

GAHC010013412022



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

Case No. : Crl.Pet./102/2022

MD RAFIK ALI @ RAFIKUL ALI
S/O MD. TABI ALI @ TARI SHEIKH
VILL- CHAKARMUKH NO. 1,
P.S. SIPAJHAR
DIST. DARRANG, ASSAM

VERSUS

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

2:SEMINA YESMIN
D/O MD AJMOL ALI
VILL- CHAKARMUKH NO. 1

P.S. SIPAJHAR
DIST. DARRANG
ASSA

Advocate for the Petitioner : MR. A MOBARAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 02-05-2024

1. Heard Mr. A Mobaraque learned counsel for the petitioner.

Also heard Mr. D Das learned Addl. PP and Mr. T Islam, learned counsel for the respondent No.2.

2. The present application under section 482 Cr.P.C is preferred by the petitioner for quashing and setting aside the judgment and order passed by the learned Sessions Judge, Darrang Mangaldoi in CR Case No.17(D-2)/2018 whereby the judgment and order dated 18.05.2018 passed by the learned CJM, First Class, Darrang Mangaldoi in MR Case No.48/2015 awarding monthly maintenance of Rs.6500/- per month was upheld.

3. The payment of maintenance was directed in favour of the daughter of the respondent No.2 who is a minor and an illegitimate child of the petitioner.

4. The only ground urged by the petitioner is that he is a daily wage earner and he is working in a private company and he is not in a position to pay such awarded amount.

5. Per contra, Mr. T Islam learned counsel for the respondent submits that this court in exercise of its revisional power should not entertain such petition where the facts are determined concurrently by both the courts below.

6. From the materials available on record it is an undisputed fact that the respondent No.2 filed an application before the learned Chief Judicial Magistrate, Darrang, Mangaldoi under section 125 Cr.P.C claiming maintenance of a child born out of the physical relation between the petitioner and the respondent No.2. Though an allegation of rape was made by the respondent No.2, which is the subject matter of the prosecution, on the basis of which Sipajhar PS

case No.764/2014 under section 376/417/420 IPC is launched, this court shall not deal with such allegation.

7. The learned CJM, Darrang, Mangaldoi after elaborately referring to the pleadings and depositions made by the witnesses, awarded an amount of Rs.6,500/- as monthly maintenance as regards the illegitimate child.

8. Being aggrieved by the aforesaid order, the petitioner herein preferred a revision petition against the judgment. The only ground on which such judgment was assailed is the quantum of amount to be excessive for the reason that the petitioner is a daily wage earner and he has to maintain his old aged parents.

9. After considering the matter, the learned revisional court dismissed the revision petition and opined that there is no ground to pass a different order.

10. As recorded herein above, the only ground of challenge is the quantum of maintenance awarded by the learned Chief Judicial Magistrate.

11. It is seen from the aforesaid that the only ground urged is the quantum of maintenance and the fact that the petitioner is a daily wage earner and therefore he cannot pay Rs. 6,500/- per month. Such ground needs factual appreciation. However factual appreciation made by the learned courts below shall require a conclusion that such findings are perverse. Neither this court has found any such perversity nor the learned counsel for the petitioner had been able to show one.

12. After perusal of the materials on record this court is also unable to find any glaring procedural defect or any manifest error on

point of law resulting in flagrant miscarriage of justice in the case in hand, inasmuch as the revisional power is required to be exercised so that justice is done and there is no abuse of the process of the court.

13. Accordingly, it is the unhesitant opinion of this court that the present petition is devoid of any merit and accordingly same stands dismissed.

JUDGE

Comparing Assistant