

GAHC010082482023



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

Case No. : Crl.Rev.P./157/2023

ALEKH BORAH
S/O LATE BRAJANATH BORAH
R/O VILL- DIHING SATRA, P.O. AMINGAON, P.S. NORTH GUWAHATI, DIST.
KAMRUP, ASSAM, PIN-781031

VERSUS

SUNUMA BORAH
W/O SRI ALEKH BORAH
D/O LATE BHARAT KALITA
R/O BAZARAPARA (NABAPUR),
MANPUR, P.O. AND P.S. PALASHBARI,
DIST. KAMRUP, ASSAM
PIN-781125

Advocate for the Petitioner : MISS. A BARUAH

Advocate for the Respondent : MS C MEDHI

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER (ORAL)

18.07.2023

Heard Ms. A. Baruah, learned counsel for the petitioner. However, the learned counsel representing the sole respondent remain absent on call.

2. This is an application under Section 397/401 of the Code of Criminal Procedure, 1973, *read with* Section 19 of the Family Courts Act, 1984, for quashing and setting aside the order dated 20.01.2023, passed by the learned Principal Judge, Family Court No. III, Kamrup (Metro), Guwahati, in F.C. (Crl.) Case No. 383/2021.

3. It is stated that the marriage between the parties were solemnized on 10.02.2016 according to Hindu Rites and Rituals and after marriage, they resided as husband and wife in the residence of the petitioner till the date of their separation, i.e. 14.06.2021. In the month of June, 2016, at about 5.30 p.m., the respondent went to her parental home without informing the petitioner or anyone of his family member. However, after 15 (fifteen) days, the petitioner consoled her and requested her to continue their married life with him on mutual understanding and thereafter they even started taking treatment under a Gynecologist. But the respondent always misbehaved with him and his family members and even with his old aged mother who is of 77 years, but the petitioner tolerated all these tortures only to save his married life. In the month

of November, 2020, the petitioner took the respondent for treatment at Swasti Hospital, Rangiya under the Gynecologists Dr. Diganta Deka and he asked the petitioner and the respondent to go to Pratiksha Hospital for IVF treatment and also prescribed some medicine. But the respondent continued her treatment under one "bej" namely Smt. Banamali Nath and hence had a miscarriage and failed the IVF treatment.

4. Thereafter, the respondent went to her parental home on 14.06.2021 without consent of the petitioner and his family members and also refused to talk with the petitioner even over mobile phone. After leaving the house of the petitioner, the respondent lodged one F.I.R. before the North Guwahati Police Station, which is registered under Section 498 (A) of the Indian Penal Code, and thereafter the respondent also filed an application under Section 125 Cr.P.C. seeking maintenance before the Principal Judge, Family Court-III, Kamrup (Metro) Guwahati, which is registered as F.C. (Crl.) Case No. 383/2021. The petitioner, accordingly, appeared before the Family Court and also filed his written objection/written statement. After filing of the written statement/objection, the learned Principal Judge passed an interim order of maintenance on 20.01.2023 directing the present petitioner to pay Rs. 5,000/- (Rupees five thousand) only per month towards interim maintenance till final disposal of the case from the date of order. In the written statement/ objection, the petitioner stated *inter alia* that the respondent is not entitled for any maintenance as she herself left her matrimonial house and she was also caught red-handed while she was having vulgar conversation with other male persons. More so, it is stated that the petitioner works as a Manager at "PRISH" Food Restaurant situated at Ambari, Guwahati, which is owned by his brother and

earns approximately Rs. 10,000/- per month. The petitioner also stated that he has the responsibility of his old ailing mother of 77 years of age who is also a cancer patient and the other 2 (two) brothers of the petitioner are also not in a position to take the responsibility of his mother. The petitioner also filed the affidavit of assets and liabilities before the learned Principal Judge, Family Court-III, Kamrup (Metro), Guwahati, and furnished the bank statement along with medical prescription of his mother who is undergoing treatment. But, without considering those grounds and the liabilities of the petitioner, via-a-viz the income of the petitioner, the learned Principal Judge, Family Court-III, Kamrup (Metro), Guwahati, directed the present petitioner to pay an amount of Rs. 5,000/- per month towards interim maintenance vide order dated 20.01.2023 and hence, the present petition is filed by the petitioner praying for setting aside and quashing the impugned order dated 20.01.2023, passed by the learned Principal Judge, Family Court-III, Kamrup (Metro), Guwahati.

