

GAHC010023872023



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

Case No. : Crl.Pet./105/2023

RAHMAN AHMED @ ATABUR RAHMAN
S/O- LATE JAMAL UDDIN, R/O- VILL. AND P.O. MANIPUR PART-II, P.S.
LAKHIPUR, DIST. CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE P.P., ASSAM

2:MUSSTT. JULEKHA BEGUM
W/O- RAHMAN AHMED @ ATABUR RAHMAN
R/O- VILL. AND P.O. MANIPUR PART-II
P.S. LAKHIPUR
DIST. CACHAR
ASSA

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 24.02.2023

Heard Mr. L.R. Mazumder, learned counsel for the petitioner. Also
heard Mr. D.P. Goswami, learned APP appearing for the State.

2. By filing this criminal petition under section 482 Cr.P.C., the petitioner has prayed for quashing of the order dated 17.01.2023, passed by the learned Judicial Magistrate First Class, Lakhipur, Cachar in Misc. (DV) Case No. 25/2021.

3. By the said order, the learned trial Court had issued a direction upon the Commandant, 9th NAP Bn.(R), Nagaland Police to deduct the interim maintenance amount of Rs.10,000/- (Rupees ten thousand only) per month from the account of the petitioner and to transfer the same to the account of the aggrieved, the estranged wife of the petitioner. The said order was passed as the petitioner was not regularly depositing the maintenance amount.

4. The learned counsel for the petitioner has submitted that in the meanwhile, the petitioner has again married and therefore, his expenses have increased, for which he has not been able to make payment of the interim maintenance amount.

5. The learned APP has made his submission in this regard.

6. It is noted that before the learned trial Court, the respondent no.2, who was the aggrieved party, had filed an application for certain reliefs and the learned trial Court has passed the following order dated 28.03.2022:

“Aggrieved is present.

Respondent Rahman Ahmed @ Atabur Rahman is also present and submitted W/S.

DIR is received.

The aggrieved along with the counsel prays for allowing interim maintenance from the respondent.

Heard the aggrieved and the counsel.

Also heard the respondent who verbally submits that he is willing to give interim maintenance to his wife and the children. He is willingly ready to give an amount of Rs.10,000/- (ten thousand) p.m. to the aggrieved for interim maintenance to the aggrieved and his children.

Since the respondent is ready to give an amount of Rs.10,000/- (ten thousand) p.m. as interim maintenance, so the prayer of the aggrieved for interim maintenance is allowed.

Fixing 27.04.2022 for payment/evidence/assets and liabilities of respondent."

7. Considering the above, there appears to be no doubt that the petitioner had willingly agreed and/or offered to pay the interim maintenance amount of Rs.10,000/- (Rupees ten thousand only) per month. The said order dated 28.03.2022 has attained finality.

8. There is no positive statement in this application that after passing of the order dated 28.03.2022, the petitioner has dutifully deposited Rs.10,000/- (Rupees ten thousand only) per month without fail. As per the documents at Annexure-4 series, it appears from the order-sheet that the maintenance was paid from 27.04.2022 to 01.12.2022, but there is no record of payment made in the month of May and June, 2022 and moreover, there is nothing on record to show that the payment was made in the month of January, 2023 and February, 2023.

9. Under such circumstances, when the petitioner has given his consent to make payment of interim maintenance and the order dated 28.03.2022, passed by the learned trial Court had attained finality, this petition to assail the subsequent order dated 17.01.2023 is nothing but an abuse of the process of the Court.

10. The projection of the petitioner is that he had entered into a fresh marriage. In that regard there is no statement made in this criminal petition that the previous marriage of the petitioner with the respondent no.2 has been dissolved with a decree of divorce or that he had taken due permission from the authorities concerned to enter into a subsequent marriage, it can only be presumed that the petitioner, being a Govt. servant, had entered into second marriage at his own risk.

11. Therefore, the Court does not find any merit in this criminal petition and the same is dismissed without issuing notice to the respondent no.2.

12. Registry shall transmit a copy of this order to the Court of learned Judicial Magistrate First Class, Lakhipur, Cachar to make it a part of record of Misc. (DV) Case No. 25/2021.

JUDGE

Comparing Assistant