

GAHC010077932023



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

Case No. : Crl.Rev.P./148/2023

YAKUB ALI
S/O MARHUM MUJIB ALI
R/O DIGHALI PAM,
P.O. BAGHURI, P.S. DERGAON
DIST. GOLAGHAT, ASSAM

VERSUS

RABIA BEGUM
W/O YAKUB ALI
R/O VILL- HABIGAON
PAKIMURI, P.S. PULIBOR, DIST.JORHAT, ASSAM

Advocate for the Petitioner : MR. I C DEKA

Advocate for the Respondent : MR S AHMED

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 27-07-2023

1. Heard Mr. I.C. Deka, learned counsel for the petitioner and Mr. M.R. Sodial, learned counsel for the sole respondent.

2. The petitioner has filed this criminal revision petition under Section 397, 401 read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short) and Article 227 of the Constitution of India. The final order dated 28.02.2023 passed in Misc. Case No. 50/2020 u/s 125 of the Cr.PC by the Judicial Magistrate, 1st Class at Jorhat has been challenged by the petitioner. The petitioner was directed to pay Rs. 7,000/- per month as monthly maintenance to the respondent from the date of filing of petition.

3. The genesis of the case was that the petitioner's marriage was solemnised with the respondent on 16.10.2019 as per '*Shariat*' by executing a *Kabilnama*. Seven days after their marriage, the petitioner sold the ring given to the respondent on her marriage to repay a loan of Rs. 6 lacs. After four days the petitioner also pressurised the respondent to sell her jewellery which she brought as *Mohrana* and when the respondent refused to sell her jewellery, the petitioner subjected her to cruelty and demanded dowry from her parental home. The respondent's father was unable to provide dowry as he was 62 years old with a very meagre income. Due to the intensive cruelty extended to the respondent by the petitioner, the respondent took ill and her father had to take her back to her parental home on 24.11.2019. However, as the petitioner assured that he would never torture the respondent, she returned to her matrimonial home but the petitioner continued to torture the respondent, at the behest of his brother, sister-in-law, brother-in-law and elder sister. When the respondent was unable to endure the cruelty meted out to her, she had to take shelter in her parental home. On 15.02.2020 she left for her parental home and she took ill and she was admitted in nursing home on 16.02.2020. Since then, the respondent has been staying in her parental home and the petitioner has neglected to maintain his wife.

4. It is submitted on behalf of the petitioner that a criminal case was initiated against the petitioner in connection with the criminal case registered as PRC Case No. 544/2020 u/s 498 A IPC. The prosecution could not prove that the petitioner had taken treatment because no medical documents were proved in connection with the criminal case. The petitioner was acquitted from the charges u/s 498 A IPC and set at liberty. It is also submitted that the respondent was ailing before her marriage and she deserted her husband and she does not deserve maintenance from her husband i.e. the petitioner. It is also contended that the trial Court failed to appreciate the evidence in its proper perspective. The petitioner's case was not taken into consideration by the trial Court who proceeded to pass the order impugned by the petitioner.

5. It is submitted on behalf of the respondent that the outcome of the criminal case will have no bearing on the present petition.

6. The respondent has also relied on the decision of the Hon'ble Supreme Court in *Anju Kumar Garg v. Deepak Kumar Garg* in connection with Criminal Petition No. 1693 of 2022 wherein it has been observed that:-

“13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child. Having regard to the evidence of the appellant-wife before the Family Court, and having regard to the other evidence on record, the Court has no hesitation in holding that though the respondent had sufficient source of income and was able-bodied, had failed and neglected to maintain the appellants. Considering the totality of facts and circumstances, we deem it proper to grant maintenance allowance of Rs.10,000/- per month to the appellant-wife, over and above the maintenance allowance of Rs. 6,000/- granted by the Family Court to the appellant no. 2-son.

14) It is accordingly directed that the respondent shall pay maintenance amount of Rs. 10,000/- per month to the appellant-wife from the date of filing of her Maintenance Petition before the Family Court. The entire amount of arrears

shall be deposited by the respondent in the Family Court within eight weeks from today, after adjusting the amount, if any, already paid or deposited by him."

7. In the instant case, the evidence of the respondent as PW-1 substantiates her pleadings. The petitioner as DW-1 has stated that his wife has levelled false allegations against him. His wife i.e. the respondent always insisted that they should live with her parents in her parental home. He has denied that he sold the respondent's jewellery. The respondent who was suffering from ailment used to fall sick frequently and she had to be admitted in the hospital. Whenever she was released from the hospital, she used to go to her parental home. So, on 07.06.2020, he along with some villagers of their village went to his in-law's house to bring back his wife but a criminal case was falsely lodged against him as he refused to live according to the respondent's wish with her parents. The evidence of DW-2 Maqbul Hussain also supports the evidence of DW-1 that the respondent was ailing and she used to be hospitalised frequently. When she took ill in the month of January, 2020, her husband (petitioner) took her to her parental house and since then she has been staying in her parental home.

8. It was held by the learned trial Court that the evidence has disclosed that the respondent is unemployed and is unable to maintain herself and she was neglected by the petitioner who neglected to maintain her. It was held by the trial Court that the evidence reveals that the respondent has sufficient reason to live separately from the petitioner as she was treated with cruelty. The trial Court has appropriately assessed the quantum of maintenance that could be paid from the petitioner's salary to the respondent. I record my concurrence to the findings of the learned trial Court. The learned trial Court has spelt out sound reasonings while deciding the case. It is held that the petitioner has failed to rebut the respondent's evidence or complaint petition.

- 9.** It is submitted on behalf of the respondent that the petitioner being a primary school teacher has a monthly income of Rs. 40,000/- and above according to the ROP of 2017.
- 10.** The judgment and order passed by the learned trial Court directing the petitioner to pay Rs. 7,000/- per month to the respondent is upheld. However, considering the submissions at the bar and as agreed to by both the parties, the petitioner is allowed to pay the arrear accrued in instalments and the petitioner is directed to complete payment of the arrear within 1 (one) year.
- 11.** Accordingly, the revision petition is dismissed.
- 12.** No order as to costs.

JUDGE

Comparing Assistant