

GAHC010067992020



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

Case No. : Crl.Rev.P./137/2020

SUMAN CHAKRABORTY
S/O- SRI SIBU PRASAD CHAKRABORTY, R/O- DIMAPUR RAILWAY
COLONY, P.O. AND P.S. DIMAPUR, DIST.- DIMAPUR, NAGALAND

VERSUS

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

2:MINAKSHI CHAKRABORTY
W/O- SRI SUMAN CHAKRABORTY
D/O- AJAY CHARABORTY
R/O- WARD NO.4
MARIANI (NATUN MATI)
P.O. AND P.S. MARIANI
DIST.- JORHAT
ASSAM
ASSA

Advocate for the Petitioner : MR A TEWARI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 02-05-2024

1. Heard Mr. R Sarma learned counsel for the petitioner. Also heard Mr. D Das learned Addl. PP, appearing for the State respondent

and Mr. H Rohman learned counsel for the respondent No.2.

2. This present revision petition is filed assailing a judgment and order dated 21.12.2019, passed by the learned Sub Divisional Judicial Magistrate (M) at Titabor, Jorhat, Assam in Misc Case No.35/2018 under section 125 Cr.P.C, by which the petitioner was ordered to pay maintenance to the respondent No.2 @ Rs.4,000/- per month. An amount of Rs.20,000/- as compensation was also directed to be paid to the respondent No.2 wife for alleged torture meted out to the respondent No.2 by the husband/petitioner.

3. Mr. Sarma submits that the impugned order has been passed without considering the stand of the petitioner inasmuch as without considering the fact that though the petitioner had a business earlier in the name of M/S Balaji Enterprise, however, the said business was closed down in the year 2018 and therefore, he was not having much income to pay the compensation awarded.

4. Mr. Sarma further submits that the learned Magistrate was not within its competence and jurisdiction to award a compensation for alleged torture inasmuch as such determination cannot be made in the proceeding under section 125 Cr.P.C and no power is vested by the Magistrate in exercise of its power under section 125 Cr.P.C to award a compensation amount and therefore, the impugned orders are liable to be quashed and set aside.

5. Per contra, Mr. Rohman learned counsel for the respondent submits that the learned Magistrate, after examination of the evidence led by the petitioner and considering the materials available on record has judiciously concluded and determined the issue framed therein

and therefore, this court in exercise of its judicial power should not interfere with such finding of fact not being perverse or not being legally sustainable.

6. However, Mr. Rohman submits that though there is no specific power given under section 125 Cr.P.C to award compensation, however, the Magistrate will not be powerless to pass such an order in the interest of justice.

7. Heard the learned counsel for the parties and also perused the LCR.

8. From the LCR it is seen that the respondent No.2 specifically pleaded and claimed that she was not maintained by her husband and wife could not maintain herself. The respondent No.2 had laid as many as 4 witnesses in support of her contention. The petitioner, though filed a written statement, but he neither cross examined the witnesses nor had led any evidence in the proceeding in support of his contention. Thus, the testimonies of the witnesses, who deposed in support of the respondent No.2 wife, remained un-rebutted and on the basis of the un-rebutted evidence, the learned Magistrate has concluded that the respondent No.2 is entitled for maintenance.

9. This court has gone through the deposition of the witnesses as well as the application filed under section 125 Cr.P.C by the respondent No.2, Wife.

10. From the aforesaid it is seen that the respondent No.2 has duly established her claim through her witnesses and there is no perversity in arriving at the conclusion, so far that the same relates to the entitlement of the respondent No.2 for maintenance as well as the

quantum.

11. That being the position, this court in exercise of its revisional power is not inclined to interfere with such decision.

12. Section 125 Cr.P.C empowers a Magistrate, upon proof of neglect or refusal to order payment of maintenance to a wife who is unable to maintain herself. However such provision do not prescribe or empower a Magistrate to award compensation for cruelty. What is to be determined is that the wife is unable to maintain herself and that the husband though is having sufficient means, neglects or refuses to maintain his wife. If the aforesaid two facts are established, the Magistrate can award monthly allowances for maintenance of the wife at such monthly rate as the magistrate thinks fit and therefore, in the considered opinion of this court, the Magistrate could not have awarded the compensation amount that too determining @ Rs.20,000.

13. Accordingly, this court is of the view that such order awarding compensation to the tune of Rs.20,000/- is not sustainable in law and accordingly the same is interfered with.

14. The impugned decision so far relating to the award of maintenance passed in favour of the respondent No.2 wife @ Rs.4,000/- per month is upheld and the order of compensation of Rs.20,000/- is interfered with.

15. This court has also noted that no order of stay was passed by this court staying the impugned order of maintenance, however, the maintenance has not been paid to the wife.

16. At this stage Mr. Sarma, learned counsel submits that the

petitioner is in Hyderabad in connection with his father's treatment and he will clear the arrear dues in 10 equal installments and will continue to pay the current monthly maintenance amount.

17. Be that as it may, the present petition stands disposed of with the determination made herein above.

18. Return the LCR.

JUDGE

Comparing Assistant