

GAHC010020382023



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

**Case No. : Crl.Rev.P./69/2024**

KHAN ASHRAFUL ALOM  
S/O SAHIDUL ISLAM, R/O VILL.-BALARPATHAR, P.O.-SHOWPUR, P.S.-  
KALGACHIA, DIST.-BARPETA (ASSAM).

VERSUS

BEGUM SAJINA AHMED  
D/O ABDUL HAKIM AHMED, R/O SANTI NAGAR, WARD NO.9, BARPETA  
ROAD TOWN, P.O. AND P.S.-BARPETA ROAD, DIST.-BARPETA (ASSAM),  
PIN-781316.

**Advocate for the Petitioner : MR. R ALI**

**Advocate for the Respondent : MR. S ISLAM**

**BEFORE**  
**HONOURABLE MRS. JUSTICE MALASRI NANDI**

**ORDER**

**Date : 13-03-2024**

Heard Mr. R. Ali, learned counsel for the petitioner as well as Mr. S. Islam, learned counsel for the respondent.

2. The petitioner has preferred an application under sections 397/401

read with section 482 of Cr.P.C. against the impugned judgment and order dated 10.08.2022 passed by the learned Principal Judge, Family Court, Barpeta, in FC (Crl) case no.325/2020 whereby the petitioner was asked to pay an amount of Rs.7000/- per month as maintenance to the respondent.

3. The case of the petitioner is that the respondent filed an application under section 125 Cr.P.C. before the learned trial Court, Barpeta alleging inter-alia that she entered into a marriage with the petitioner on 14.06.2020 according to Muslim Shariat by executing registered Kabilnama. At the time of marriage with the petitioner the respondent brought various articles with her to the house of the petitioner and both the parties started to live together as husband and wife. The petitioner has his father, brother and sister in his house.

4. The respondent's case is that she stayed about 13 days in her matrimonial home. It was alleged that as the husband and father-in-law demanded money and dowry articles, she was compelled to leave her husband's house and started to live with her parents.

5. The further case of the petitioner is that he is a dentist, by profession working in Delhi. The respondent wife is also a homeopathic doctor. According to the learned counsel for the petitioner, the Family Court, Barpeta without considering the earning capacity of the respondent, directed the petitioner to pay monthly maintenance of Rs.7000/- to the respondent.

6. The learned counsel for the petitioner has also submitted that the learned Family Court has totally failed to appreciate the guidelines issued by the Hon'ble Supreme Court in the case of *Rajneesh Vs. Neha reported in (2021) 2*

SCC 324 and passed the impugned judgment without considering the assets and liabilities of the concerned parties which is mandatory in nature. In the case of *Rajneesh Vs. Neha (supra)*, the party claiming maintenance should require to file an affidavit disclosing assets and liabilities of the respective parties before the concerned Court. As the Family Court, Barpeta did not follow the guidelines of the Hon'ble Supreme Court the matter be remanded back to consider the matter afresh.

7. On the other hand, the learned counsel for the respondent has made no objection on the prayer of the petitioner to consider the matter afresh by providing their respective assets and liabilities before the trial Court.

8. I have considered the submissions of the learned counsel for the parties. It appears from the record as well as the judgment of the trial Court that the learned Family Court did not ask the parties to provide their respective assets and liabilities during trial and the judgment was passed accordingly without following the guidelines of Hon'ble Supreme Court in the case of *Rajneesh (supra)*.

9. The Hon'ble Apex Court in the case of *Rajneesh (supra)* has held as under:-

*“.... The party claiming maintenance either as a spouse or as a partner in a civil union, live-in relationship, common law marriage should be required to file a concise application for interim maintenance with limited pleadings, along with an affidavit a disclosure of assets and liabilities before the concerned Court, as a mandatory requirement. On the basis of*

*the pleadings filed by both parties and the affidavits of disclosure, the Court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at an interim stage....”*

10. In view of the aforesaid legal proposition as well as the submission of the learned counsel for the parties, the present criminal petition is allowed. The matter is remitted back to the Principal Judge, Family Court, Barpeta with a direction to decide the matter afresh after considering the disclosure of assets and liabilities by both the parties.

11. The parties are directed to appear before the Principal Judge, Family Court, Barpeta on 09/04/2024 to get further instruction regarding submission of affidavit on assets and liabilities. On the basis of disclosure of assets and liabilities by both the parties, the Family Court, Barpeta will decide the matter afresh and pass the appropriate order in accordance with law.

12. The judgment and order dated 10.08.2022 is hereby set aside. If any payment has been made earlier by the petitioner which may be adjusted accordingly.

13. In view of the above observation, this criminal petition stands disposed of.

**JUDGE**

**Comparing Assistant**