

GAHC010041252024



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

Case No. : Crl.Rev.P./245/2024

DEBASHIS PAUL
S/O SRI DILIP KUMAR PAUL, R/O 602-B, PRIYANKA APARTMENT, DINHATA
ROAD, NEAR MORAPARA CHOWPATTY, BESIDE ELECTRICITY OFFICE,
P.O.- COOCHBEHAR, PIN-736101, WEST BENGAL.

VERSUS

SMTI. BANHISIKHA PAUL DEB
D/O SRI BIPLAB DEB, W/O SRI DEBASHIS PAUL, R/O LACHIT NAGAR,
MAHALAYA APARTMENT, 4TH FLOOR, FLAT NO. 4-A, BYE LANE -12,
OPPOSITE BYE LANE NO. 09, P.S.-PALTAN BAZAR, GUWAHATI-781007,
DIST.- KAMRUP (M), ASSAM.

Advocate for the Petitioner : MR C KUMAR, MR. K KASHYAP, MS. V RAI, MR H BETALA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 07.08.2024

Heard Mr. H.Betala, learned counsel for the petitioner.

2. By filing this criminal petition under Sections 401 of the CrPC r/w Section

19 (4) of the Family Courts Act, 1984, the petitioner has prayed for setting aside the impugned Judgment and Order dated 11.07.2023 passed by the learned Principal Judge, Family Court No.2, Kamrup (M) at Guwahati in F.C. (Crl.) Case No. 548/2019 directing the petitioner to pay an amount Rs. 40,000/- per month to the respondent as maintenance allowance from the date of order.

3. The opposite party, being the wife of the petitioner had filed an application under Section 125 CrPC, 1973 before the learned Principal Judge, Family Court No.2, Kamrup (M), Guwahati in FC (Crl.) Case No. 548/2019 praying for a decree of maintenance in favour of the respondent/opposite party and her two daughters.

4. Though the summons were served to the petitioner and subsequently, the petitioner also filed a petition before the trial court showing his inability to appear on the date but the trial court observing the continuous absence of the petitioner/ husband, had proceeded the case *ex-parte* against him. Thereafter, the evidence was adduced by the respondent wife. On 27.02.2022, the matter was fixed for *ex-parte* argument. On the said date, the petitioner husband had filed a petition praying for setting aside the *ex-parte* order dated 01.08.2022 but the learned trial court did not consider the prayer of the petitioner and finally on 11.07.2023 *ex-parte* judgment was passed directing the petitioner to pay the maintenance allowance to his respondent wife and her two daughters as aforesaid.

5. Learned counsel for the petitioner has submitted that the learned trial court while passing the *ex-parte* order on 11.07.2023, has failed to take note of the vital fact that the decision arrived at in the case is against the guidelines of the Hon'ble Supreme Court in the case of ***Rajnesh vs- Neha & anr.*** reported in (2021) 2 SCC 324, which makes it mandatory to file an affidavit for

disclosure of assets and liabilities of the parties in order to arrive at a conclusion for determining the quantum of maintenance. It is further submitted that as the order dated 11.07.2023 passed by the trial court is a clear violation of the guidelines referred in the case of Rajnesh (supra), the order is liable to be set aside with a direction to decide the matter afresh.

6. By referring the judgment of ***Aditi @ Mithi vs- Jitesh Sharma*** reported in (2023) SCC Online SC 1451, learned counsel for the petitioner has pointed out that in the said case, the Hon'ble Supreme Court has held that the guidelines laid down in the case of Rajnesh (supra) has to be followed mandatorily by all the courts while deciding the case of maintenance.

7. Learned counsel for the petitioner has also contended that it is reflected in the case of Rajnesh (supra) that in the first instance, the family court in compliance of the mandate of Section 9 of Family Courts Act, 1984 must make an endeavour for settlement of the disputes which is not followed in family courts.

8. Learned counsel for the petitioner also submits that the appointment of marriage counsellors in every family court is also required. Learned counsel has also pointed out the paragraph 64 and 65 of the decision of Rajnesh (supra) which are reproduced as follows:

“64. In the first instance, the Family Court in compliance with the mandate of [Section 9](#) of the Family Courts Act 1984, must make an endeavour for settlement of the disputes. For this, [Section 6](#) provides that the State Government shall, in consultation with the High Court, make provision for counsellors to assist a Family Court in the discharge of its functions. Given the large and growing percentage of matrimonial litigation, it has become necessary that the provisions of [Section 5](#) and [6](#) of the Family Courts Act are given effect to, by providing for the appointment of marriage counsellors in

every Family Court, which would help in the process of settlement. If the proceedings for settlement are unsuccessful, the Family Court would proceed with the matter on merits.

65. 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, alongwith an Affidavit of 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 the interim stage.”

9. Having heard the learned counsel for the petitioner as well as in view of the aforesaid legal mandates, the parties are to give declaration about their income, assets and liabilities before the trial court in deciding the quantum of maintenance. From the judgment of the trial court dated 11.07.2023, it reveals that earlier though notice was served to the petitioner but due to his absence for some days, the matter was proceeded ex-parte and the case was fixed for ex-parte argument. Though the petitioner filed a petition before the trial court to vacate the *ex-parte* order, but the trial court rejected the said petition. Ultimately, the *ex-parte* judgment was delivered without determining the assets and liabilities of the petitioner. The judgment dated 11.07.2023 also shows that this exercise was not undertaken by the learned trial court in spite of the binding directions issued by the Hon'ble Supreme Court.

10. As per judgments of the *Rajnesh (supra)* and *Aditi @ Mithi (supra)* it was directed that the financial capacity of the husband, his actual income, reasonable expenses of his own maintenance and dependant family whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration to arrive at the appropriate quantum of maintenance to

be paid.

11. In the case in hand, admittedly, the trial court did not allow the petitioner to contest the case and to disclose his assets and liabilities which is a gross violation of the guidelines of the Hon'ble Supreme Court in the aforesaid cases.

12. Hence, the judgment and order dated 11.07.2023 is set aside with a direction to the trial court to give opportunity to both the parties to submit their respective affidavits disclosing their assets and liabilities and thereafter, to hear the matter afresh and to pass necessary order in accordance with law. The parties are directed to appear before the trial court on or before **02.09.2024** to take necessary instructions from the trial court to further proceed with the case.

13. If any payment is made by the petitioner, in view of the order dated 11.07.2023, the same shall be adjusted accordingly.

14. It is pertinent to mention here that the learned trial court is directed to follow the guidelines enumerated by the Hon'ble Supreme Court in the case of Rajnesh (supra) as reflected in paragraph 64 and 65 as aforesaid.

Criminal petition stands disposed of.

JUDGE

Comparing Assistant