

GAHC010163772024



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

Case No. : Crl.Pet./322/2023

MD. JABIR HUSSAIN
S/O MD. SAHJAHAN HUSSAIN
R/O DEHAJAN NEAR DEHAJAN MAJID
P.O. DEMOW
P.S. MORAN
DIST. SIVASAGAR
ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
THROUGH THE PP
ASSAM

2:MRS. BENJIR NARFA AZAM
W/O MD. JABIR HUSSAIN
D/O MUKIBUR RAHMAN
R/O GELEKEY GGS NO. 1 GOAD

P.O. AND P.S. GELEKEY
DIST. SIVASAGAR
ASSAM

Advocate for : MR R CHAKRAVORTY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

12.09.2024

Heard Mr. R. Chakravorty, learned counsel for the petitioner and Mr. A. W. Aman, learned counsel for the respondent No. 2. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State/respondent No. 1.

2. In an application filed under Section 125 CrPC by the respondent No. 2 against the petitioner, the learned Sub-Divisional Judicial Magistrate (M), Nazira, Sivasagar by Final Order dated 06.07.2022 passed in Misc. Case No. 26/2020, directed the petitioner to pay a monthly maintenance of Rs. 4,000/- per month to the respondent No. 2 and Rs. 3,000/- to their minor daughter, in total Rs. 7,000/- per month w.e.f. 06.07.2022.

3. Against the said Final Order of monthly maintenance dated 06.07.2022 passed by the learned SDJM (M), Nazira, Sivasagar in Misc. Case No. 26/2020, the petitioner preferred a Criminal Revision Petition before the Court of the learned Sessions Judge, Sivasagar, being Crl. Rev. No. 25(3)/2022.

4. After hearing the parties, by judgment dated 01.02.2023, the learned Sessions Judge, Sivasagar dismissed the said Criminal Revision No. 25(3)/2022 preferred by the petitioner and affirmed the order dated 06.07.2022 passed by the learned SDJM (M), Nazira, Sivasagar in Misc. Case No. 26/2020 under Section 125 CrPC.

5. Hence this criminal petition by the petitioner, praying amongst others, to set aside and quash the impugned judgment dated 01.02.2023 passed by the learned Sessions Judge, Sivasagar in Criminal Revision No. 25(3)/2022 as well as Final Order dated 06.07.2022 passed by the learned SDJM (M), Nazira, Sivasagar in Misc. Case No. 26/2020.

6. Notice in this case was issued on 11.04.2023 and the respondent No. 2 has filed its affidavit-in-opposition.

7. The Hon'ble Supreme Court in the case of *Rajnish Vs. Neha*, reported in (2021) 2 SCC 324 decided on 04.11.2020 have laid down the law for consideration of the amount of maintenance under Section 125 CrPC and also the process of assessment/determination of such maintenance payable to the aggrieved party including the interim maintenance payable to such aggrieved party.

8. In the case in hand, it is seen that the Final Order dated 06.07.2022 passed by the learned SDJM (M), Nazira, Sivasagar in Misc. Case No. 26/2020 under Section 125 CrPC is not in conformity with the said judgment of the Hon'ble Apex Court in the case of *Rajnish* (supra) and the directions issued therein.

9. In view of the above, the Final Order dated 06.07.2022 passed by the learned SDJM (M), Nazira, Sivasagar in Misc. Case No. 26/2020 under Section 125 CrPC is hereby set aside and quashed and the matter is remanded back to the Court of the learned Sub-Divisional Judicial Magistrate (M), Nazira, Sivasagar for a fresh consideration, who in turn shall dispose of the said Misc. Case No. 26/2020 under Section 125 CrPC preferred by the respondent No. 2 in accordance with law.

10. Consequently, the Judgment dated 01.02.2023 passed by the learned Sessions Judge, Sivasagar in Criminal Revision No. 25(3)/2022 is also set aside and quashed.

11. Till such Final Order to be passed by the learned Sub-Divisional Judicial Magistrate (M), Nazira, Sivasagar in said Misc. Case No. 26/2020, the petitioner shall pay a monthly interim maintenance of Rs. 3,000/- to the respondent No. 2 and Rs. 2,000/- to their minor daughter, in total Rs. 5,000/- per month in the bank account of the respondent No. 2 every successive month as per Gregorian calendar within the first ten days, depositing the receipt of such payment before the Court of the learned Sub-Divisional Judicial Magistrate (M), Nazira, Sivasagar in said Misc. Case No. 26/2020.

12. In default of payment of such total interim maintenance by the petitioner to the respondent No. 2, she shall approach the Court of the learned Sub-Divisional Judicial Magistrate (M), Nazira, Sivasagar in Misc. Case No. 26/2020 and in turn the said Magistrate shall do the needful in accordance with law.

13. With the above observations and directions, this criminal petition stands disposed of.

JUDGE

Comparing Assistant