

GAHC010071312023



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

Case No. : Crl.Pet./318/2023

RUBY BEGUM @ RUBY RAFIQUE AND ANR. .
W/O- MR. SHAHEEL RAFIQUE, R/O- GD, BLOCK A, BRINDABAN
APARTMENT GANESH MANDIR PATH, BYE LANE 6, NEW GUWAHATI
TINIALI, NOONMATI, PIN- 781020, PH- 8638670793

2: ALMA SHAHEEL
D/O- MR. SHAHEEL RAFIQUE
D/O- SHRI ABBAS ALI
R/O- GD
BLOCK A
BRINDABAN APARTMENT GANESH MANDIR PATH
BYE LANE 6
NEW GUWAHATI TINIALI
NOONMATI
PIN- 78102

VERSUS

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

2:RAFIQUE SHAHEEL
S/O- LATE MOBINAUT DOWLAH PERMANENT ADDRESS- C/O- NAZIA
RAFIQUE R/O- MOTIRAM BORAH ROAD (HOSPITAL ROAD)
RAFIQUE MANZIL
SADAR
NAGAON
ASSAM
PH- 03672-235668
9101097531 PRESENT ADDRESS- RAFIQUE SHAHEEL
LILANGA STREET
MOUNTAIN VIEW

MBABANE
H100
SWAZILAND
SOUTH AFRICA
PH- 002687112237
P.S. MBABAN

Advocate for the Petitioner : MR. A K BHUYAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 26.05.2023

Heard Ms. B. Bora, learned counsel for the petitioners. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor appearing for the State/respondent No.1. None appears for the respondent No.2.

2. The petitioners have preferred an application under Section 482 Cr.P.C. for quashing of the order dated 27.01.2023 passed by the Principal Judge, Family Court No. 1, Kamrup(M), Guwahati in connection with F.C.(Crl.) Case No. 48/2019, whereby the respondent No.2 was directed to pay interim maintenance of Rs.35,000/- per month from the date of the order i.e. 27.01.2023.

3. The case of the petitioners is that the petitioners lodged a case bearing F.C.(Crl.)Case No. 48/2019 under Section 125 Cr.P.C. before the Family Court No.1, Kamrup(M), Guwahati and accordingly notice was issued to the respondents and received accordingly. In

spite of receipt of notice, the respondent No.2 did not appear before the Family Court No.1, Kamrup(M) and the case was proceeded ex-parte against him. The Family Court No.1 recorded the ex-parte evidence of the petitioners and other witnesses and after hearing the argument, the learned trial court was pleased to pass the final order dated 06.09.2021 directing the respondent No.2 to pay Rs.60,000/- per month to the petitioner No.1 as maintenance allowance from the date of filing of the petition i.e. on 28.01.2019.

4. On receipt of the court's ex-parte order, the respondent No.2 approached before the Family Court for vacating the ex-parte maintenance order and after hearing both sides, the ex-parte order was vacated with a cost of Rs.7,000/- and subsequently, the date was fixed for payment of cost and written statement.

5. The petitioners placed the matter for granting interim maintenance as they have no source of income and they were in financial hardship. Accordingly, on hearing the parties, the Family Court has allowed interim maintenance to the peititoner No.1 as aforesaid.

6. Being aggrieved and dissatisfied with the order dated 27.01.2023 passed in connection with interim maintenance, the petitioners have preferred this revision petition.

7. The learned counsel for the petitioners has submitted that the learned Family Court erred in law as well as on facts in passing the impugned order dated 27.01.2023 by directing interim maintenance from the date of the order. According to the petitioners, the impugned

order dated 27.01.2023 was passed in violation of the Hon'ble Apex Court judgment reported in 2021 vol.2 SCC 324 (Rajnish v. Neha & Anr.)

8. It is also submitted by the learned counsel for the petitioners that the case was filed in the year 2019 and after passing ex-parte order same has been vacated in the year 2022 and till date no interim maintenance has been paid to the petitioners by the respondent No.2 knowing fully well that they have no source of income and as such, allowing the maintenance from the date of order itself violates the fundamental right of the petitioners and as such, the impugned order dated 27.01.2023 is bad in law and liable to be set aside.

9. I have considered the submissions made by the learned counsel for the petitioner. I have also perused the judgment of the Hon'ble Apex Court cited by the learned counsel for the petitioners.

10. Section 125(2) Cr.P.C. says that-

“Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.”

11. On a cited decision rendered by the learned counsel for the petitioners, it reveals that the Hon'ble Supreme Court has discussed decisions of various High Courts and finally has given the criteria for

determining the date from which the maintenance would be considered. It was observed that the maintenance in all cases will be awarded from the date of filing of the application for maintenance.

12. It appears from the record that the case is pending in the Family Court since 2019. The respondent No. 2 has not paid any maintenance towards the petitioners since the day of filing of the case. It also appears that the petitioners have no source of income. It is seen that the interim maintenance was granted to the petitioners from the date of the order i.e. 27.01.2023 and it was directed to pay the interim maintenance in every month within first week of succeeding month to the petitioner No.1 from the date of the order till final disposal of the case.

13. As per the judgment of *Rajnesh v. Neha*(supra), the maintenance in all cases will be awarded from the date of filing of the application for maintenance. Here, in this case, interim maintenance was granted to the petitioner and the case is not finally disposed of.

14. An order of interim maintenance passed under Section 125 Cr.P.C. by any Family Court or Magistrate, during the pendency of the proceeding, remains effective up to the final order only and does not decide the rights and liabilities of the parties in finality.

15. Under such backdrop, I am of the view that there is no such infirmity in passing the order. However, the learned Family Court No.1, Kamrup(M), Guwahati will consider the matter when the case would be finally disposed of by following the guidelines determined by the

Hon'ble Supreme Court in the case of Rajnesh vs. Neha(supra).

16. In the result, the present petition is dismissed and disposed of at the admission stage.

JUDGE

Comparing Assistant