

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

Crl. Petn .No.12 of 2024

For Petitioner(s) : Ms. Ankita Pal, Advocate.
For Respondent(s) : Mr. S. Ghosh, Addl. P.P.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_O_R_D_E_R_

05.04.2024

Heard Ms. A. Pal, learned counsel appearing for the petitioner also heard Mr. S. Ghosh, learned Addl. P.P. appearing for the respondents.

The present petition has been filed under Section-482 of the Code of Criminal Procedure for setting aside the impugned order dated 16.12.2023 passed by the learned Addl. Sessions Judge, Kamalpur, Dhalai Tripura in connection with case No.Crl. Misc (Condo) 01 of 2023 arising out of Cr. Rev. 04 of 2023 wherein, the learned Addl. Sessions Judge passed the impugned order dated 16.12.2023 dismissing the petition of the petitioner for the delay of 421 days in filing the Revision Petition No.04 of 2023.

The facts in brief are that the respondent herein filed a petition before the learned Judicial Magistrate 1st class, Kamalpur, Dhalai Tripura praying for monthly maintenance for herself against the petitioner which was registered and numbered as Crl. Misc. 14 of 2020. Thereafter, since the order of maintenance has been passed the petitioner was not acquainted with that order. The petitioner has no knowledge about the said *ex-parte* order dated 12.05.2022 because the summons was not properly served and petitioner being day labour, he was out of station for earning bread and better, petitioner came to know about such impugned order dated 12.05.2022 passed by the learned J.M. 1st class, Kamalpur when an Execution case was filed against him after receiving the summons in Crl. Misc 41 of 2022. It is worth mentioning that before receiving Summons related to the Case No. Crl. Misc 41 of 2022 petitioner could not receive any notice/summons by the said learned Court and the notice was not properly served upon him compliance of Section-64 and 65 of Cr.P.C as such the petitioner has no knowledge about such maintenance case.

On 21.01.2022 the learned Judicial Magistrate 1st Class, Kamalpur, Dhalai Tripura passed an *ex-parte* order against the petitioner. That being unaware of the *ex-parte* order dated 12.05.2022, the petitioner has filed a revision petition before the learned Addl. Sessions Judge which was numbered as Cri. Rev. No.02 of 2023

but the same was withdrawn due to some typical error in the said case. Thereafter, petitioner again filed a revision petition before the learned Court which was numbered as CrI.Rev.04 of 2023 under Sections-397 & 399 of the Code of Criminal Procedure, 1973, challenging the legality, correctness & propriety of the impugned *ex-parte* final order dated 12.05.2022, passed by the learned Judicial Magistrate 1st Class, Kamalpur, Dhalai Tripura, in Case No. CrI. Misc 14 of 2020, whereby the petitioner was directed to pay maintenance amount of Rs.2000/- per month, to the respondent, without recording any substantial finding thereof along with condonation petition for delay of 421 days in filing the revision petition before the learned Court. After filing of the revision petition after receipt of the notice/summons, the respondent appeared before the learned Court and by an order dated 16.12.2023 the learned Addl. Sessions Judge dismissed the Condonation petition of the petitioner for delay of 421 days.

Hence this present petition has been preferred before this Court by the petitioner for redress.

Ms. A. Pal, learned counsel appearing for the petitioner has submitted that there was want of knowledge on the part of the petitioner about the suit proceeding as well as *ex-parte* order before the learned Judge below resulting in the delay. The learned Court has failed to appreciate the law, facts and circumstances and as such the order dated 16.12.2023 is liable to be set aside. The impugned order dated 16.12.2023 passed by the learned Addl. Sessions Judge, Kamalpur suffers from illegality, impropriety and irregularity and hence the impugned order is required to be set aside.

It has been further contended that the learned Court did not consider the veracity of the facts and such order dated 16.12.2023 is required to be altered. The learned Court below has committed error in law as well as facts while passing the impugned orders inasmuch as, in the condonation petition, the petitioner properly explain the reason that he has no knowledge about the said *ex-parte* order dated 12.05.2022 because the summon was not properly served. It is also mentionable here that petitioner is a day labour by profession and he was out of station for earning bread and butter. The petitioner came to know about such impugned order when execution case was filed against him after receiving the summon of CrI. Misc 41 of 2022.

In view of above arguments and having gone through the findings as observed by the learned Court below, this Court is of the opinion that the present petition needs to be disposed of holding that the petitioner-husband shall deposit maintenance amount i.e. Rs.2,000/- per month for the current month on or before 10th of April, 2024 and the arrears accrued upon till date in terms of the order of the learned Court below, shall be paid in three equal monthly installments i.e. May, June & July, 2024 and shall continue to pay the maintenance regularly. In default, the respondent-wife is at liberty to press for the execution. Till then, the execution proceedings are kept in abeyance. Once the arrears are paid, the execution proceedings be closed.

In view of above observation and direction, the present petition stands disposed of. As a sequel, miscellaneous application pending, if any, shall stand closed.

T. AMARNATH GOUD, J

A. Ghosh

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by ANJAN GHOSH
Date: 2024.04.10
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