

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Rev.P. No. 7 of 2023 with
Crl.M.C. No. 30 of 2023

Date of Decision: 08.05.2023

Shri. Apchendo M. Marak

Vs.

Smti. Detharine P. Marak

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

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

For the Respondent(s) : Mr. L. Shongwan, 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 |

JUDGMENT AND ORDER (ORAL)

1. Heard Mr. S. Pandit, learned counsel for the petitioner as well as Mr. L. Shongwan, learned counsel for the respondent.

2. The main contention of the petitioner herein is that the petitioner was compelled to come before this Court being aggrieved by the impugned order dated 30.09.2022 passed by the learned Magistrate First Class, Subordinate District Council Court, Khasi Hills, Shillong, whereby the petitioner was directed to part with 50% of his retirement/pensionary benefits in favour of the respondent/petitioner therein, and which order was

passed in a matter or rather in a case which has already been disposed of vide order dated 20.04.2021.

3. The background of the case is that the respondent herein has approached the concerned Court for grant of maintenance to be paid by the petitioner herein and which matter has proceeded before the competent court under due procedure, however in course of proceedings of the said matter before the said Court, the same was apparently dismissed for default. The respondent has then preferred an application for restoration of the same.

4. It is the contention of the petitioner that before the case of the parties could be restored by way of a proper judicial order, the learned Trial Court has passed the impugned order apparently without any basis since by then, the Court has become functus officio.

5. There is no quarrel by the parties as regard the facts depicted hereinabove. It is however the submission of the parties that though the impugned order may be set aside and quashed, the learned Trial Court may be directed to proceed with the application for restoration of the said case.

6. Without going into the merits of the case between the parties, suffice it to say that the submission made has credence, inasmuch as, the impugned order was passed without taking note of the fact that the main application has since been dismissed and though the parties have appeared

before the Court with an application for restoration of the same, no effective order has been passed as regard the said prayer, instead the impugned order was passed, which has no basis in procedural law.

7. Be that as it may, this Court is inclined to accept the submission made and accordingly, the said impugned order dated 30.09.2022 is hereby set aside and quashed. The Trial Court is however directed to take up the issue of restoration after hearing the parties concerned.

8. In view of the fact that the prayer involves the issue of maintenance, the Trial Court is requested to expedite the matter and to dispose of the same as early as possible. If the same could not be disposed of, perhaps within a period of 3(three) months or so, the Court may consider the grant of interim maintenance to the respondent herein.

9. In view of the above, Crl.Rev.P. No. 7 of 2023 is accordingly disposed of. No costs.

10. Crl.M.C. No. 30 of 2023 also stands disposed of.

Judge

Meghalaya
08.05.2023
"D. Nary, PS"