

Serial No. 30
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Petn. No. 4 of 2023

Date of Decision: 13.04.2023

Shri. Saibal R. Marak

Vs.

Smti. Nancy Ch. Sangma

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P.K. Borah, Adv.

For the Respondent(s) : Ms. R. Kharshiing, Adv.

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

ORDER (ORAL)

1. Heard Mr. P.K. Borah, learned counsel for the petitioner. Also heard Ms. R. Kharshiing, learned counsel for the respondent.

2. Mr. Borah has submitted that the petitioner is a BSF personnel who is now posted at Jammu & Kashmir. The petitioner is however surprised to be informed of an order dated 12.10.2018 passed by the court of the learned

Magistrate First Class, Subordinate District Council Court, Khasi Hills, Shillong in M.C.R. (M.C) No. 80(A) of 2018 under Section 125 Cr.P.C wherein the petitioner was directed to pay an interim maintenance of ₹ 8000/- (Rupees eight thousand) only to the respondent herein who is said to be the wife of the petitioner.

3. At the outset, the learned counsel has submitted that the petitioner does not know the respondent at all, he has not met her and there is no relationship between the two even as husband and wife and as such, the impugned order has caused prejudice to him inasmuch as firstly, the said order was not conveyed or communicated to him at the first instance. It is only when the Commanding Officer of his unit brought such notice to his attention that he came to know of the said direction by the learned court. Hence this petition.

4. Mr. Borah has also submitted that since the impugned order was passed ex parte, it is therefore prayed that the same may be set aside and quashed and the issue to be re-agitated before the court on an opportunity being given to him to present his case.

5. Ms. R. Kharshiing, learned counsel for the respondent has conceded that the impugned order was passed ex parte, however, it is submitted that this is an application under Section 125 Cr.P.C which is a beneficial provision,

taking into account the plight of the respondent who has to take care of a minor child born out of the union between the petitioner and the respondent and for which the petitioner is duty bound to maintain and accordingly the learned counsel has submitted that even if the main matter be contested by the petitioner, the impugned order may not be set aside at this juncture.

6. This Court on consideration of the submission made is mindful of the fact that an application for maintenance and an order for interim maintenance is in accordance with due provision of law and taking into account the plight of women and children who, more often than not, if the woman is unable to sustain or maintain herself and the family, she is left destitute and at the mercy of the elements. However in this instant case, the assertion of the petitioner that the respondent is not related to her at all and that he does not even know or recognised her is also to be considered though the same is to be proved before the Trial Court by way of evidence, etc.

7. Taking into consideration all aspects of the matter, this Court at this stage is of the considered view that the impugned order is to be set aside and quashed and the matter be remanded to the Trial Court for the issue to be agitated by the parties.

8. To this extent, the impugned order dated 12.10.2018 is hereby set

aside and quashed. The learned Magistrate First Class, Subordinate District Council Court, Khasi Hills, Shillong is hereby directed to take up the matter by giving adequate opportunity to the petitioner herein and the respondent to be heard. It is also requested that the same be disposed of within one month from the date of this order.

9. Let copy of this order be issued upon the concerned court for compliance.

10. Parties to appear before the court on 25.04.2023.

11. Petition disposed of. No costs.



Judge

Meghalaya
13.04.2023
"Tiprilynti-PS"