

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. No.28/2023

Jayed Ali, S/O. Faruk Miah, Vill.-Srinathpur, P.S.-Irani, P.O.-Baburbazar,
Sub-Division-Kailashahar, District-Unakoti, Tripura.

..... Petitioner(s).

V E R S U S

Sahena Begam alias Sahana Begam, W/O. Jayed Ali, D/O. Arjod Ali, Vill.,
P.O. & P.S.-Irani, Sub-Division-Kailashahar, District-Unakoti, Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. A.K. Pal, Advocate.

For Respondent(s) : Mr. S. Datta, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

20/07/2023

Heard Mr. A.K. Pal, learned counsel appearing for the
petitioner-husband and Mr. S. Datta, learned counsel appearing for the
respondent-wife.

2. Petitioner is the husband aggrieved by the judgment and order
dated 06.04.2022 passed under Section 125 of the Cr.P.C. by the learned
Judge, Family Court, Kailashahar, Unakoti, Tripura in Criminal Misc. (125)
case No.18 of 2020 by which he has been ordered to pay maintenance @
Rs.3,000/- per month to the respondent-wife with effect from filing of the
case i.e., 07.03.2020. The arrears from 07.03.2020 to 06.04.2022 may be
paid in installments @ Rs.500/- along with the regular monthly maintenance

amount till the arrear amount is cleared. The procedure for remittance in the Savings Bank account of the petitioner has also been indicated to be done by 10th day of every English Calendar month.

3. The petitioner has in support of the challenge, *inter alia*, contended that the impugned order suffers from lack of proper appreciation of the facts and materials on record and the applicable legal principles. It is, therefore, not proper and arbitrary. Referring to this stand before the learned Family Court he submitted that petitioner's father was seriously ill and admitted in the District Hospital, Kailashahar on 18.11.2019. He had to look after the health of his father and continuously remained engaged in District Hospital complex for his treatment. However, during that period his wife along with one Ambar Ali and two others conspired against him for his marriage though he was a minor. However, when he returned home from the hospital, his father came to know that his minor son had been married forcefully and made to put his signature on Kabinnama. Thus, the marriage itself was illegal. Learned trial Court did not give scope to adduce evidence on behalf of the petitioner-husband and passed the impugned judgment which suffers from severe errors of law and facts. Therefore, the impugned judgment and order may be set aside and the matter be remanded to the

learned Family Court to enable the petitioner-husband to adduce evidence in support of his case.

4. Learned counsel for the respondent-wife who appears as a Legal Aid Counsel has, however, opposed the prayer and submitted that due to torture the respondent-wife had to leave the matrimonial home as she could not fulfill the demand. In the meantime, she had become pregnant. She was again assaulted on 08.02.2022 at about 8.30 p.m. and illegal demands of motorbike and a cash amount of Rs.50,000/- were made and she was dragged from her room to oust her. She somehow managed to escape and took shelter in her parents' house. She also stated that her parents are poor, therefore it was very tough for them to maintain her and arrange for her proper treatment during the pregnancy. Learned counsel for the respondent-wife submits that the petitioner belongs to a wealthy family and is a driver by profession who also has landed property as well as fisheries. His income would not be less than Rs.30,000/- to Rs.35,000/- per month. Hence, she demanded Rs.7,000/- per month, but the learned trial Court has granted maintenance @ Rs.3,000/- per month only.

5. I have considered the submissions of the learned counsel for the parties. It appears that 3(three) prosecution witnesses were examined including the respondent-wife. However, the opposite party did not appear

to cross-examine the witnesses. The learned trial Court also took note that the factum of the marriage as per Islamic rites and rituals was evident during the conciliation proceedings since petitioner accepted her to be his wife. A daughter has been born after filing of the case. The husband did not adduce any evidence nor appeared to cross-examine the PWs. Based on this inference drawn from the materials on record, the learned trial Court considered the application of Section 125 of the Cr.P.C. and found that she has got sufficient reasons for not living with her husband and she is unable to maintain her. However, since the evidence to determine the income was not there, the learned trial Court held that the opposite party is a skilled worker whose income per day would be around Rs.315/- per day and can easily earn up to Rs.400/- per day. Assuming his income at that rate for 25 days in a month, his income was calculated Rs.10,000/- per month approximately. On these findings, the learned trial Court held the petitioner-wife entitled to get monthly maintenance allowance @ Rs.3,000/-.

6. On perusal of the records and upon hearing the learned counsel for the parties, in a challenge to the order passed under Section 125 of Cr.P.C., this Court should not question the marital status of the parties when the learned trial Court has rendered a finding on that score which was not rebutted by any evidence on the part of the respondent-husband. However,

an able bodied married husband has a responsibility to maintain his wife and the dependent children. Reference is made to the judgment of the Apex Court in the case of *Shamima Farooqui vrs. Shahid Khan* reported in (2015) 5 SCC 705 (See para 14 to 19).

7. It, however, appears that the learned Family Court has made a guess assumption that the petitioner being a skilled person would earn at least Rs.400/- per day and assuming that he gets work for 25 days in a month, he would earn Rs.10,000/- per month. The amount of monthly maintenance drawn on that basis, therefore, appears to be on a guess assumption that the petitioner-husband would be having at least 25 days of work as a skilled worker. However, it is also contended by the petitioner that he has his ailing father to maintain. In such circumstances, this Court is of the view that interest of justice would be met if the maintenance amount is reduced to Rs.2,500/- per month to be paid from the date of filing of the case. Arrears of maintenance standing in the name of the petitioner-husband should be paid in installments @ Rs.400/- per month along with the regular monthly maintenance till the arrear amount is cleared. Remittance be made in the same manner by the 10th day of every English Calendar month in the account of the petitioner/respondent-wife.

8. With these observations and modification in the order impugned, the instant petition is disposed of.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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