

GAHC010031222022



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

**Case No. : Crl.Rev.P./68/2022**

MUSTAK AHMED  
S/O LATE ALI AHMED  
R/O ZOO NARENGI ROAD,  
P.S. GITANAGAR, GUWAHATI-781024  
DIST. KAMRUP (M), ASSAM

VERSUS

SAKILA BANU  
W/O MD. MUSTAK AHMED  
D/O LATE MD. ISMAIL  
R/O H. NO. 13, BYE LANE -7, DR ZAKIR HUSSAIN PATH  
P.O. AND P.S. DISPUR, GUWAHATI-781006,  
DIST. KAMRUP (M), ASSAM

**Advocate for the Petitioner : MR. U J SAIKIA**

**Advocate for the Respondent : MR. N J KHATANIAR**

**BEFORE**  
**HONOURABLE MRS. JUSTICE MALASRI NANDI**

**JUDGEMENT AND ORDER(CAV)**

**Date : 23-06-2023**

Heard Mr. U.J. Saikia, learned counsel for the petitioner. Also heard Mr. N.J. Khataniar, learned counsel for the respondent.

2. The petitioner being the husband of the respondent/wife filed an application under Section 401 Cr.P.C. against the judgment and order dated 07.05.2021 passed by the learned Principal Judge, Family Court II, Kamrup(M) in F.C.(Crl.) Case No. 377/2016 granting maintenance of Rs.7,000/- per month to the respondent/wife and for her child.

3. The respondent/wife filed an application under Section 125 Cr.P.C. before the Family Court praying for granting maintenance for her and her minor child on the ground that she was unable to maintain herself. In the said petition, the respondent/wife contended that she got married to the petitioner and after their marriage, they lived together as husband and wife and out of their wedlock, a male child was born. It was alleged by the respondent/wife that the petitioner and his sister demanded money from the respondent/wife amounting to Rs.4 lakh to set up a new business for the petitioner and when the respondent/wife expressed her inability to fulfill the demand, the petitioner and his family members assaulted her and drove her out from her matrimonial home along with her son. Subsequently, though the respondent/wife was taken back in her matrimonial home but ultimately she was compelled to leave the house of her husband i.e. the petitioner and a case was registered before the All Women Police Station against her husband i.e. the petitioner under Section 498A/506 IPC.

4. Before the Family Court, the petitioner has submitted his written statement wherein he alleged that the petition for maintenance is not maintainable both in law and fact and is liable to be dismissed since

the respondent has deserted the petitioner. According to the petitioner, he is an ailing person and his only source of income is his rented house from which he used to earn Rs. 8,000/- per month. It is alleged that the respondent has caused various mental torture towards him and his family members and left his house with all his belongings and was not willing to come back. It is also stated in the written statement that from the rented rooms of the residential building, he and his brother used to get Rs.25,000/- per month and the same is divided amongst them and the petitioner only gets Rs.8,000/- per month. Under such circumstances, the petitioner is not in a position to pay Rs.7,000/- to the respondent for her maintenance and her minor son.

5. It has been submitted by the learned counsel for the petitioner that the impugned order granting maintenance has been passed without being any material on record to show the paying capacity of the petitioner. Therefore, the same is perverse.

6. It is further submitted that the order for granting maintenance has been without there being any specific statement of the claimant regarding the source of income of the petitioner. The learned Family Court illegally directed to pay Rs.7,000/- to the respondent/wife and her child without coming to a finding in respect of his income and the order was passed purely on surmises and conjectures. Therefore, the same is illegal.

7. It is also the submissions of the learned counsel for the petitioner that the granting maintenance to the extent of Rs.7,000/- per month against the petitioner whose only source of income is his rented rooms

is highly disproportionate and as such, the order passed by the learned Family Court is bad in law and liable to be set aside.

8. On the other hand, the learned counsel for the respondent/wife has argued that the brother of the petitioner who was examined before the learned trial court as D.W.2 has admitted that the building is a commercial complex building and they have 16(sixteen) commercial shops in their building. Under such circumstances, it cannot be said that only income of the petitioner and his brother are Rs.25,000/- in a month and he gets Rs.8,000/- as his share.

9. I have considered the submissions made by the learned counsel for the parties and also perused the scanned copy of the record.

