

GAHC010239742017



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

Case No. : Crl.Pet./659/2017

MAKIBAR RAHMAN
S/O- LATE ABDUL ALI, VILL- PUB KALA KUCHI, P.O- MUKALMUA, P.S-
MUKALMUA, DIST- NALBARI, ASSAM

VERSUS

MUSSTT. TAHMINA BEGUM and 3 ORS.
R/O- RAJA BAZAR TAKURIA CHUPA, P.O- KALITA KUCHI, P.S- HAJO, DIST-
KAMRUP, ASSAM

2:MUSSTT. MARIYAM BEGUM @ MANOWARA BEGUM
W/O- NOT KNOWN
C/O- MUSSTT. TAHMINA BEGUM MOTHER
R/O- RAJABAZAR THAKURIA CHUPA
P.O- KALITA KUCHI
P.S- HAJO
DIST- KAMRUP
ASSAM

3:MUSSTT. ACHMA ARA BEGUM
C/O- MUSSTT. TAHMINA BEGUM
R/O- RAJABAZAR THAKURIA CHUPA
P.O- KALITA KUCHI
P.S- HAJO
DIST- KAMRUP
ASSAM

4:THE STATE OF ASSA

Advocate for the Petitioner : MR.S CHAUHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

11.09.2023.

1. None appears for the petitioner on call. None did represent the petitioner on 02.06.2023 and also on 11.08.2023. Accordingly, this matter was directed to be listed today. Today also none appears.
2. Though this Court thought of appointing an Amicus Curiae, however, in view of the decision of the Hon'ble Apex Court in the case of ***Taj Mohammad –Vs- State of Uttar Pradesh and Others*** arising out of ***SLP (Crl) 5298/2023*** while relying on the earlier decisions of the Hon'ble Apex Court in the case of ***Madan Lal Kapoor –Vs- Rajiv Thapar*** reported in ***2007 7 SCC 625*** and ***Bani Singh –Vs- State of U.P.*** reported in ***1996 4 SCC 720*** under its order dated 01.08.2023, provided that even in absence of a party or his counsel, a revision petition can be considered in merit in accordance with law for consideration.
3. In the considered opinion of this Court such principle can also be followed in case of a criminal petition. Therefore, without appointing an Amicus Curiae, this Court proceeds with the matter on merit.
4. The present application is filed under Section 482 of the Cr.P.C. praying for quashing of F.C.(Crl) Case No.413/2002 pending before the Principal Judge, Family Court, Kamrup at Guwahati. The further challenge is an order

dated 08.12.2014 passed in Misc. Case No. 143/2014 whereby the petition filed by the petitioner was rejected and order dated 27.04.2015 was passed in Misc. Case No. 614/2013, whereby the maintenance amount granted earlier was enhanced from Rs. 3,000/- to Rs. 4,500/- i.e. Rs. 1,500/- to the petitioner and Rs. 1,500/- each to her two daughters from the date of the order. Such order is under challenge in this petition.

5. Perused the materials available on record including the evidence laid by the parties. As many as 6 witnesses were examined by the respondent wife and the petitioner husband examined himself as DW-1.
6. From perusal of the said evidence, this Court does not find any illegality or infirmity to exercise its power under Section 482 of Cr.P.C. to interfere such finding of facts.
7. It is by now well settled that revisional jurisdiction of a Court can be invoked where the decision under challenge is grossly erroneous, there is non compliance with the provision of law and finding recorded is based on no evidence or material evidences are ignored or judicial discretion is exercised arbitrarily or perversely.
8. After perusal of the materials available on record including the evidences laid by the respondent wife, the petitioner husband as well as their cross-examination have properly been appreciated by the learned trial Court below and came to the aforesaid conclusion under challenge.
9. Such decision neither can be said to be erroneous or perverse. Nothing is found on record which suggest that the learned Court below has not complied with any provision of law inasmuch as due procedure was

followed and the petitioner herein duly cross-examined the witnesses adduced by the respondent wife as petitioner before the learned Court below.

10. After perusal of the evidence, this Court is of the unhesitant view that finding recorded is based on evidence that has been laid by the parties.
11. In view of such, this Court finds no illegality in the impugned order. Accordingly, the present criminal petition stands dismissed.
12. LCR be returned back forthwith.

JUDGE

Comparing Assistant