

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Rev. P. No. 4 of 2023

Date of Order: 04.10.2023

Smti. Parmina Khatun

Vs.

Shri. Raihan Babu.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Dey, Adv.

For the Respondent(s) : Mr. S. A. Sheikh, Adv.

Heard Mr. S. Dey, learned counsel for the petitioner and also heard Mr. S. A. Sheikh, learned counsel for the respondent.

This Criminal revision petition under Section 397 Cr.P.C. has been filed against the order dated 27-04-2022 passed by the Judicial Magistrate First Class, South West Garo Hills, Ampati in Misc. Case No. 04 of 2021 arising out of CR case No. 57 of 2021 by which the learned Trial Court dismissed both the petitions whereby claim of the petitioner for grant of maintenance from the respondent under Section 125 Cr.P.C. stood rejected.

A perusal of the impugned order dated 27-04-2022 reveals that the learned Trial Court rejected the claim of the petitioner on the ground that there exists a deed of agreement executed between the petitioner, the respondent and the second wife of the respondent, wherein there is a stipulation of payment of monthly maintenance allowance by the respondent to the petitioner, who happens to be the first wife of the

respondent. The learned Trial Court, therefore, was of the view that the dispute between the petitioner and the respondent stood amicably settled.

What requires to be noticed in the impugned order dated 27-04-2022, is that, no proof of payment of maintenance by the respondent to the petitioner was placed before the Trial Court to establish that the respondent has been paying regular maintenance allowance to the petitioner. Mere existence of a deed of agreement has no bearing on the claim of maintenance as it does not disprove the allegation of negligence and refusal on the part of the husband to maintain his wife.

The impugned order does not show that the learned Trial Court has recorded its satisfaction basing on the proof of payment of maintenance allowance by the respondent to the petitioner to come to a conclusion that the dispute was amicably settled. During the course of the hearing of this matter, the respondent failed to bring anything on record to prove that the respondent is paying regular maintenance allowance to the petitioner and there no negligence on his part. In a claim of maintenance by wife from her husband, Section 125 Cr.P.C poses a requirement on the Trial Court to determine as to whether there is negligence or refusal on the part of the husband to maintain his wife. Since there is no proof of payment of maintenance allowance by the respondent to the petitioner, the learned Trial Court could not have come to a finding that the matter was amicably settled by a deed of agreement.

Accordingly, this revision petition stands allowed, the impugned order dated 27-04-2022 is hereby set aside and quashed. The CR case No.57 of 2021 and Misc. Case No. 04 of 2021 stand restored back to the file of the Judicial Magistrate First Class, South West Garo Hills, Ampati. The learned Trial Court shall take up the entire matter and hear the

application for grant of interim maintenance afresh within a month from the date of receipt of this order after issuing notice to the respective parties and fixing a date for the same.

This Revision Petition stands disposed of.

Judge

Meghalaya
04.10.2023
"Biswarup PS"

