2) (c) of the Act read with Rule 5 (1) (2) and Rule 17 (3). In the report, it is stated that Sri Lalrinkima Tochhawng who is the petitioner herein had inflicted injuries on the body of his wife Smt. Nemkhawneihi who is the respondent herein, and as a result, to take necessary proceeding seeking a relief under Sections 18, 20 and 22 of the Act. The report was accompanied by photos of the respondent's body showing various injuries inflicted by the petitioner. The case was tried and disposed by the learned Judicial Magistrate First Class.

4. According to the learned Counsel appearing for the petitioner, the allegation made against the petitioner is false and fabricated. The learned Counsel also submits that the learned Lower Court did not appreciate the evidence taken on record. Hence, the impugned Judgment & Order passed by the learned Judicial Magistrate First Class is liable to be set aside and quashed.

5. On the other hand, the Id. Counsel appearing for the Respondent submits that there is no infirmity in the Judgment & Order passed by the Id. Lower Court. According to the Id. Counsel, the instant Revision Petition is not maintainable in its present form inasmuch as the Act provides provision for appeal to the Court of Sessions within 30 days against any Order made by the Magistrate. He also submits that there is no provision provided for revision in the Act. Finally, he submits that the Revision Petition cannot be entertained in view of the provision of sub-section (4) of Section 401 of Cr.P.C. To support his stand, the Id. Counsel refers the decision of the

Apex Court in *Dulichand Vs. Delhi Administration* (AIR 1975 SC 1960) in which it is observed thus: -

'The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to re-appreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned additional Sessions Judge was correct. But even so the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse.'

6. In the present case, the Revision Petitioner is to prefer only statutory appeal as provided under section 29 of the Act. In the instant case, obviously, the Petitioner has not filed any statutory appeal under section 29 of the Act. Instead of filing the statutory appeal under section 29 of the Act, the Petitioner has directly approached this Court by filing the instant Revision Petition under section 397 of the Cr.P.C. When a statutory right of filing an appeal is provided with the Petitioner as provided under section 29 of the Act, then this Court is of the considered view that the Petitioner cannot invoke the revisional jurisdiction under section 397 of Cr.P.C. Further, a combined reading of sections 397, 399, 400 and 401 of Cr.P.C. provides that where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision can be entertained at the instance of the party who would have appealed.

7. In the result, it is held by this Court that the present Criminal Revision Petition filed by the Petitioner before this Court will not lie in the eye of law. Accordingly, the petition is dismissed.

Sd/- VANLALENMAWIA

Addl. Sessions Judge

Aizawl Judicial District, Aizawl

Memo No.____/AD&SJ(A)/2015 : Dated Aizawl, the 9th Feb., 2015

Copy to: -

1. Sri Lalrinkima Toichhawng through Counsel Sri H. Laltanpuia, Advocate.
2. Smt. Nemkhawneihi through Counsel Sri J.C. Lalnunsanga, Advocate.
3. Sessions Judge, Aizawl Judicial District, Aizawl.
4. Chief Judicial Magistrate, Aizawl District.
5. Sri Lalramsanga, Judicial Magistrate First Class, Aizawl District.
6. Smt. C. Zodinpuui, Protection Officer (Aizawl East), Social Welfare Department, Mizoram; Aizawl.
7. Registration Section.
8. Guard File.
9. Case Record.
10. Calendar Judgment.

P E S H K A R