

GAHC010086802023



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

Case No. : Crl.Rev.P./255/2023

DHRUBAJYTOI KALITA
S/O SRI PARIKHIT KALITA
R/O BANAKUCHI, P.O. AND P.S. TIHU
DIST. NALBARI, ASSAM,
PIN-781371

VERSUS

BHANITA DEKA
D/O SRI HALADHAR DEKA
R/O VILL- SARTHEBARI,
P.O. AND P.S. SARTHEBARI
DIST. BARPETA, ASSAM
PIN-781307

Advocate for the Petitioner : MR. U SAIKIA

Advocate for the Respondent : MR. R ALI

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

JUDGMENT

Date : 26-04-2024

Heard Mr. S.D. Roy, learned counsel for the petitioner. Also heard Mr. H.A. Ahmed, learned counsel for the respondent.

2. This is an application under Section 401 read with Section 482 Cr.P.C. against the impugned judgment and order dated 14.03.2023 passed by the learned Principal Judge, Family Court, Barpeta in connection with F.C.(Crl.) No.140/2022 under Section 125 Cr.P.C. whereby the present petitioner is directed to pay maintenance allowance of Rs.4,000/- per-month to the wife/respondent and Rs.1,000/- to her minor son from the date of filing of the petition.

3. It is submitted by the learned counsel for the petitioner that he married the respondent on 05.12.2018 as per Hindu rituals and started their conjugal life at village Banekuchi, Tihu, Nalbari. They lead a very happy conjugal life, but slowly the respondent started misbehaving with the petitioner and his old parents and without any reason she left the house of the petitioner and went to her maternal house situated at Sarthebari, which is 15 K.M far from the house of the petitioner. She started staying in her maternal house for almost two/three months. However the respondent again came back to her matrimonial house on being requested by the petitioner. But after some days she again started

behaving cruelly with the petitioner as well as in laws and after some days, she again left her matrimonial house. However on 09.05.2021, a village bichar was held wherein an agreement was made and as per the said agreement, she again returned to her matrimonial house and started her marital life. But again on 26.08.2021, she falsely lodged an FIR before Tihu police station against the petitioner and his family member and she went to her maternal house and since then she did not return back to her matrimonial house. Thereafter, she lodged a case for maintenance under Section 125 Cr.P.C. before the learned Principal Judge, Family Court, Barpeta, wherein, after hearing the submissions made by the learned counsel for both sides, the learned Principal Judge, Family Court passed an order for maintenance of Rs.5,000/-, directing the petitioner to pay Rs.4,000/- to the respondent/wife and Rs.1,000/- to the minor son of the respondent towards maintenance allowance. He further submits that she lodged the FIR as well as the case for maintenance with some false and concocted allegation of mental and physical torture on her for demand of money, which is totally false and concocted. It is stated by the respondent in her petition that the petitioner has a stock of grocery shop goods at his residence and he earns Rs.60,000/- per-annum and that apart he also has house and other agricultural land. But the petitioner is a hocker of stationary goods and he sales his stationary items door to door in his locality and earns very meager amount of

money which is not even sufficient to maintain himself and his parents.

But the learned Court below while passing the impugned order did not consider all these facts of this case and arrived at a wrong decision which is passed only on the basis of the evidence of PWs. More so, the respondent left her matrimonial house by her own and she refused to continue her conjugal life and thus she is not entitled to any maintenance under Section 125 Cr.P.C. Further, the petitioner was also not given any chance to produce his income certificate before the learned Court below and decided the quantum of maintenance in absence of assets and liabilities statement on record. Further it is stated that the learned Family court also over looked the criminal case which was filed by the respondent under Section 498A Cr.P.C. wherein, the respondent is already acquitted by the JMFC, Tihu. Accordingly, it is submitted by the learned counsel for the petitioner that the judgment and order passed by the learned Principal Judge, Family Court, Barpeta in FC(Crl.) 140/2022 is liable to be set aside and quashed and the present petitioner is not in a position to provide maintenance of Rs.5,000/- per-month as per the direction of the learned Principal Judge, Family Court in FC(Crl.) 140/2022.

4. In this context, learned counsel for the respondent has submitted that the learned Principal Judge, Family Court rightly assessed the quantum of

maintenance and hence, there is no need of any interference of this Court in the judgment and order passed by the learned Court below. The quantum of maintenance passed by the learned Principal Judge, Family Court is only Rs.5,000/- which is quite reasonable rather there should be an increase of maintenance amount as the respondent is facing difficulty in maintaining herself along with her minor child with the said amount. Further he submits that the case is also not maintainable as it is not filed under the proper section of law and the present revision petition filed only under Section 401 read with Section 482 Cr.P.C. which is not maintainable and the petition ought to have been filed under Section 397 Cr.P.C., under which section the revision lies. He further submits that in the statement of assets and liabilities submitted by the petitioner it is shown that he has paid Rs.32,000/- per-anum as EMI which is contradictory to his own statement wherein he stated that he earns Rs.5,000/- per-month only from his business. It is seen that the petitioner has not come before the Court with clean hands and his contradictory statement reveals that his income is more than 5,000/- and he is able bodied person and is liable to pay maintenance to his wife and the minor child. Learned counsel for the respondent further relied on a decision of the Hon'ble Apex Court in the case of *Anju Garg and Another –vs- Deepak Kumar Garg* reported in (2022) 3 Apex Court Judgments (SC) 311 and relied on paragraph-9 of the said judgment

which quoted herein below:-

“A two-Judge Bench in [Kirtikant D. Vadodaria v. State of Gujarat](#) [(1996) 4 SCC 479 : 1996 SCC (Cri) 762] , while adverting to the dominant purpose behind [Section 125](#) of the Code, ruled that : (SCC p. 489, para 15)

15. “... While dealing with the ambit and scope of the provision contained in [Section 125](#) of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in [Section 125](#) provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in [Section 125](#) are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in [Section 125](#) clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

10. In [Chaturbhuj v. Sita Bai](#) [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] , reiterating the legal position the Court held : (SCC p. 320, para 6)

6. “... [Section 125](#) CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Capt. [Ramesh Chander Kaushal v. Veena Kaushal](#) [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] falls within constitutional sweep of [Article 15\(3\)](#) reinforced by [Article 39](#) of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in [Savitaben Somabhai Bhatiya v. State of Gujarat](#) [(2005) 3 SCC 636 : 2005 SCC (Cri) 787] .”

11. Recently in [Nagendrappa Natikar v. Neelamma](#) [(2014) 14 SCC 452 : (2015) 1 SCC (Cri) 407 : (2015) 1 SCC (Civ) 346] , it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children”.

5. Citing the above preferred judgment, the learned counsel for the

respondent further submits that it is a settled position of law that Section 125 Cr.P.C. is a measure of social justice and specially enacted to protect women and children and infirm parents etc. and to prevent destitution vagrancy. He further relied on the decision of the Coordinate Bench of this Court passed in Crl.Rev.P.105/2022 dated 09.01.2023 wherein also this Court is expressed the view that Section 125 Cr.P.C has been enacted to achieve social object and the object is to prevent vagrancy and destitution and to provide speedy remedy to deserted or divorced wife minor children and infirm parents in term of food, clothing and shelter and minimum needs of one's life. Accordingly, it is submitted that the present petitioner is not only an able bodied person, but has also sufficient source of income who give EMI of Rs.32,000/- and also has sufficient income to provide maintenance @ Rs.5,000/- per-month for the maintenance of respondent and her minor child.

6. After considering the submissions made by the learned counsel for both sides, I have also perused the case record of the judgment passed by the learned Court below in FC (Crl.) 142/2022 dated 14.03.2023. It is the main contention of the petitioner that he is a poor person and he earns his livelihood doing his business only as a hocker and as such, he is not in a position to pay Rs.5,000/- per month towards maintenance of the respondent and her minor

child. Further it is the case of the petitioner that the respondent left his matrimonial house at her own and inspite of his best effort she did not return to her matrimonial house and thus she is not entitled to maintenance under Section 125(2) Cr.P.C. as she left his house by her own. But the learned Principal Judge, Family Court, Barpeta failed to appreciate the fact that the petitioner never neglected the respondent to keep her with him rather it is the respondent who left her matrimonial house without any reason and started living separately and at the same time, learned Principal Judge, Family Court also failed to assess the income of the petitioner and directed him to pay maintenance @ 5,000/- per-month towards maintenance of the respondent and her minor child.

7. But from the discussion made in the judgment passed by the learned Court below, it is seen that the respondent brought serious allegation of mental and physical torture on her by demanding fridge, gold chain etc. at the time of marriage and on 26.08.2021 she was subjected to physical torture by the petitioner and his parents, for which she had to leave her matrimonial house and she was compelled to live separately from the petitioner. At the same time, it is seen that for the allegation of mental and physical torture she also lodged an FIR against the petitioner under Section 498A IPC though he got acquitted by the learned Court below. But it is evident from the evidence of PWs and DWs

that since the day she left her matrimonial house the petitioner never paid any maintenance to her and the evidence of the PW 1 also could not be reborted in respect of allegation of mental and physical torture on her rather the petitioner failed to substantiate his plea that the respondent left his house without any reason and living separately. The petitioner may got acquitted in the case lodged against him by the respondent but that cannot be the sole ground for rejecting the prayer of maintenance made by the respondent unless it is proved that she left her matrimonial house without any reason.

8. Coming to the quantum of maintenance, it is the case of the respondent that the petitioner is a business man and deals with the stocks of grocery items and has sufficient landed property. But as per the petitioner he is a hocker and deals with the business of stationary items by moving door to door and earns meager amount of money and as such he is not in a position to pay maintenance to the respondent and her minor child as awarded by the learned Court below. But it is admitted that the first party is a legally married wife of the second party and a child was also born out of their wedlock. It is also a fact that the petitioner is an able bodied person. Though it is claimed by the petitioner that he does not have any sufficient income to pay maintenance as he is a poor business man and deals with the business of stationary items as a hocker, but

from the assess of liabilities submitted by the petitioner, it is seen that he used to pay 32,000/- per-anum as EMI and which is found to be self contradictory with his plea that he earns a very meager amount of money from his business as hocker. More so, the awarded maintenance amount is found to be very reasonable and justified.

9. Section 125 Cr.P.C. is a measure of social justice and is substantially enacted to protect the women and children and it gives effect to fundamental rights and natural duties of a man to maintain his wife children and parents when they are unable to maintain themselves. [Chaturbhuj –Vs- Sita Bai reported in (2008) Vol-2 SCC 316].

10. So in view of the discussion made hereinabove, this Court is of the opinion that the judgment and order passed by the learned Principal Judge, Family Court, Barpeta needs no interference of this Court and the awarded amount of maintenance is found to be reasonable and justified. In the resultant situation, the Criminal Revision Petition stands dismissed.

11. The petitioner/second party is hereby directed to pay maintenance to the respondent/wife @ Rs.4,000/- and to the minor child Rs.1,000/- per-month as awarded. The petitioner is further directed to pay arrear amount of

maintenance, if any.

With the above observations, the present petition is disposed of.

JUDGE

Comparing Assistant