



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Crl.Rev.P. No. 604/2022

Iyanur Haque,
S/o Aynal Haque,
R/o Village-Naoshali, PO-Thamna,
PS-Masalpur (Athiyabari),
Dist.-Baksa, BTR, Assam, Pin-781377.

.....Petitioner.

-Versus-

1. The State of Assam,
represented by the P.P., Assam.
2. Enuwara Begum,
D/o Motaleb Ali,
W/o Iyanur Haque,
Vill-Tengagaon, PO & PS-Sorbhog,
Dist.-Barpeta, Assam, Pin-781315.

.....Respondents.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Petitioner(s) : Mr. M.U. Mondal,
Ms. N. Nasrin,
Mr. I.H. Khan,
Mr. A. Alim Sk. Advocates.

For the Respondent(s) : Dr. G.J. Sharma,
Mr. N. Barman (R-2),

Mr. S. Hussain (R-2),
PP, Assam. Advocates.

Date of hearing and judgment : **25th July, 2023**

JUDGMENT AND ORDER (ORAL)

Heard Mr. A. Alim Sk, learned counsel for the petitioner. Also heard Mr. A. Bhattacharyya, learned counsel appearing for the respondent No.2 and Mr. B. Sarma, learned Additional Public Prosecutor, Assam, appearing for respondent No.1.

2. In this petition, under Section 401, read with Section 397 of the Code of Criminal Procedure, the petitioner Mr. Iyanur Haque has put to challenge the judgment and order dated 29.09.2022 passed in F.C.(Crl.) No.147/2021 by the learned Principal Judge, Family Court, Barpeta. It is to be noted here that vide impugned judgment and order, the learned Court below has directed the petitioner to pay a sum of Rs.6,000/- per month being the maintenance to the respondent No.2 Smt. Enuwara Begum, under Section 125 Cr.P.C.

3. The background facts leading to filing of the present criminal revision petition is briefly stated as under:-

"The petitioner herein got married with the respondent No.2 on 09.03.2017, and after few days of the marriage, marital discord surfaced between them. The petitioner, on being instigated by his family members, used to subject the respondent No.2 to cruelty, and thereafter, the petitioner took the respondent No.2 to his place of posting at Bilasipara and there also he subjected her to both physical and mental cruelty demanding a sum of Rs.10 lakhs, one car, washing machine, etc. from her parental home. The

respondent No.2 could not met the demand of the petitioner and therefore, the petitioner intensified the cruelty upon the respondent No.2 day by day, and on 06.06.2018, the petitioner and his family members attempted to set her fire by pouring kerosene on her person. But, somehow she managed to escape and since then she has been taking shelter in her parental abode. The petitioner has neither enquired about her wellbeing nor provided any maintenance to her and she has no source of income so as to maintain herself and depending upon her parents for two square meal a day.

On the other hand, the petitioner has been serving as a school teacher and he has also cultivable land and his monthly income is about Rs.60,000/- to Rs.70,000/-. Therefore, the respondent No.2 has instituted a proceeding under Section 125 Cr.P.C. before the learned Principal Judge, Family Court, Barpeta.

The petitioner had contested the petition filed by the respondent No.2, by filing written statement, wherein he denied subjecting her to any physical and mental cruelty demanding dowry. His pleaded case was that the respondent No.2 used to pick up quarrel with him without rhyme or reason and also she objected in sending money to his parents and on 06.06.2018, while he was in his bathroom, the respondent No.2 left for her parental abode without any intimation to him, and thereafter, he had visited the parental home of the respondent No.2 to take her back, but she refused to continue conjugal life with him, and thereafter, she had instituted on C.R. Case No.484/2018, under the Domestic Violence Act, wherein the learned SDJM(S), Barpeta has directed the petitioner to pay interim maintenance @Rs.1,500/- per month. It

is the further case of the petitioner that he is unable to pay the aforesaid amount of maintenance and therefore, it is contended to dismiss the petition.

Then after hearing learned advocates of both the parties and also considering the materials placed on record, the learned Principal Judge, Family Court, Barpeta, has directed the petitioner to pay maintenance @Rs.6,000/- per month.”

4. Being aggrieved by the judgment and order of the Family Court dated 29.09.2022 passed by the learned Principal Judge, Family Court, Barpeta, the petitioner approached this Court by filing the present petition primarily on the ground that respondent No.2 has suppressed the pendency of the C.R. Case No.484/2018 in F.C.(Crl.) No.147/2021 as required by a decision of the Hon’ble Supreme Court in **Rajnesh Vs. Neha & Anr.** reported in **(2021)2 SCC 324** and the learned SDJM(S), Barpeta vide order dated 25.11.2022 in C.R. Case No.484/2018 has directed the petitioner to pay maintenance @Rs.4,000/- per month and also directed him to pay a sum of Rs.1,00,000/- to the respondent No.2 being the compensation. The petitioner has burden of looking after his ailing parents and during the pendency of this petition, the petitioner has contracted a 2nd marriage and he has to maintain his 2nd wife also and therefore, it is contended to allow this petition.

5. On the other hand, Mr. A. Alim Sk, learned counsel for the petitioner submits that the petitioner is ready to pay the maintenance amount as directed by the learned Principal Judge, Family Court, Barpeta, but he is not in a position to pay the additional maintenance as directed by the learned SDJM(S), Barpeta, in C.R. Case No.484/2018 @Rs.4,000/- per month. It is further submitted that though the petitioner’s salary is Rs.40,000/-, yet his net salary is Rs.35,000/- and

besides he has the burden of looking after his 2nd wife whom he got married after filing of this present petition and that he has the burden of looking after his ailing parents and he has to maintain himself also and therefore, it is contended to allow the petition.

