

GAHC010147062022



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

Case No. : I.A.(Crl.)/386/2022

REJABUDDIN AHMED
S/O LATE KANDURA SHEIKH, R/O KHAMAR MANIKPUR, P.O. AND P.S.-
KRISHNAI, DIST-GOALPARA, ASSAM.

VERSUS

ROJIBON NESSA AND 2 ORS.
D/O ROHIM ALI, R/O VILL-DHUPDHARA, P.O. AND P.S.-DHUPDHARA, DIST-
GOALPARA, ASSAM, PIN 783123.

2:ROHIMA BIBI
W/O ROHIM ALI
R/O VILL-DHUPDHARA
P.O. AND P.S.-DHUPDHARA
DIST-GOALPARA
ASSAM

3:ROHIM ALI

S/O KOLIA SHEIKH
R/O VILL-DHUPDHARA
P.O. AND P.S.-DHUPDHARA
DIST-GOALPARA
ASSA

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : MR. B D DEKA

BEFORE

HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 01-08-2023

1. Heard Mr. A. Alim Sk, learned counsel for the applicant and Mr. N. Chaudhury, learned counsel for the opposite-parties.

2. The applicant has prayed for vacation/modification of interim order dated 16.03.2021 passed in Criminal Petition No. 69/2021. The applicant was arrayed as respondent in Criminal Petition No. 69/2021.

3. The applicant's marriage was solemnised with the OP No. 1 on 07.10.2018 in the office of the Muslim Marriage, Divorce Registrar & Kazi, Padupara as per *Islamic Shariat* and a marriage certificate was issued on 07.10.2018. After their marriage, on the request of OP Nos. 1, 2 and 3, the applicant started staying along with his wife in the opposite-party's house i.e. the parental house with OP No. 1. Thereafter the applicant purchased –

a] One Mobile handset for Rs. 9,500/-

b] Dunlop Set for Rs. 15,000/-

c] Show Case for Rs. 7,000/-

d] Steel Almirah for Rs. 9,000/-

e] Central Table for Rs. 4,000/-

f] Alna for Rs. 2,000/- and

g] Gold ornaments of Rs. 6,000/- etc.

4. The vouchers of the above-mentioned articles are marked as Annexure-1, 2 and 3 respectively. Meanwhile the OP Nos. 1, 2 and 3 demanded that the applicant should leave their house and also threatened to dissolve the marriage between the applicant and OP No. 1. On 19.07.2019 the applicant was thrown out of the opposite-party's (OP's for short) house.

5. Several endeavours were made by the applicant to reconcile with the opposite-parties and to continue with his marital life with OP No. 1. He visited the OP's on 03.08.2019

accompanied by some other persons. The OP No. 1 however denied to continue with her marital life with the applicant. The applicant then asked the opposite-parties to return back the articles he purchased after marriage. The applicant was impelled to file a complaint before the Chief Judicial Magistrate which was registered as C.R. Case No. 251/2019 and vide order dated 17.02.2020 the learned Addl. Chief Judicial Magistrate, Goalpara was pleased to take cognizance against the opposite-parties u/s 406/506/34 of the Indian Penal Code (IPC for short) and issued the summons to the opposite-parties/accused-persons.

6. Against the order of cognizance the opposite-parties initiated the Criminal Petition No. 69/2021 challenging the validity and legality of the order and vide order dated 16.03.2021 in Criminal Petition No. 69/2021, this Court at the motion stage was pleased to stay further proceedings of the C.R. Case No. 251/2019. It is submitted that in view of the aforementioned interim order dated 16.03.2021 the entire proceedings in connection with C.R. Case No. 251/2019 have been stayed. The applicant is highly prejudiced as the proceedings pending in the Court of the Addl. Chief Judicial Magistrate has been stayed. The opposite-parties Nos. 1, 2 and 3 filed an affidavit-in-opposition that no offence of breach of trust was committed by the opposite-parties. It was averred that the applicant purchased the aforementioned articles but those articles were gifted by him to the OP No. 1 out of love and affection. The statement of a witness named as Tahidul Ali who accompanied the applicant does not incriminate or implicate the opposite-parties. The C.R. Case No. 251/2019 was initiated against the opposite-parties with a view to harass them. The opposite-parties were impelled to prefer the petition u/s 482 Cr.PC for quashing the complaint along with the order dated 17.02.2020 as the complaint was filed with malafide and no ingredients of offences u/s 406/506 exists against the opposite-parties. A prima facie case could be made out and so the order of stay of the C.R. Case No. 251/2019 was passed by this Court on 16.03.2021 in the connected criminal petition registered as 69/2021.

7. An additional-affidavit was filed by the applicant stating that on 24.06.2014, the OP No. 1 was married to 'X' of Sardarpara, Krishnai in the District of Goalpara and she lived with 'X' as his wife in their matrimonial home and they have two children. The OP No.1's marriage with 'X' was dissolved on 28.07.2018. After a few months the applicant and the OP No. 1 had fallen in love and got married on 04.10.2018. On 22.07.2019 the OP No. 1 dissolved her

marriage and snapped her ties with the applicant as per "Khula" of the Mohammadan Law. The copies of the marriage affidavit and the dissolution of marriage are marked as Annexure-8 and 9 respectively. An affidavit-in-reply was also filed against the affidavit-in-opposition with more or less similar contentions. It is contended that the household articles as mentioned above have been purchased by the applicant as demanded by the OP No. 1 and cannot be considered as gift to OP No. 1 out of love and affection.

8. The rival contentions reflect that the applicant has claimed that he had purchased some household articles marked as Annexure-1, 2 and 3 respectively. When he was thrown out of his house by the OP Nos. 1, 2 and 3, the opposite-parties had retained those articles. The opposite-parties have vehemently denied that they had misappropriated those articles. The opposite-parties have admitted that the applicant has purchased those articles. No reason is fathomable as to why the interim order of stay dated 16.03.2021 staying the proceedings of the C.R. Case No. 251/2019 has to be vacated or modified. The merits of the case cannot be considered at this juncture on the basis of a petition praying for vacation or modification of an order passed in the connected Criminal Petition No. 69/2021. It cannot be considered at this stage if any case u/s 406/506 does not exist against the respondents. This Court is constrained to dismiss the petition/application.

9. The present application is dismissed and the Criminal Petition No. 69/2021 is to be taken-up for early hearing.

JUDGE

Comparing Assistant