

GAHC010269362022



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

Case No. : Crl.Pet./72/2023

HEMANTA MAZUMDAR
S/O- LATE DHARANIDHAR MAZUMDAR, R/O- VILL- NAKUL -1, P.O-
RANGIA, P.S- RANGIA, DIST- KAMRUP, ASSAM, PIN- 781354

VERSUS

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

2:USHA BARMAN
W/O- SRI HEMANTA MAZUMDAR
D/O- SRI PRADIP BARMAN
PRESENT R/O- VILL- ABHOIPURIA GAON
WARD NO. 9
P.O AND P.S- AMGURI
DIST- SIVASAGAR
ASSAM
PIN- 78568

Advocate for the Petitioner : MR. A K DUTTA

Advocate for the Respondent : MR. A K DUTTA

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 27.01.2023

Heard Mr. A.K. Dutta, learned counsel for the petitioner. Also heard Mr. R.R. Koushik, learned APP, learned APP appearing for the State.

2. By filing this criminal petition under section 482 Cr.P.C., the petitioner has assailed the order dated 09.09.2022, passed by the learned Additional Chief Judicial Magistrate, Sivasagar in Misc. Case No. 45/2021, being a proceeding under section 125 Cr.P.C., by which the petitioner was ordered to pay a maintenance of Rs.2000/- to the respondent no.2 i.e. petitioner's estranged wife, Rs.3000/- to the son and Rs.3000/- to the daughter, aggregating a total maintenance amount of Rs.8,000/- per month.

3. The learned counsel for the petitioner has submitted that the petitioner has a salary income, out of which he has to incur expenses for his mother, who is disabled and suffering from various illness. It is also submitted that the respondent no.2 had deserted the petitioner and she also has her own source of income through business and to show her business income, the petitioner has annexed the income tax records of the respondent no.2.

4. In this criminal petition, it is also submitted that the respondent no.2, with the physical support of the persons from her family had looted a cash of Rs.1.5 lakh, which was kept at home for his mother's medical expenses. It is also submitted that the bank documents of respondent no.2 are annexed to

show that the respondent no.2 has substantial amount of money in her account.

5. Having regard to the nature of allegation made in this criminal petition and considering the nature of the income of the respondent no.2, which in the assessment year 2020-2021 was Rs.4,10,810/-, the respondent no.2 will fall within the category of low income group. Moreover, it is too well settled that even if the wife has some income, the prayer for maintenance cannot be rejected under section 482 Cr.P.C. The cases of (i) *Sumita Kachwaha Vs. Anil Kachwaha*, AIR 2015 SC 554, and (ii) *Chaturbhuj Vs. Sita Bai*, AIR 2008 SC 530, cited by the learned Court below are authority on the point.

6. Moreover, it is seen that the maintenance, which has been awarded to the respondent no.2 is only a sum of Rs.2000/- per month. The petitioner has not been able to demonstrate from any cogent and admissible materials that it is possible for his wife to survive at a maintenance of Rs.2,000/- per month.

7. Moreover, there is no material on record to show that the order passed by the learned Additional Chief Judicial Magistrate, Sivasagar was without jurisdiction or there was any jurisdictional error in passing the said order.

8. Therefore, the Court is of the considered opinion that an order which is well within the power of jurisdiction of the learned Additional Chief Judicial Magistrate, Sivasagar and when there is no legal error in the said order, such an order cannot be quashed by applying the provisions of section 482 Cr.P.C.

9. Therefore, the order of maintenance cannot be said to be illegal, and that the maintenance granted by the learned Court below cannot be said to be exorbitant or disproportionate to the income of the petitioner. Moreover, it is the pleaded case of the petitioner that his mother is a retired employee and therefore, there are grounds to presume that she must be getting some pension. Therefore, the Court is inclined to dismiss this criminal petition at the motion stage without issuance of notice on the respondent no.2.

10. Registry shall transmit a copy of this order to the Court of learned Additional Chief Judicial Magistrate, Sivasagar to make it a part of record of Misc. Case No.45/2021 pending before the said learned Court.

JUDGE

Comparing Assistant