



**THE GAUHATI HIGH COURT AT GUWAHATI**

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

**PRINCIPAL SEAT AT GUWAHATI**

**Criminal Petition No. 1319 of 2022**

ARSHID ANOWAR HUSSAIN  
S/O AZIZUR RAHMAN  
R/O VILL- BALAPARA  
P.O. BALAPARA  
P.S. JOGHIGHOPA  
DIST. BONGAIGAON, ASSAM  
PIN-783382.

.....Petitioner

VERSUS

1. THE STATE OF ASSAM,  
REP. BY THE PP, ASSAM.
2. UMME SALMA  
W/O ARSHID ANOWAR HUSSAIN  
D/O ATAUR RAHMAN  
VILL- BARBALA  
P.O. BARBALA, P.S. HOWLY  
DIST. BARPETA  
ASSAM, PIN-78131

.....Respondents.

**BEFORE  
HON'BLE MR. JUSTICE ROBIN PHUKAN**

For the Petitioner : Mr. A. Ahmed.  
.....Advocate.

For the Respondents : Mr. B. Sarma, Addl. P.P.

Ms. Meghali Barman,  
Legal Aid Counsel.  
.....Advocates.

Date of Hearing : 16.11.2023

Date of Judgment : ***4<sup>th</sup> December, 2023***

### **JUDGMENT AND ORDER**

Heard Mr. A. Ahmed, learned counsel for the petitioner and Ms. M. Barman, learned Legal Aid Counsel for the respondent No. 2.

**2.** In this petition, under Section 482 read with Article 227 of the Constitution of India, the petitioner namely, Arshid Anowar Hussain, has prayed for quashing the entire proceeding of F.C. [Crl.] Case No. 104/2020, pending before the learned Principal Judge, Family Court, Barpeta.

**3.** It is to be noted here that in the said proceeding, the learned court below has directed the petitioner to pay maintenance to the son of the respondent No. 2, @ Rs.2,000/- per month.

**4.** The background facts, leading to filing of this criminal petition, are briefly stated as under:-

“The petitioner and the respondent No. 2 are husband and wife and they got married on 20.04.2015, as per Muslim Shariat and thereafter, they started their conjugal life in the house of the petitioner. After some days of the marriage,

marital discord surfaced between the petitioner and the respondent No. 2, and the petitioner used to subject the respondent No. 2 to both physical and mental cruelty demanding dowry and then being unable to bear the torture meted out to the respondent No. 2, the respondent No. 2 left the matrimonial home and taken shelter in her parental house. Thereafter, the respondent No. 2 had approached the learned Principal Judge, Family Court, Barpeta by filing an application under Section 125 of the Cr.P.C for granting maintenance to her and her son. Thereafter, the learned court below, after hearing both the parties, vide judgment and order 18.01.2023, had directed the petitioner to pay maintenance to the son of the respondent No. 2 @ Rs. 2,000/- per month, but declined to grant maintenance to the respondent No.2 as she has already been receiving maintenance from the petitioner in a proceeding under Domestic Violence Act, @ Rs.6000/- per month.”

**5.** Being aggrieved the petitioner has filed the present petition contending to set aside the impugned judgment and order in F.C. [Crl.] Case No. 104/2020, on the following grounds that :-

[i] the respondent No. 2 has been receiving the maintenance @ Rs. 6,000/- per month, as per ex-parte final order dated 18.07.2018, in C.R. Case No.

1059/2016, under Section 12 of the Protection of Women from Domestic Violence Act;

- [ii] the income of the petitioner is of Rs. 7,000/- per month and as such, the petitioner is unable to bear the burden of payment of Rs. 8,000 per month with just Rs.7000/- income per months being his income;
- [iii] there is a chance for amicable settlement between the parties."

**6.** Mr. Ahmed, learned counsel for the petitioner submits that the petitioner has been working as a correspondent in a Batori Kakot at Guwahati and his monthly income, as determined by the learned Principal Judge, Family Court, Barpeta in F.C. [Crl.] Case No. 104/2020, under Section 125 of the Cr.P.C., dated 18.01.2023, is Rs. 12,000/- and that in the said proceeding under Section 125 of the Cr.P.C., the learned court below has directed the petitioner to pay maintenance to the son of the respondent No. 2 @ Rs. 2,000/- per month. Mr. Ahmed further submits that in view of the ex-parte final order dated 18.07.2018, passed by the learned Judicial Magistrate First Class, Barpeta, in C.R. Case No. 1059/2016, the petitioner has to pay a sum of Rs. 6,000/- and if the total income of the petitioner is Rs. 12,000/- out of which he has to pay a sum of Rs. 8,000/- [6,000/- + 2,000/-] to the respondent No. 2, then nothing will remain with the petitioner. Mr. Ahmed also submits that while determining the income of the petitioner the learned court below might have not considered the decision of the Hon'ble Supreme Court in the case of **Rajnish**

**vs. Neha and Another**, reported in **[2021] 2 SCC 324** and therefore, it is contended to allow this petition by quashing the entire proceeding of F.C. [Crl.] Case No. 104/2020, pending before the learned Principal Judge, Family Court, Barpeta.

**7.** On the other hand, Ms. Barman, learned Legal Aid Counsel for the respondent No. 2 submits that the impugned judgment and order dated 18.01.2023, passed by the learned Principal Judge, Family Court, Barpeta in F.C. [Crl.] Case No. 104/2020, suffers from no infirmity or illegality, as while passing the said judgment and order the learned court has rightly followed the direction of the Hon'ble Supreme Court in the case of **Rajnesh(Supra)**, and arrived at such a finding, and as such, the impugned judgment and order requires no interference of this Court and therefore, it is contended to dismiss the petition.

**8.** Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned judgment and order dated 18.01.2023, passed by the learned Principal Judge, Family Court, Barpeta in F.C. [Crl.] Case No. 104/2020.

**9.** It appears that after hearing learned counsel for both the parties and also considering the evidence placed before it, the learned Principal Judge, Family Court, Barpeta has determined the income of the petitioner @ Rs. 12,000/- per month. Further, it appears that after considering the ex-parte final order dated 18.07.2018, passed

by the learned Judicial Magistrate First Class, Barpeta, in C.R. Case No. 1059/2016, the learned Principal Judge, Family Court, Barpeta has not awarded any maintenance to the respondent No. 2, however, the learned Principal Judge, Family Court, Barpeta has directed the petitioner to pay maintenance @ Rs. 2,000/- per month, to the son of the respondent No. 2. It also appears that the learned court below has followed the ratio, laid down by Hon'ble Supreme Court in the case of **Rajnesh** (supra), while assessing and awarding the quantum of maintenance to the son of the respondent No.2 and refusing to grant maintenance to the respondent No.2, on account of receiving of maintenance by her in the proceeding under Domestic Violence Act.

**10.** On such count, this Court is of the considered view that the opinion of the learned court below appears to be justified in the given facts and circumstances on the record and therefore, the same requires no interference of this Court.

**11.** In view of above, this Court is inclined to dismiss this petition as there is no merit in the same. Accordingly, the same stands dismissed. The parties have to bear their own cost. The registry shall pay necessary fees to the learned Legal Aid Counsel, as per her entitlement on furnishing a certified copy of this judgment and order.

**JUDGE**