

GAHC010126932023



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

Case No. : Crl.Pet./564/2023

SHAHEEL RAFIQUE
S/O LATE MOBINAUT DOWLAH
R/O MOTIRAM BORAH ROAD (HOSPITAL ROAD), RAFIQUE MANJIL,
NAGAON, SADAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PP, ASSAM

2:RUBY BEGUM @ RUBY RAFIQUE
W/O SHAHEEL RAFIQUE
R/O GD
BLOCK-A
BRINDABAN APARTMENT
GANESH MANDIR PATH
BYE LANE-6
NEW GUWAHATI TINIALI
NONMATI-781020

3:ALMA SHAHEEL
D/O SHAHEEL RAFIQUE
R/O GD
BLOCK-A
BRINDABAN APARTMENT
GANESH MANDIR PATH BYE LANE-6
NEW GUWAHATI TINIALI
NOONMATI-78102

Advocate for the Petitioner : MR A KAKOTI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 14.09.2023

Heard Mr. A. Kakoti, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State respondent No. 1 and Ms. N. Choudhury, learned counsel for the respondent Nos. 2 & 3.

2. This is an application Section 482 of the Code of Criminal Procedure, 1973, for quashing of the impugned order dated 27.01.2023, passed by the learned Principal Judge, Family Court No. 1, Kamrup(M), Guwahati.

3. It is submitted by the learned counsel for the petitioner, Mr. Kakoti, that the respondent Nos. 2 & 3 lodged a case under Section 125 Cr.P.C. before the learned Principal Judge, Family Court No. 1, Kamrup(M), Guwahati, and though the notice was served on the petitioner, but it was not a proper service and as the petitioner was outside the territory of India, he could not contest the case and accordingly, an *ex parte* order was passed on 06.09.2021 directing the present petitioner to pay Rs. 60,000/- per month as interim maintenance to the respondent Nos. 2 & 3. However, on appearance of the petitioner, the said *ex parte* order was vacated vide order dated 14.06.2022 and the petitioner was given a chance to file his Written Statement in this regard. Thereafter, on 27.01.2023, the matter was fixed for hearing on the interim maintenance, but the petitioner could not appear before the learned Court below and the

adjournment was sought for by his engaged counsel enabling him to participate in the hearing. However, the learned Principal Judge, Family Court No. 1, Kamrup(M), Guwahati, without giving any opportunity of being heard to the petitioner, had passed the order of interim maintenance directing the present petitioner to pay maintenance @ Rs. 35,000/- per month as interim maintenance till disposal of the case.

4. On being highly aggrieved and dissatisfied with the said order, the present petition has been filed by the petitioner stating that the order has been passed by the learned Principal Judge, Family Court No. 1, Kamrup(M), Guwahati, in gross violation of principles of natural justice and the petitioner was never afforded any opportunity to be personally present or to take part in the hearing before passing the order.

5. Further it is submitted by the learned counsel for the petitioner that the learned Court below also arrived a conclusion that the petitioner was earning around Rs. 2.6 Lakhs per month till 2019 and even though the learned Court below observed that he has lost his job in the year 2019, the order for interim maintenance was passed by the learned Court below. It is further submitted that it is an admitted fact that basically the petitioner is working as a Advisor/Consultant in Rural Development Department and he was also offered with job opportunity in countries like Africa and Swaziland under the Ministry of Planning and Development, Government of Swaziland and it is also a fact that he was earning handsome amount of money during the project, but from the year 2020, he is sitting idle and hence, without considering this aspect of the case, the order has been passed by the learned Court below directing the

petitioner to pay an amount of Rs. 35,000/- per month as interim maintenance to the respondent Nos. 2 & 3, which is not at all possible on the part of the petitioner.

6. In this context, the learned counsel appearing on behalf of respondent Nos. 2 & 3, Ms. N. Choudhury, has submitted that the learned Court below, vide order dated 06.09.2021, which was an *ex parte* order, had directed the present petitioner to pay an amount of Rs. 60,000/- per month from the date of filing of the petition. But, subsequently, after vacating the *ex parte* order and considering the statement made in the Written Statement, the learned Principal Judge, Family Court No. 1, Kamrup(M), Guwahati, altered/modified the earlier order on interim maintenance and directed the petitioner to pay an amount of Rs. 35,000/- per month towards interim maintenance from the date of order. But, even after the date of passing of that interim order, the petitioner has paid only Rs. 40,000/- to the respondent, though she is living separately along with her daughter since the year 2017 and in the year 2019, the petition seeking maintenance was filed, but till date, except Rs. 40,000/- the respondent and her daughter have not received any amount from the petitioner. Presently, they are residing in a rented apartment and her daughter is also studying in LLB and in such situation, Rs. 35,000/-, which is ordered by the learned Principal Judge, Family Court No. 1, Kamrup(M), Guwahati, is not at all sufficient even to maintain the respondent Nos. 2 & 3. The learned counsel further submitted that the petitioner is a Scholar in Agricultural Economics and he is also a PMP from the Project Management Institute, USA, and had a job opportunity in outside country and thus, he was earning Rs. 20 Lakhs per month and recently also, he released a book "Uplift Your Life" and apart from that, being a Marketing

Consultant, the petitioner is also earning quite handsome amount per month and hence, the plea of the petitioner that he is not capable to pay Rs. 35,000/- per month is not acceptable. Accordingly, the learned counsel for the respondent Nos. 2 & 3 vehemently objected and submitted that the present petition should be dismissed and the order passed by the learned Principal Judge, Family Court No. 1, Kamrup(M), Guwahati, be upheld.

7. After hearing the submissions made by the learned counsels for both sides and also considering the petition as well as the Written Statement etc., it is seen that the learned Court below, after vacating the *ex parte* order, had passed the order for maintenance @ Rs. 35,000/- per month to be paid by the petitioner considering the materials available in the Written Statement of the petition and also considering his income and the status as well as the standard of living of the family. It is also observed by the learned Principal Judge, Family Court No. 1, Kamrup(M), Guwahati, that the petitioner is a Senior Business Development Adviser at Cardno Emerging Markets Belgium, Swaziland and also a Marketing Consultant and he was also engaged with World Food program, United Nations and was assigned tours to various places outside the country. However, it is submitted by the learned counsel for the petitioner that though he was earlier offered with some projects even outside the country, but at present, he is sitting idle; however, he has been recently engaged for 3 (three) months project in Nagaland.

8. However, considering the entire facts and circumstances of the case and also considering the status and earning capability of the present petitioner, I find that the order for interim maintenance @ Rs. 35,000/- per month is quite a

reasonable amount and apart from that the petitioner is still getting the opportunity to contest the case at the time of final hearing and in that case, there may be scope for modification/alteration of the order for maintenance allowance.

9. In view of above, I do not find any reason to make any interference in the order dated 27.01.2023, passed by the learned Principal Judge, Family Court No. 1, Kamrup(M), Guwahati, directing the petitioner to pay interim maintenance @ Rs. 35,000/- per month to the respondent Nos. 2 & 3 and therefore, I do not find merit in this petition and accordingly, the same stands dismissed.

10. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant