

GAHC010028432023



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

Case No. : Crl.Rev.P./67/2023

HOBIBUR RAHMAN
S/O AMIR ALI
VILL- NO. 2 BHELKAR, P.O. BHELKOR BAZAR, P.S. HAJO, DIST. KAMRUP,
ASSAM

VERSUS

RABIA KHATUN
W/O HOBIBUR RAHMAN
R/O VILL- NO. 2 BHELKAR
P.O. BHELKAR BAZAR
P.S. HAJO
DIST. KAMRUP, ASSAM
PIN-781102

Advocate for the Petitioner : MR. B U LASKAR

Advocate for the Respondent : MR. H DAS

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 18.09.2023

Heard Mr. B.U. Laskar, learned counsel appearing for the petitioner. Also heard Mr. B. Sarma, learned counsel for the respondent.

This application under Sections 397/401 read with Section 482 of the Cr.P.C. 1973 has been filed

against the order dated 19.11.2016 passed by the Principal Judge, Family Court-II, Kamrup (M), Guwahati in Misc. Case No. 634/14, whereby enhanced the award of maintenance under Section 127 Cr.P.C. in F.C.(Crl.) case No. 380/2010.

It is submitted by the learned counsel for the petitioner that earlier on 26.08.2011 an ex-parte order was passed against the present petitioner asking the present petitioner to pay an amount of 1000/- to the respondent and Rs. 500/- each per month to the 3 minor children. As per the said ex-parte order the maintenance amount of Rs. 2,500/- was paid to the respondent. But, again the respondent filed another petition for enhancement of the amount of maintenance. The petitioner had appeared before the Court and filed written statement. The learned Court below did not consider the written statement and passed the order dated 19.11.2016 enhancing the earlier maintenance amount and directed to pay Rs. 3,600/- per month towards the maintenance of the respondent and her 3 minor children. It was submitted that in the year 2011 the respondent had driven out the petitioner from his house and she had also occupied the shop house. Presently, the respondent is running her shop and she has the capability to maintain herself and her 3 children. But, the learned Court below without considering these facts, arbitrarily passed the order dated 19.11.2016 asking the petitioner to enhance the amount of maintenance to Rs. 3,600/- per month. The petitioner is not in a position to pay the amount of maintenance in enhance rate and the respondent is earning more than the petitioner which is sufficient to maintain herself and her 3 minor children.

It is further submitted that the petitioner had also lodged an FIR in the Hajo P.S. with the allegation that the respondent evicted him from his house and made an attempt to kill him which is accordingly registered as Hajo P.S. Case No. 15/2023 under Section 294/506 of the IPC. The FIR was lodged on 06.01.2023 with the above referred allegation. In this context, he also annexed a certificate issue by the Gaonburah wherein it is stated that respondent has occupied the residential property along with shop house. Accordingly, it is submitted that the order for enhancement may be set aside and quashed but the petitioner is ready to pay the amount of Rs. 2,500/- which was earlier granted by the learned Court below.

In this context, Mr. B. Sarma, learned counsel for the respondent submitted that the learned Principal Judge, Family Court No. 2, Kamrup (M) has rightly passed the order of enhancement directing the petitioner to pay maintenance amount of Rs. 3,600/- for the maintenance of the respondent and her 3 minor children. It is submitted that the petitioner did not challenge the ex-parte order passed by the learned Court on 26.08.2011 and was paying the maintenance allowance. However, from 19.11.2016 the petitioner stopped payment of maintenance and since then he has not paid even a single penny for which the learned Principal Judge, Family Court issued N.B.W.A. against him. Further it is submitted that he did not produce any document before the learned Court below or before this Court to substantiate his allegation that he has been dispossessed from his land and property.

However, considering the price hike of essential commodities the learned Principal Judge enhanced the amount of maintenance from Rs. 2,500/- to Rs. 3,600/- which is very reasonable amount and interference in this case is not necessary. Further, it is submitted that the FIR has been lodged in the year 2023 though it has alleged that he was dispossessed from his landed property in the year 2011. It is also submitted that the respondent is running a shop and the income of which is not at all sufficient to maintain herself and her 3 minor children. After issuance of the NBWA the present petitioner has come up with a petition for setting aside and quashing of the order of enhancement and accordingly the same is liable to be dismissed..

After considering the submission of the learned counsel for the parties, I have perused the case record and the orders passed by the learned Court below. It is seen that in the 2011 the order of maintenance was passed ex-parte but the same has not been challenged by the petitioner and he was paying the

maintenance but after the order of enhancement he stopped payment of maintenance and since 2016 he avoided to pay maintenance and in the year 2023 only he came up with the present revision petition against the order of enhancement. From the FIR filed by the petitioner it also reveals that he got married with another lady and he is maintaining her. However, the present respondent has 3 minor children and hence she may not be in a position to maintain herself along with her 3 minor children with the meagre amount of Rs. 2,500/- and the order of enhancement passed by the learned Court below is found reasonable considering the price hike of essential commodities.

Accordingly, I do not find any plausible reason to interfere with the order of enhancement passed by the learned Principal Judge, Family Court-II, Kamrup (M), Guwahati in Misc. Case No. 634/2014.

With the above observation, the revision petition is dismissed.

JUDGE

Comparing Assistant