

GAHC010003662012



2024:GAU-AS:12334

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

Case No. : Crl.Rev.P./115/2012

ATUL SAIKIA
S/O LT. BHOLARAM SAIKIA R/O VILL- RANGATI, P.O. PATHALIPAHAR, P.S.
BIHPURIA, DIST. LAKHIMPUR, ASSAM, PIN- 784163

VERSUS

SMTI MINA SAIKIA
W/O SRI ATUL SAIKIA R/O VILL- MOTIA CHAMUAGAON, P.O.
PATHALIPAHAR, P.S. BIHPURIA, DIST. LAKHIMPUR, ASSAM, PIN- 784163

Advocate for the Petitioner : MR.R HAZARIKA, MR.G KAKATI

Advocate for the Respondent : MR.A J DAS, MR.P DEKA,MR.G RENGMA

BEFORE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

06-12-2024

- 1.** None appears for the petitioner on call.
- 2.** The present criminal revision petition is filed under Sections 397/401 read with

Section 482 of the Code of Criminal Procedure, 1973 assailing the judgment and order dated 07.06.2011 passed by the learned Additional Chief Judicial Magistrate, North Lakhimpur in Misc. Case No. 162/2009 preferred by the sole opposite party/respondent as 1st Party under Section 125 CrPC granting sum of Rs. 600/- & Rs. 900/- per month towards maintenance of the respondent and her child respectively. The further challenge is against the judgment and order dated 22.11.2011 passed by the learned Additional Sessions Judge (FTC), Lakhimpur, North Lakhimpur in Criminal Revision No. 13(3)/ 2011 whereby the aforesaid judgment and order dated 07.06.2011 was upheld.

3. As none appears for the petitioner on call, this Court has requested Mr. N. Mahajan, learned counsel to assist this Court as an Amicus Curiae.

4. Mr. Mahajan, learned Amicus Curiae has gone through both the impugned judgments and orders as well as the present petition and he assisted this Court and made his submissions.

5. From the materials available on record, it is seen that the fundamental ground raised in the written statement of the petitioner was that the respondent/1st party therein, who is the wife of the petitioner had got sufficient income as she was working as an Anganwadi Worker and the petitioner was rather living below poverty line without any fixed income. Therefore, the learned Courts below could not have passed the aforesaid impugned judgments and orders.

6. Mr. Mahajan, learned Amicus Curiae submits that only stand taken by the petitioner is that the respondent wife is having sufficient means. Referring to the judgments, Mr. Mahajan, learned Amicus Curiae submits that both the learned Courts below after appreciation of the evidences of PW-1 and PW-2, had concluded that the evidences of such PWs were not even challenged by the defence.

7. According to Mr. Mahajan, learned Amicus Curiae, through DW-1, DW-2 & DW-3, the petitioner tried to make out a case that his wife used to go to her maternal house and

did not return to matrimonial house and she wanted the husband to stay in her maternal house. However, such fact was discarded by the learned Courts below on the ground that there was no pleading to such effect in the written statement.

8. It is also argued by Mr. Mahajan, learned Amicus Curiae that the defence witness, i.e., DW-2 stated that he did not know anything as regards the allegation made by the husband. According to Mr. Mahajan, after elaborate and meticulous discussion of the evidences, the learned Courts below had arrived at the impugned conclusion.

9. In the aforesaid backdrop, Mr. Mahajan, learned Amicus Curiae fairly submits that this Court will have limited scope in the aforesaid backdrop to interfere with the decisions exercising its revisional power.

10. This Court has perused the materials available on record and also considered the submissions advanced by the learned Amicus Curiae.

11. From the materials available on record, it is seen that after appreciation of the evidences, both the Courts below had concurrently held that the respondent wife and her child had no sufficient means to maintain themselves and the husband had refused to maintain them.

12. The ground taken in this petition, the wife being an Anganwadi Worker and getting salary will not *ipso facto* lead to a conclusion that such salary or remuneration paid to an Anganwadi Worker is sufficient to maintain the wife herself and her minor child inasmuch as such plea was not taken before the learned Courts below.

13. Law is well settled that the object of revisional power of this Court under Sections 397/401 CrPC is to set right a patent defect or an error of jurisdiction or of law. Such power can be exercised where the decisions under challenge are grossly erroneous, there is non-compliance of provisions of law, the finding recorded is either based on no evidence or the material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. It is equally well settled that the revisional jurisdiction of a High Court should

not be exercised in a routine manner.

14. The Hon'ble Apex Court in the case of ***Chandra Babu Vs State*** reported in **2015 (8) SCC 774** held that normally revisional jurisdiction should be exercised in a question of law. However, when factual appreciation is involved, then it should be exercised in the class or the classes of cases resulting in a perverse finding. The Hon'ble Apex Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

15. In the considered opinion of this Court, the learned Courts below had passed the impugned judgments and orders on the basis of the evidences led by the parties and it is not that the learned Courts below had discarded the material evidence or the irrelevant evidence had been relied upon while coming to its finding. In short, the decision arrived at by the learned Courts below cannot be said to be perverse decisions inasmuch as it is an admitted fact that the respondent wife was married to the petitioner and the child was a minor at the relevant point of time and they could not maintain themselves and that the petitioner who is the husband of the respondent and the father of the minor child did not maintain them. Accordingly, this Court finds no merit in the present petition and the same stands dismissed at its admission stage.

16. However, while parting with the record, it is made clear that as the matter is pending since 2012, the parties shall be at liberty to approach the learned Trial Court under Section 127 CrPC or Section 146 BNSS, if there is any change of circumstances and this Court puts it on record its appreciation as regards assistance rendered by Mr. Mahajan, learned counsel as an Amicus Curiae. Accordingly, Registry shall ensure that Mr. Mahajan, learned Amicus Curiae be paid the legal fee, as payable to a Legal Aid Counsel as per the existing norms fixed by the Legal Services Authority.

17. LCR be returned back.

JUDGE

Comparing Assistant