

GAHC040000472023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.Petn./9/2023

Anu Rai @ Anu Tacha
Wife of Toli Tacha,
Daughter of Ram Bahadur Chetry,
Resident of Farm Line, Tezu, PO/PS Tezu, Dist. Lohit, Arunachal Pradesh.
Mobile No. 9362165889

VERSUS

Toli Tacha
Son of Late Karto Tacha,
Resident of 4th IRBN Police Training Center, Banderdewa, Dist. Papumpare,
Arunachal Pradesh.

Advocate for the Petitioner : S Bhattacharjee

Advocate for the Respondent : Lissing Perme

**BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 03-08-2023

Heard Mr. S. Bhattacharjee, learned counsel for the petitioner. Also heard Mr. W. Yirang, learned counsel representing the respondent.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 challenging the Order dated 09.12.2022, passed by the Court of learned Chief Judicial Magistrate, Tezu, Lohit District in Misc. Case No. 09/2021 by dismissing the prayer made by the present petitioner regarding interim maintenance.

3. It is submitted by the learned counsel for the petitioner, Mr. S. Bhattacharjee that the petitioner had filed maintenance case under Section 125 Cr.P.C. along with an interim petition before the Court of learned Session Court, Tezu, which was registered as Misc. Case No.09/2021, however, the said maintenance case was transferred to the Court of learned Chief Judicial Magistrate, Roing for its trial and disposal.

4. The fact of the case is that, earlier the present petitioner got married with one Rajesh Rai, who was a Sepahi in Indian Army and out of their wedlock they have one boy child. However, the said first husband of the present petitioner died on 03.10.2014, and as such being the widow of Lt. Rajesh Rai the petitioner received all the service benefits of her deceased husband through the bank account maintain at State Bank of India, Tezu Branch. The petitioner after

a gap of two years got married with the present respondent, and their marriage was solemnized on 25.10.2016 in presence of the relatives of the petitioner. Thereafter, the petitioner along with her son moved to Namsai with her second husband and started to live happily as husband and wife. During their conjugal life, the petitioner gave birth to a female child on 28.05.2019

5. After the birth of their female child, the respondent changed his mind and behaviour towards the petitioner and thereafter, he started torturing her physically and mentally, whereas, the main cause of the same was that, when the petitioner asked the opposite party to get her name entered as his wife along with the said female child in his service record, the respondent became furious and assaulted her badly. Thus, the petitioner lodged an FIR at Banderdewa Police Station on 06.04.2021 against the respondent under Protection of Women from Domestic Violence Act, 2005. Subsequently, the respondent flew away without giving any information to the petitioner. The petitioner on the same day returned with her daughter at the official quarter provided by IRBN and remained in the quarter for 10 days and finding no alternative for such nowhere about the respondent, the petitioner returned back with her daughter at her parents' house at Tezu on 19.04.2021.

6. It is stated further that the respondent is permanently residing at 4th IRBN Police Training Centre, Papumpare District, Banderdewa and he is serving in the post of Head Constable-cum-Trainer, and presently he is drawing a salary of Rs. 58,000/ (Rupees fifty-eight thousand) only per month. Thereafter, finding no alternative the petitioner filed the maintenance case and also prayed for, to

provide interim maintenance allowance of Rs.7,000/- for herself and Rs.7,000/- for her daughter as per the provision of 125 Cr.P.C., during the pendency of this maintenance case and to continue the same till the final hearing and disposal of the same.

7. Upon receipt of the notice, the respondent appeared before the Court of learned Chief Judicial Magistrate, Roing and filed his written objection. The said Court after hearing the maintenance petition had directed to pay a sum of Rs.5,000/- (Rupees Five thousand) only as an interim maintenance for her female child, however, the prayer for interim maintenance of the present petitioner was rejected. Thereafter, the petitioner preferred the Criminal Revision petition before the Court of learned Sessions Judge, Tezu, which was registered as Criminal Revision No.5(LDV) of 2022 and the said Court after hearing both the parties passed the order on 14.09.2022 directing the learned Trial Court to consider the prayer of granting interim maintenance of the petitioner as expeditiously as possible in compliance to the guidelines issued by the Hon'ble Supreme Court in the case of ***Rajnesh (Supra)***.

8. Thereafter, the learned Chief Judicial Magistrate passed the order on 09.12.2022 by rejecting the prayer for interim maintenance of the present petitioner with an observation that the petitioner is getting an amount of Rs.16,000/-(Rupees Sixteen thousand) only per month as a pension along with interim maintenance of Rs.5,000/-(Rupees Five thousand) only for her daughter, which the learned Chief Judicial Magistrate has considered as substantial sum which should be sufficient for livelihood of the petitioner.

9. Thus, the learned Chief Judicial Magistrate has rejected the prayer for interim maintenance considering the income of the present petitioner, which she is receiving as pension of her earlier husband and also interim maintenance of Rs.5,000/-(Rupees Five thousand) only for her daughter maintenance. Thus, it is seen that she is getting an amount of Rs. 21,000/-(Rupees Twenty one thousand) only and it is sufficient for the petitioner to maintain herself and her children.

10. The learned counsel for the petitioner further submitted that the learned Chief Judicial Magistrate has not considered the fact that the respondent is earning a sum of Rs.58,000/-(Rupees fifty eight thousand) only and on the other hand it is difficult on the part of the petitioner to maintain herself and her son of first husband, who is studying in class-X. Hence, the pension amount is not at all sufficient to maintain both the children. Further, it is submitted that the learned Trial Court had completely overlooked the certain provision of law that the husband is duty bound to maintain his wife and as such the impugned order passed by the learned Chief Judicial Magistrate is liable to be set aside and quashed.

11. In this regard, Mr. W. Yirang, the learned counsel for the respondent has submitted that the petitioner is receiving a monthly pension benefit to the tune of Rs.26,175/- from her late husband regularly since 2014. It is also submitted that the respondent is getting the monthly salary of Rs.61,347/-, however, he has the responsibility of five dependents including his old aged mother aged 65 years old. Further, it is submitted that the learned Chief Judicial Magistrate had

rightly passed the order by rejecting the prayer for interim maintenance as the petitioner has sufficient income to maintain herself and her children.

12. In this context, the learned counsel for the petitioner has submitted that the husband is duty bound to maintain his wife irrespective of her own source of income. He also relies on the decision passed by the ***Hon'ble Delhi High Court in the case of Crl.Rev.P.162/2021 & Crl.M.As.5576/2021, 8691/2021***, wherein, enhancement of the interim maintenance is provided. Here in the instant case, it is seen that the present petitioner is receiving a reasonable amount of pension, i.e.Rs.26,175/- from her earlier husband, as per the bank statement which is annexed by the respondent and apart from that she is also provided with Rs.5,000/- for maintenance of her daughter from the respondent.

13. The case of maintenance is still pending before the Court of learned CJM and also it cannot be denied that the petitioner is receiving a reasonable amount of money from her pension as well as for maintenance of her daughter, which in my opinion is sufficient to maintain herself and her children till final disposal of the case.

14. So, from the entire discussions made above, I do not find that the learned Trial Court has committed any error or mistake while rejecting the prayer for interim maintenance. In the result, I find no merit in this petition and accordingly, the application under Section 482 of the Code of Criminal Procedure Code, 1973 against Order dated 09.12.2022, passed by the Court of learned Chief Judicial Magistrate, Tezu, Lohit District in Misc. Case No. 09/2021 stands

dismissed.

15. Parties shall bear their respective costs.

JUDGE

Comparing Assistant