

GAHC010169372023



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

Case No. : Crl.Pet./798/2023

SANAT KR MUDOI
S/O LATE HOLODHAR MUDOI
R/O BHARALUMUKH
BACKSIDE OF GOENKA NURSING HOME, P.O. AND P.S. BHARALUMUKH,
DIST. KAMRUP (M), ASSAM, PIN-781009

VERSUS

SUNITA MUDOI
W/O SRI SANAT KR. MUDOI
R/O PATARKUCHI
GULAP NAGAR,
P.O. AND P.S. BASISTHA
DIST. KAMRUP (M), ASSAM
PIN CODE- 781029

Advocate for the Petitioner : MR. R DE

Advocate for the Respondent : MS. B SAIKIA

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

05.12.2023

Heard Mr. R. De, learned counsel for the petitioner and also heard Ms. B. Saikia,
learned counsel for the respondent.

1. In this petition under Section 482 of the Code of Criminal Procedure, 1973, the petitioner has put to challenge the correctness or otherwise of the judgment and order dated 01.11.2022 passed by the learned Principal Judge, Family Court No.1, Kamrup(M), Guwahati in F.C. (Crl.) Case No. 316/2017.
2. It is to be noted here that vide judgment and order dated 01.11.2023, the learned court below has directed the petitioner to pay a sum of Rs.16,000/- being the maintenance to the sole respondent and her three children.
3. Mr. De, learned counsel for the petitioner submits that the petitioner has been paying a sum of Rs.6000/- per month, in a proceeding under Domestic Violence Act, being the maintenance to the sole respondent. The said fact was brought to the notice of the learned court below, but, the learned Principal Judge, Family Court No.1, in the proceeding under Section 125 Cr.P.C. has not considered the adjustment or set-off the amount awarded in the proceeding under Domestic Violence Act, while determining the quantum of maintenance in the proceeding under Section 125 Cr.P.C. though a direction was issued by the Hon'ble Supreme Court in the case *Rajnesh vs Neha* reported in *2021 (2) SCC 324* for such adjustment.
4. It is to be noted here that in the aforementioned case, the Hon'ble Supreme Court has also directed that in a proceeding under Section 125 Cr.P.C. the parties have to file affidavits, disclosing their assets and liabilities. Mr. De further submits that in the proceeding under Section 125 Cr.P.C. before the learned Principal Judge, Family Court the parties have not file any affidavit disclosing their assets and liabilities. Mr. Saikia, the learned counsel for the respondents also fairly submits that the parties have not filed any affidavit disclosing their assets and liabilities.
5. In view of above, and also as agreed to by the learned Advocates of both the parties, this Court is inclined to set aside the impugned judgment and order dated 01.11.2022, passed in F.C.(Crl.) Case No. 316/2017, and to direct the parties to appear before the learned court below on or before 18.01.2024, and to file their respective affidavits, disclosing their assets and liabilities and thereafter, the learned court below shall consider the same by giving an opportunity of being heard to both the parties and

thereafter to decide the quantum of maintenance afresh.

6. In terms of above, this petition stands disposed of. The parties have to bear their own costs.

JUDGE

Comparing Assistant