

GAHC010240522023



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

Case No. : Crl.Pet./1169/2023

SIBA KUMAR BORDOLOI
S/O SHYAM KUMAR BORDOLOI, R/O VILL- CHALCHALI, P.O.-KAWAIMARI,
P.S.-NAGAON SADAR, DIST- NAGAON, ASSAM, PIN-782140

VERSUS

SMTI PREEYA DEVI
W/O SIBA KUMAR BORDOLOI, R/O VILL- CHALCHALI, P.O.-KAWAIMARI,
P.S.-NAGAON SADAR, DIST- NAGAON, ASSAM, PIN-782140

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 06-11-2023

Heard Mr. I. Uddin, learned counsel for the petitioner and also heard Mr. B. Sarma, learned Addl. P. P. for the State respondent .

In this petition under Section 482/483 Cr.P.C., the petitioner, Sri Siba Kumar Bordoloi, has put to challenge the judgment and order dated 19.05.2023, passed by the learned Sessions Judge, Nagaon in Crl. Appeal No. 42/2019. It is to be noted here that vide judgment and order dated 19.05.2023, the learned Sessions Judge, Nagaon enhanced the maintenance amount of Rs.4,000/-, per

month, granted by the learned Judicial Magistrate, Ist Class, Nagaon, in D.V. Case No. 21 of 2016, vide judgment and order dated 29.04.2019, to Rs.10,000/- and also directed to pay the petitioner a compensation amounting to Rs. 2,00,000/- instead of Rs.10,000/- granted by the learned Judicial Magistrate, Ist Class, Nagaon.

Mr. Uddin, learned counsel for the petitioner submits that the learned Sessions Judge has enhanced the maintenance amount from Rs. 4,000/- to 7,000/- without asking the parties to file their affidavits disclosing the assets and liabilities of the parties, as required by the judgment of Hon'ble Supreme Court in **Rajnish Vs. Neha and another reported in (2021)2 SCC 324.**

Referring to paragraph 17 of the aforesaid judgment, Mr. Uddin learned counsel for the petitioner, submits that in the said judgment, the Hon'ble Supreme Court has directed that affidavit of disclosure of assets and liabilities, annexed as the enclosure 1, 2 and 3 of the judgment, as may be applicable, shall be filed by the parties in all maintenance proceeding, including pending proceedings before the Family Court/District Court/Magistrate Court as the case may be throughout the country. And as the impugned judgment was passed by the learned Sessions Judge without complying the direction of Hon'ble Supreme Court in **Rajnish (supra)**, that part of the judgment and order of learned Sessions Judge by which, the maintenance amount of Rs.4,000/- is enhanced to Rs. 10,000/- may be set aside and the matter may be remanded to the learned Sessions Judge to decide the matter afresh after affording opportunities to both the parties to submit their affidavits disclosing their assets and liabilities.

Having heard the submission of learned Advocates of both sides , I have gone through the petition and the documents placed on record and also perused the impugned judgment and order dated 19.5.2023, passed by the learned Sessions

Judge in Crl. Appeal No. 42/2019 and also the judgment and order dated 29.4.2019, passed by the learned JMFC, Nogaon in DV Case No.21/2016.

It is to be noted here that in the judgment and order dated 29.4.2019, the learned JMFC, Nogaon has directed the petitioner to pay maintenance to the aggrieved and the minor child, @ 4,000/- per month, but, the learned Sessions Judge, vide impugned judgment and order dated 19.5.2023, in paragraph No.12, has enhanced the aforesaid amount to Rs. 7,000/-, without considering the direction issued by Hon'ble Supreme Court in the case of **Rajnesh** (supra). It is to be noted here that in the case of Rajnesh (supra) the Hon'ble Supreme Court has directed that the guidelines issued in the said judgment and order shall be filed by the parties in all the maintenance proceeding including pending proceeding before the Family Court/ District Court/ Magistrate Court concerned as the case may be throughout the country.

In view of above, I find sufficient force in the submission of Mr. Uddin, learned counsel for the petitioner. Accordingly, impugned judgment and order dated 19.5.2023, so far it relates to enhancement of maintenance from 4,000/- to 7,000/- is concerned, only stands set aside and quashed. Remaining part of the judgment will remain the same.

The parties are directed to appear before the learned Court below and to file their respective affidavits, disclosing the assets and liabilities and thereafter, the learned Court below shall pass necessary order, in that regard.

In terms of above, this Crl.Petition stands disposed of at this motion stage itself.

JUDGE

Comparing Assistant