



Serial No.02
Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl. Rev. P No.10 of 2023

Date of Decision: 07.06.2024

Shri Elkin Jolious Shadap
S/O. (L) Jelius Suiam
R/O. Mookyndeng village
West Jaintia Hills District Meghalaya

:::::PETITIONER

-VERSUS-

Smt. Meries Pala
D/O. Shri Martin Dkhar
R/O. Malki-Kharmalki, Shillong
East Khasi Hills District, Meghalaya

:::::RESPONDENT

Coram:

Hon'ble Mr. B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Suna, Adv.
For the Respondent(s) : Mr. L. M. Sangma, Adv.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT



Heard Mr. S. Suna, learned Counsel appearing for the petitioner and also Mr. L. M. Sangma, learned Counsel appearing for the respondent.

1. The petitioner and the respondent are related as husband and wife and they have 5 (five) children out of their wedlock. It appears that both of them got separated from each other and the respondent started to stay separately with all the children. In the month of October, 2020, the respondent filed an application under Section 125 Cr.P.C. being M.C.R Case No. 49 of 2020 before the Court of the Magistrate, Subordinate District Council Court, Shillong claiming monthly maintenance for the children. The learned Court of Magistrate vide order dated 05-11-2020 directed the petitioner to pay an interim maintenance of Rs. 20,000/- per month to the children. The petitioner being aggrieved, filed a petition before the Court of the Magistrate raising the question of maintainability of the case on the ground of territorial jurisdiction by contending that the petitioner is a permanent resident of Mowkyndeng village, Madankynsaw West Jaintia Hills District, Meghalaya. The learned Magistrate, immediately on the filing of the said application by the petitioner, by order dated 14-12-2021 kept in abeyance the order dated 05-11-2020 pending disposal of the petition filed by the petitioner and fixed the matter for show-cause and hearing. Thereafter, the respondent herein filed an application for setting aside of the order dated 14-12-2021 and revival of the order dated 05-11-2020. The learned Magistrate after hearing both the parties, by impugned order dated 14-12-2022 rejected the contention of the petitioner and vacated the order dated 14-12-2021 and revived the order dated 05-11-2020 by which the petitioner was ordered to pay the interim maintenance allowance to the children.

2. Assailing the impugned order dated 14-12-2022, the learned Counsel for the petitioner submitted that the petitioner is a permanent



resident of Mowkyndeng village, Madankynsaw West Jaintia Hills District and hence the learned Magistrate, Subordinate District Council Court, Shillong does not have the territorial jurisdiction to try the matter in view of the proposition of law laid down by the Apex Court reported in (2017) 13 SCC 488, *Kyntiew Akor Suchiang Vs. Woston Hynniewta*. According to the learned Counsel, the jurisdiction of the District Council Court is in respect of tribals who belong to the Scheduled Tribes within such area for which the said District Council is constituted. It would have no jurisdiction where one of the parties belong to another area which is under the jurisdiction of another District Council. Since the petitioner is a permanent resident of another district, the District Council Court in Shillong lacks territorial jurisdiction in the matter.

3. Refuting the submissions made on behalf of the petitioner, the learned Counsel for the respondent contends that in view of the provisions of law laid down in Section 126 Cr.P.C., the claim for maintenance can be instituted in any place where the husband or the wife resides or where they resided last together as husband and wife. He further contends that the petitioner and the respondent resided last together as husband and wife at Malki, Shillong, which area falls well within the territorial jurisdiction of the learned Court of the Magistrate, Subordinate District Council Court, Shillong. He submits that just because the petitioner has started residing in Jaintia Hills after getting separated from the respondent would not ouster the jurisdiction of the Court of the Magistrate, Subordinate District Council Court, Shillong.

4. The petitioner does not dispute the fact that he resided with the respondent last as husband and wife at Malki, Shillong. In fact, in his instant revision petition before this Court at para – 4, it is stated as follows: -

“That after their marriage, the Petitioner and the Respondent were living together as husband and wife



along with their children at Malki, Kharmalki Shillong till the early of the year 2019.”

The provision of Section 126 (1) Cr.PC. stipulates as follows: -

“126. Procedure. – (1) *Proceedings under section 125 may be taken against any person in any district –*

- (a) *Where he is, or*
- (b) *Where he or his wife resides, or*
- (c) *Where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.”*

Thus, there remains no doubt that the learned Magistrate has jurisdiction to try the matter in terms of provisions of Section 126 (b) & (c) Cr.PC.

5. The contention raised by the petitioner questioning the jurisdiction of the Court of Magistrate, Subordinate District Council Court, Shillong is on the basis of place of resident of the petitioner and not on the basis that the petitioner and the respondent belong to two different Scheduled Tribe communities residing under jurisdiction of different District Councils. In fact, the petitioner admits the fact that he and the respondent belong to the same Scheduled Tribe Community. It is also not the case of the petitioner that he is not a Scheduled Tribe in the area where the territorial jurisdiction of the Court of the Magistrate, Subordinate District Council, Shillong extends. In such a situation, the proposition of law laid down in *Kyntiew Akor Suchiang(supra)* is distinguishable and not applicable in the present matter as the proposition of law laid down therein applies to the persons belonging to two different Scheduled Tribes Communities from different areas.

6. For what has been discussed above, there is no merit in the present criminal revision petition. No case has been made out by the petitioner for interfering with the order dated 14-12-2022 passed by the Magistrate, Subordinate District Council Court, Shillong in M.C.R (M.C) No. 44 of



2022 arising out of M.C.R No. 49 of 2020.

7. The criminal revision petition stands dismissed.

Judge

Meghalaya
07.06.2024

BISWARUP
BHATTACHARJEE

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