5. It is submitted by the learned counsel for the petitioner, Ms. A. Baruah, that the affidavit of assets and liabilities was filed by the petitioner prior to the order passed by the learned Principal Judge and without considering his liabilities, viz-a-viz the income, the learned Principal Judge passed the order arbitrarily directing the present petitioner to pay Rs. 5,000/- per month towards interim maintenance till disposal of the case. The petitioner also annexed the affidavit on assets and liabilities as well as the objection filed by him along with some medical documents to substantiate the plea that his mother is a cancer patient who is presently undergoing treatment. And, accordingly, it is submitted that the petitioner is not in a position to pay the interim maintenance @ Rs. 5,000/- per month as his total monthly income is only Rs. 10,000/- per month

and a good amount of money has to be spent towards the treatment of his mother.

6. After considering the submissions made by the learned counsel for the petitioner, I have perused the case record and the order passed by the learned Principal Judge, Family Court-III, Kamrup (Metro), Guwahati, dated 20.01.2023, whereby, the petitioner was directed to pay Rs. 5,000/- per month towards interim maintenance.

7. It is seen that the learned Principal Judge had observed that the marriage is not disputed and in the same time, the petitioner is also working as a Manager in a Food Restaurant. The respondent claimed Rs. 30,000/- per month towards interim maintenance till disposal of this case stating that the financial condition of the petitioner is good. It is also stated that the respondent is staying separately from her husband and facing financial problem to maintain herself, whereas, the petitioner has sufficient income and has the ability to pay the interim maintenance.

8. It is a fact that the marriage is not disputed and the petitioner also cannot waive his liability to pay maintenance as it is also admitted fact that the respondent is unemployed and she has to depend on her parents for her maintenance. But, in the same time, it is seen from the assets and liabilities submitted by the petitioner that apart from his own expenses, he has to bear the cost of the treatment of his mother who is a cancer patient and to substantiate the said plea, the petitioner also submitted some documents that his mother is undergoing treatment as cancer patient. But it also cannot be

denied that the petitioner is not the only son and he has other 2 (two) brothers who are also independent and hence, considering the said fact, it cannot be accepted that the petitioner is the one who has to bear the entire expenses incurred towards the treatment of his mother. Further it is seen that the respondent claimed in her assets and liabilities that the petitioner is a businessman by profession and has sufficient landed property at North Guwahati, Amingaon, and also has a Canteen at IIT Campus, Guwahati, along with other Restaurant, namely, "Pirish" Restaurant near Rabindra Bhawan, Guwahati. Accordingly, she claimed that the monthly income of the petitioner is around Rs. 80,000/- per month and has the ability to pay the interim maintenance @ Rs. 30,000/- per month.

9. However, the learned Principal Judge, Family Court-III, Kamrup (Metro), Guwahati, after considering the entire submissions made by the learned counsel for the parties and also considering the affidavit submitted by both the parties regarding the assets and liabilities, passed the order directing the petitioner to pay Rs. 5,000/- per month towards the interim maintenance and hence, I find that no illegality has been committed by the learned Principal Judge, Family Court-III, Kamrup (Metro), Guwahati, while assessing the interim maintenance. However, considering the submission made by the learned counsel for the petitioner and other aspects of the matter as well as the expenses incurred towards the treatment of his mother, who is a cancer patient, I find that Rs. 4,000/- per month will be just and reasonable amount towards the interim maintenance for the respondent.

10. In view of above, it felt that slight modification is required in the order

dated 20.01.2023, passed by the learned Principal Judge, Family Court-III, Kamrup (Metro), Guwahati, and accordingly, the interim maintenance amount is slightly modified and the petitioner is directed to pay Rs. 4,000/- per month towards interim maintenance till final disposal of the case with effect from the date of order, i.e. 20.01.2023.

11. In terms of above, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant