

GAHC010100742023



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

Case No. : Crl.Rev.P./188/2023

SHAFIUZZAMAN
S/O VILL- AND P.O. KALGACHIA
P.S. KALGACHIA
DIST. BARPETA, ASSAM
PIN- 781319

VERSUS

RESMA PARBIN
D/O FAIJUR RAHMA
R/O VILL AND P.O. KUJARPITH P.S. HOWLY, DIST. BARPETA, ASSAM
PIN-781316

Advocates for the petitioner : Mr. R. Ali, Id. Adv.

Advocates for the respondent : Mr. J. Ali, Id. Adv.

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

Date of hearing : 01.09.2023

Date of Judgment & Order : 29.09.2023

JUDGMENT & ORDER (CAV)

Heard Mr. R. Ali, learned counsel for the petitioner. Also heard Mr. J. Ali, learned counsel for the respondent.

2. This is an application filed under Section 397/401 read with Section 482 of the Code of Criminal Procedure Code, 1973 challenging the Judgment and Order dated 10.04.2023 passed by the learned Principal Judge, Barpeta in F.C. (Crl.) Case No.250/2022 directing the petitioner to pay an amount of Rs.5,000/- (Rupees Five thousand) only per month to the respondent towards the monthly maintenance.

3. The brief facts of the case is that the respondent as a first party filed an application under Section 125 of Cr.P.C. before the learned Family Court, Barpeta alleging *inter alia* that the respondent entered into marriage with the petitioner on 06.08.2017 according to Muslim Sariyat by executing Kabin-Nama. But, after six months of their marriage, the petitioner started torturing her mentally and physically and also demanded an amount of Rs.3 Lakhs along with some wooden furniture. Finally, on 02.02.2021 the present respondent was driven out of her matrimonial house and thereafter, she took shelter in her parental house. It is further alleged that since the day she left her matrimonial house, the petitioner has not provided her maintenance in spite of the fact that she has no source of income and at present she is totally dependent upon her father.

4. On the other hand, the petitioner is a Civil Engineer and only son of the

parent. The petitioner earns about Rs.50,000/- to 60,000/- (Rupees Fifty thousand to Sixty thousand) only per month from his service in a Construction Company and apart from that he earns from his landed property located at Kalgachia, Howly as well as in Guwahati. Considering all sources, the petitioner earns about Rs. 80,000/- to 90,000/- (Rupees eighty thousand to ninety thousand) per month. So, the petitioner can provide a maintenance of Rs.10,000/-(Rupees Ten thousand) only per month to the respondent.

5. In this regard, the learned counsel for the petitioner, Mr. R. Ali has submitted that the respondent never maintained peaceful conjugal life with the present petitioner. She went to her parental house on 02.02.2021 willfully along with her father. Thereafter, the petitioner and his parents tried to bring her back from her parental house, but she denied every time and asked the petitioner to give divorce. On 03.10.2021, the respondent's father decided to settle the matter amicably, however, in the same sitting the uncles of the respondent's attacked the petitioner to kill him. After that the petitioner sent a pleader's notice through his Advocate to the respondent on 03.03.2022, where, he asked the respondent to come back to resume conjugal life, but, no reply was given by the respondent.

6. He also submitted that, though, the petitioner was Graduate in engineering, but, at present he is unemployed and totally dependent upon his retired father. Thus, the petitioner is not in a position to pay any maintenance to the respondent and he is still willing to continue his marital life with the respondent.

7. The learned counsel for the petitioner further submitted that, as the respondent had left the matrimonial house willfully, and thus, she is not at all

entitle to get any maintenance as per proviso under Section 125 (4) Cr.P.C. He further submitted that the learned Principal Judge Family Court, Barpeta did not consider any assets and liabilities of the parties before passing the Judgment and Order in spite of the guidelines provided by the Hon'ble Apex Court. Further, it is submitted that there is no evidence that the petitioner had tortured the respondent rather he was trying to resume their conjugal life and to that effect he also issued a pleaders notice.

8. Although, it is a fact that the petitioner has done Graduation in engineering, but, at present he is working in a school and not in a position to make any payment as per the order of the learned Principal Judge, Barpeta. Thus, the learned counsel for the petitioner prays and submits that it is a fit case to remand back the matter before the Trial Court to pass appropriate order by considering all the aspect of this case including the evidence on record as well as considering the assets and liabilities of both the parties.

9. More so, the learned Principal Judge also failed to consider the guidelines framed by the **Hon'ble Apex Court in the Case of Rajnesh Vs. Neha & Anr. reported in (2021) 2 SCC 324**, and accordingly, it is submitted that impugned Judgment and Order dated 10.04.2023 passed by the learned Principal Judge Family Court, Barpeta in F.C. (Crl.)Case No.250/2022, directing the present petitioner to pay an amount of Rs.5,000/-(Rupees Five thousand) only per month towards maintenance to the respondent is liable to be set aside and quashed.

10. In this context, Mr. J. Ali, learned counsel for the respondent has submitted that the learned Principal Judge had rightly passed the order by directing the present petitioner to pay an amount of Rs.5,000/-(Rupees Five

thousand) only per month towards maintenance allowances. The petitioner is Graduate in Engineering and he was also working in a private company and was earning more than Rs.50,000/- to 60,000/- (Rupees Fifty thousand to Sixty thousand) only per month apart from that he is also earning from his landed property. Thus, the amount which has been awarded by the learned Principal Judge is quite reasonable amount and a lady requires more than Rs.5,000/- (Rupees Five thousand) to maintain herself. The respondent has no source of income of her own. Accordingly, it is submitted that there is no reason to make any interference in the Judgment and Order passed by the learned Principal Judge Family Court in F.C.(Crl.) Case No.250/2022.

11. After hearing the submissions made by the learned Advocates of both sides, I have perused the Judgment and Order passed by the learned Principal Judge Family Court, Barpeta in F.C.(Crl.) Case No.250/2022. It is a fact that the marriage between the parties is admitted, and it is also seen that the first party/respondent is staying in her parental house since the day she left her matrimonial house and since then, the petitioner has not provided her maintenance. Further, the respondent has adduced her evidence, that the petitioner assaulted her physically and demanded an amount of Rs. 3 lakhs along with wooden furniture and for that reason she had to leave her matrimonial house.

12. On the contrary, it is the plea of the second party/petitioner that the respondent had left the matrimonial house on her own will. It has been stated that the respondent confessed before the petitioner that she was forced by her father to marry him against her will because she had love affair with another person prior to her marriage. The petitioner never demanded neither money nor

wooden furniture from the respondent. However, to substantiate the said plea the second party did not adduce any evidence. It is a fact that the learned Trial Court had not discussed anything about the assets and liabilities of the parties before passing any order on maintenance. But, it is an admitted fact that he is Graduate in engineering and at present he is working as a science teacher in a private School. Also, the first party/respondent could not produce any land document or other evidence regarding the income of the petitioner.

13. Considering the submissions made by the learned Advocates of both sides and also considering the prices of the essential commodities as well as the income of the second party/petitioner, who is working in a private school, the learned Principal Judge had rightly passed the Judgment and order dated 10.04.2023 by directing him to pay an amount of Rs.5,000/-(Rupees Five thousand) only per month as a maintenance allowance to the respondent. Thus, I find that there is no error or mistake committed by the learned Trial Court while passing the order on maintenance and the assessment of the assets and liabilities of the parties can not be a good reason to interfere in the Judgment and Order passed by the said Court.

14. For the aforesaid reasons, I do not find any error in the impugned Judgment and Order dated 10.04.2023 passed by the learned Principal Judge in F.C.(Crl.) Case No.250/2022 to make any interference and accordingly, the Judgment and Order dated 10.04.2023 is hereby upheld.

15. The criminal revision petition is, accordingly, stands dismissed.

JUDGE

Comparing Assistant