

GAHC010215992022



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

Case No. : Crl.Pet./1083/2022

GOUR TALUKDAR
S/O SRI ASHUTOSH TALUKDAR
R/O WARD NO. 13, SANTINAGAR, DHUBRI P.O. AND P.S. DHUBRI,
DIST. DHUBRI, ASSAM
PIN-783301

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE PP, ASSAM

2:SMTI. JHUMKI SEN
D/O KARTIK SEN
VILL- ARAIANI PART-II
P.O. AND P.S. BAGRIBARI
DIST. KOKRAJHAR BTR
ASSAM
PIN-78337

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 20-02-2023

Heard Mr. A.Z. Ahmed, learned counsel for the petitioner as well as Mr. R.J.

Baruah, learned APP for the State respondent no.1 and Md. H.R. Ahmed, learned counsel for the respondent no.2.

2. By filing this criminal petition under section 482 Cr.P.C. the petitioner has assailed the order dated 17.02.2021 passed by the learned Judicial Magistrate First Class, Kokrajhar in Misc case no.38^M/2019 as well as order dated 30.08.2022 passed by the learned Session Judge, Dhubri in Crl. Rev. No.05/2021.

3. By the judgment dated 17.02.2021, the learned trial Court had directed the petitioner who is the estranged husband of the respondent no.2 to pay a maintenance amount of Rs.10,000/- per month from the date of filing of the said petition under section 125 Cr.P.C. while under section 126(3) Cr.P.C., the petitioner was directed to pay a cost of Rs.5,000/-towards expenses. By the revisional judgment passed on 30.08.2022, the Revisional Court did not find any merit in the impugned order or unreasonableness as regards the amount of monthly maintenance awarded by the learned trial Court. Accordingly, the revision was dismissed.

4. Assailing both the said orders, the learned counsel for the petitioner has referred to the stand taken in paragraph-3 of this application to project that the petitioner was receiving monthly salary of Rs.30,600/- per month and he had taken a loan of Rs. 8.00 lakh from the Dhubri Branch of SBI and was paying monthly installment of Rs.15,475/- plus he also pays house rent of Rs.2,500/- per month and spends around Rs.2,100/- as medical expenses for his parents. Therefore, the petitioner is left only with Rs.14,000/- for his survival. Hence, it is

submitted that the maintenance of Rs.10,000/- per month was on higher side to him.

5. The learned counsel for the respondent no.2 has referred to the loan sanction letter dated 20.03.2021 and it is submitted that the said loan was availed only after the impugned order was passed by the learned trial Court.

6. It appears that in the trial Court proceeding, the petitioner had taken a defence of having availed a loan of Rs.4.50 lakh from the SBI Golakganj Branch, which is considered when the maintenance amount was quantified. The availing of a subsequent loan of Rs.8.00 lakh was not raised before the learned trial Court and as because the said loan was never availed during the pendency of the trial.

7. The order of the learned trial Court was passed on 17.02.2021 and the loan was availed thereafter. It does not appear from the order of the learned Revisional Court that the issue of taking loan of Rs.8.00 lakh was raised at the revisional stage. Therefore, the learned Revisional Court in paragraph-3 and 8 of the order had referred to the previous loan and not the subsequent loan of Rs.8.00 lakh.

8. As the petitioner has consciously availed the loan after the order of maintenance was passed by the learned trial Court, the petitioner has done so at his own risk. Moreover, nothing has been brought on record to demonstrate that the order passed by the learned trial Court as well as by the learned

Revisional Court has passed order without any jurisdiction or did not take any note of the evidence which was raised before the learned trial Court.

9. This is not a case where any evidence which was placed before the learned trial Court was not taken note of or that the judgment is vitiated on the ground that the learned Court below took into consideration any extraneous materials which was not covered by the evidence led by the parties.

10. In light of above, the petitioner has not been able to make out a case for interference of the final orders passed by both the learned Courts below by invoking the inherent power of the Court under section 482 Cr.P.C. In view of above, the Court does not find any merit in this application filed under section 482 Cr.P.C. Accordingly, the same stands dismissed.

11. The Registry shall not issue certified/ uncertified copy of scanned copy of the case record.

JUDGE

Comparing Assistant