10. Under Section 125 Cr.P.C., the husband is bound to pay the maintenance to his wife and her children if she is unable to maintain herself. The objective of granting maintenance is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meager that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

11. For determining the quantum of maintenance, Hon'ble Supreme Court has framed the following guidelines in the case of ***Rajnish vs. Neha*** reported in ***2020 SCC Online SC 903***.

(i) The status of the parties, reasonable needs to the wife and dependant children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income. Whether the income is sufficient to enable her to maintain the same standard of living as well as the spiraling inflation rates and high costs of living.

(ii) On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance.

(iii) In case where the wife is working, it cannot operate as a bar from being awarded maintenance by the husband. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income an adverse inference may be drawn by the court.

(iv) The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of

children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support.

12. The aforesaid factors are however not exhaustive and the concerned court may exercise its discretion to consider any other factor which may be necessary or of relevance in the facts and circumstances of a case.

13. In the instant case, the learned trial court has considered the evidence of the witnesses fixing the quantum of maintenance in the case. The learned Family Court did not believe that the petitioner gets his share of Rs.8,000/- in a month as because during his cross-examination, the petitioner as D.W.2 admitted that the share of his two sisters which were in the second floor were sold by them. That being the position, the observation of the Family Court is that the statement made by D.W. 1 in his examination-in-chief that he gets his share Rs.8,000/- per month from Rs.25,000/- as rent of the building which claimed to be shared between their five siblings is found to be not true as because his two sisters have already sold their shares. Again D.W.2, the brother of the opposite party, during his cross-examination also admitted that the building is commercial building and they have 16(sixteen) shops and 3(three) offices in their commercial complex and accordingly, the learned Family Court has fixed the quantum of maintenance as Rs.7,000/- per month for the petitioner and her child.

14. In the case of ***Dukhtar Jahan v. Mohd. Farooq***, reported in

**(1987) vol. 1 SCC 624**, it was held that “*proceedings under Section 125 Cr.P.C., it must be remembered are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.*”

15. In another case **Vimala(K.) v. Veeraswamy (K.)**, reported in **1991 vol. 2 SCC 375**, while discussing about the basic purpose under Section 125 of the Code, it was observed that “*Section 125 Cr.P.C. is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.*”

16. In the case of **Kirtikant D. Vadodaria v. State of Gujarat**, reported in **(1996) vol. 4 SCC 479**, the Hon’ble Supreme Court while adverting to the dominant purpose behind Section 125 of the Code, ruled that:-

*“While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and inform parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind*

*the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”*

17. In the case of **Nagendrappa Natikar v. Neelamma**, reported in **(2014) vol.14 SCC 452**, it has been stated that *it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children.*

18. In the case in hand, admittedly, the respondent/wife has no source of income, she used to stay in the house of her parents. The petitioner has neither has taken care of his wife i.e. respondent and his son nor taken any information about them. The petitioner also admitted in his evidence that since his wife left his home, he did not enquire about her or her son and not provided any maintenance to them. Though, it has been submitted by the learned counsel for the petitioner that except Rs.8,000/-, the petitioner has no other source of income but this Court is neither impressed nor is ready to accept such submissions as it appears from the evidence of D.W.1 and D.W.2 that they have a commercial building complex which consists of 16(sixteen) commercial shops and the building is located in Zoo Narengi Road, Guwahati. It has not come out from the evidence of witnesses that the petitioner is an ailing person having some diseases and is not in a position to earn anything. As such, the petitioner being an able bodied person, he is obliged to earn by legitimate means and maintain his wife and minor child.

19. Having regard to the evidence of the respondent/wife and other witnesses before the Family Court, this Court has no hesitation in holding that though the petitioner has sufficient source of income and is able bodied, has failed and neglected to maintain the respondent/wife and her child.

20. Considering the totality of facts and circumstances, this Court does not find any infirmity in the order dated 07.05.2021 passed by the learned Family Court in F.C.(Crl.) Case No. 377/2016 by fixing maintenance of Rs.7,000/- per month to the respondent/wife and her minor son.

21 . In view of above, the revision petition stands dismissed and disposed of accordingly.

**JUDGE**

**Comparing Assistant**