6. Mr. A. Bhattacharyya, learned counsel for the respondent No.2 submits that the learned Principal Judge, Family Court, Barpeta, has passed the impugned judgment and order after taking into account the income of the petitioner and the respondent No.2 and their social status and thereafter passed the reasoned order and the same requires no interference of this Court. Mr. Bhattacharyya further submits that the respondent No.2 has also disclosed the pendency of a 125 proceeding before the Family Court, Barpeta and also produced the judgment passed by the learned Principal Judge, Family Court, Barpeta before the learned SDJM(S), Barpeta and after taking into account all the facts and circumstances, the learned SDJM(S), Barpeta, in C.R. Case No.484/2018 has directed the petitioner to pay maintenance @Rs.4,000/- per month. Mr. Bhattacharyya further submits that the petitioner is a Government servant and he has been serving as a school teacher and his salary, as per observation made by the learned Principal Judge, Family Court, Barpeta, is Rs.40,000/- per month and he is an able bodied person to pay the aforesaid amount and therefore, it is contended to dismiss the petition.

7. Having heard the submission of learned advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case law in **Rajnesh** (supra) referred by the learned counsel for the petitioner.

8. It is to be noted here that in the case of **Rajnesh** (supra) at paragraph 128.1(i), it is stated that "*(i) where successive claims for*

maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding. (ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in subsequent proceeding. (iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding.”

9. Here in this case it appears that though the proceeding under the Domestic Violence Act was initiated earlier in the year 2018 and the proceeding in the Family Court under Section 125 Cr.P.C. was instituted only in the year 2021. Further, it appears that though the F.C.(Crl.) Case No.147/2021 is subsequent to the earlier proceeding, yet the judgment in the F.C.(Crl.) No.147/2021 was delivered on 29.09.2022 and the final order in the proceeding under the Domestic Violence Act was passed on 25.11.2022. Further it appears that in the proceeding under the Domestic Violence Act, the judgment and order in the proceeding under Section 125 Cr.P.C. was produced and the learned SDJM(S), Barpeta has considered the same. Having gone through the judgment of the learned SDJM(S), Barpeta, in C.R. Case No.484/2018, which is annexed with the petition as Annexure-13 at page 79, it appears that the respondent No.2 herein has disclosed about the judgment and order dated 29.09.2022, passed by the learned Principal Judge, Family Court, Barpeta, in the proceeding under Section 125 Cr.P.C. and after due consideration of the same, the learned SDJM(S), Barpeta has directed the petitioner to pay maintenance @Rs.4,000/- per month under Section 20 of the Domestic Violence Act. Thus, the proposition of law so laid down in the case of **Rajnesh** (supra) appears to be taken care of.

10. As no final order was passed in the proceeding under the Domestic Violence Act in C.R. Case No.484/2018 by the learned SDJM(S), Barpeta, so as to disclose it before the learned Principal Judge, Family Court, Barpeta, in the proceeding under Section 125 Cr.P.C. being F.C.(Crl.) No.147/2021, non-disclosure thereof is inconsequential and it appears that the order passed in F.C.(Crl.) No.147/2021 was taken into account by the learned SDJM(S), Barpeta, while passing the final order in C.R. Case No.484/2018 dated 25.11.2022. It is also to be noted here that it is not in dispute that the petitioner has been serving as a school teacher and his monthly salary is Rs.40,000/- and it appears that the total amount of maintenance to be paid by the petitioner to the respondent No.2 in both the proceedings, amounts to Rs.10,000/- per month.

11. It is also well-settled that the respondent No.2 is entitled to live in the same standard to which she was accustomed to, while she was living with the petitioner in her matrimonial home. As the petitioner has been serving as a school teacher, the respondent No.2 is also entitled to live in the same standard even though she has been residing in her parental abode.

12. Under the aforesaid facts and circumstances, I find that the impugned order dated 29.09.2022, passed by the learned Principal Judge, Family Court, Barpeta, in F.C.(Crl.) No.147/2021 suffers no infirmity or irregularity requiring any interference of this Court.

13. However, during the course of hearing, the learned counsel for the petitioner submits that the petitioner has contracted 2nd marriage during the pendency of this proceeding and he has to maintain his 2nd wife also. It is also submitted that the prices of all essential items are skyrocketing during these days and though the petitioner's gross salary

is Rs.40,000/-, his net salary is Rs.35,000/- only and if Rs.10,000/- is awarded to the respondent No.2, the remaining amount would be insufficient to maintain his ailing parents and also himself and his first wife.

14. Having taken note of above submission and also considering the amount awarded by the learned SDJM(S), Barpeta, in C.R. Case No.484/2018, which is not challenged before this Court, further, considering the proposition of law laid down in the case of **Rajnesh** (supra), this Court is of the view that end of justice should be meted out if the amount of maintenance in the proceeding under Section 125 Cr.P.C. is reduced from Rs.6,000/- to Rs.5,000/- per month. Accordingly, interfering with the quantum of maintenance awarded by the learned Principal Judge, Family Court, it is provided that the petitioner shall pay maintenance to the respondent No.2 @Rs.5,000/- per month, from the date of application in F.C.(Crl.) No.147/2021, besides, the amount of maintenance directed to be paid to the respondent No.2 by the petitioner in C.R. Case No.484/2018. The interim maintenance already paid to the respondent No.2 has also to be adjusted as submitted by the learned counsel appearing for the petitioner and agreed by the learned counsel for the respondent No.2. The arrear amount shall be cleared within a period of 3(three) months from today, in 3 instalments. Accordingly, interim order dated 24.02.2023, stands vacated.

15. In terms of above, this criminal revision petition stands disposed of leaving the parties to bear their own cost.

Sd/- Robin Phukan
JUDGE

Comparing Assistant