

GAHC010098172023



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

Case No. : Crl.Rev.P./184/2023

FARIDUL ISLAM
S/O ROMEJ UDDIN
R/O VILL- KOKILA PART-II
P.O. KOKILA
P.S. ABHAYAPURI
DIST. BONGAIGAON, ASSAM
PIN-783392

VERSUS

KARISHMA KHATUN
D/O ABDUS SAMAD
R/O VILL- DEWKURA
P.O. KALGACHIA
P.S. KALGACHIA
DIST. BARPETA, ASSAM
PIN-781319

Advocate for the Petitioner : MR A A DEWAN, S N ULLAH

Advocate for the Respondent : MR. M ALI, MR J. ISLAM, MR. R ISLAM

:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 13.05.2024

Date of Judgment : 21.08.2024

JUDGMENT & ORDER (CAV)

Heard Mr. A. A. Dewan, learned counsel for the petitioner. Also heard Mr. M. Ali, learned counsel for the respondent.

2. This application has been filed under Section 397/401 of the Code of Criminal Procedure, 1973 challenging the impugned Judgment & Order dated 08.02.2023, passed by the learned Principle Judge, Family Court, Barpeta, in F.C. (Crl.) Case No. 491/2021, registered under Section 125 of Cr.P.C., whereby, the petitioner/2nd party was directed to pay maintenance of Rs. 4,000/- (Rupees Four thousand) only to the present respondent/1st party.

3. The facts leading to the filing of the present revision petition are as follows: The respondent, as the 1st party, filed an application under Section 125 of the Cr.P.C. claiming maintenance from the present petitioner/2nd party. The respondent's case, in brief, is that she got married with the petitioner on 04.03.2020 as per Muslim Shariat. She contends that, two months after their marriage, the petitioner started demanding Rs. 5,00,000/- as dowry due to direct instigation and inducement by other family members of the petitioner. She alleges that when she was unable to meet this demand, the petitioner subjected her to physical and mental torture. Despite enduring this treatment for the sake

of her family, she was ultimately driven out of her matrimonial home on 07.06.2020 and had to take shelter at her parents' house. Since leaving her matrimonial home, the petitioner has neither inquired about her nor provided any maintenance. She has no source of income to support herself. Conversely, the petitioner is a businessman with sufficient means, owning significant landed property, and earning approximately Rs. 1,00,000/- per month from various sources. Consequently, she has claimed Rs. 20,000 per month towards her maintenance.

4. The petitioner filed his written statement contesting the case and denied all allegations leveled against him, including the demand for dowry of Rs. 5,00,000/- from the respondent. He further stated in his written statement that the respondent is a lady of an adulterous character and engaged in illicit relationships with other individuals. He also claimed that she desired a very luxurious lifestyle despite knowing that he is still pursuing his studies and has no source of income. The petitioner is a B.Com student and has no landed property to provide the maintenance demanded by the respondent. However, after hearing arguments from both sides and considering the evidence on record, the learned Principal Judge, Family Court, Barpeta, vide Judgment and Order dated 08.02.2023, awarded maintenance of Rs. 4,000/- per month to the respondent/1st party.

5. On being highly aggrieved and dissatisfied with the impugned Judgment and Order dated 08.02.2023 passed by the learned Principle Judge, Family Court, Barpeta in F.C. (Crl.) Case No. 491/2021, the petitioner has preferred this instant revision petition praying for setting aside and quashing of the aforesaid Judgment and Order.

6. Mr. Dewan, learned counsel for the petitioner, has submitted that the learned Trial Court passed the Judgment and Order dated 08.02.2023 without properly appreciating the evidence on record. He further submits that the respondent failed to prove the necessary ingredients required under Section 125 of the Cr.P.C. to sustain her claim. Additionally, the Trial Court did not take into account the financial status of the petitioner, who is still pursuing his studies and is not in a position to provide maintenance as directed by the court. Moreover, the respondent/1st party left her matrimonial home willfully and without a cogent reason, which affects her claim for maintenance under Section 125 of the Cr.P.C. Despite this, the petitioner remains ready and willing to reconcile and take his wife back, but the respondent is unwilling to continue the marital relationship. However, the Trial Court did not consider these aspects of the case and passed the impugned Judgment and Order dated 08.02.2023, which is liable to be set aside and quashed.

7. He further submitted that the petitioner is still continuing his studies and remains dependent on his father. However, he suggested that the quantum of maintenance may be reduced, and the matter should be remanded to the Trial Court to determine the appropriate amount, considering all aspects of the case.

8. Accordingly, Mr. Dewan, learned counsel for the petitioner, has submitted that the Judgment and Order dated 08.02.2023, passed by the learned Principal Judge, Family Court, Barpeta, in F.C. (Crl.) Case No. 491/2021, is liable to be set aside. Therefore, this Court's intervention is essential for the sake of justice.

9. On the other hand, Mr. Ali, learned counsel for the respondent, has submitted that the marriage between the parties is undisputed, and it is also undisputed that the petitioner has not provided any maintenance to the

respondent since she left her matrimonial home and she has no source of income of her own. He further pointed out that the petitioner is a successful business and earns a substantial amount of money i.e. 1,00,000/- per month. In addition, the petitioner owns both movable and immovable properties from which he earns sufficient income. Moreover, the petitioner's father is a retired CRPF employee, and therefore, the petitioner has no financial obligations towards other family members, as his father has adequate income from his retirement benefits.

10. Mr. Ali, learned counsel for the respondent, has submitted that the respondent is a legally married wife, and the petitioner, being an able-bodied person with sufficient income, cannot avoid his obligation to pay maintenance to the respondent/1st party. He further stated that the respondent had to leave her matrimonial home because the physical and mental torture she endured was unbearable, and she could not meet the dowry demands made by the petitioner. Consequently, she was driven out of the matrimonial house on 07.06.2020 and took shelter at her parental home. Her father, being a very poor person, is unable to provide maintenance to his daughter as he has the burden of his entire family.

11. He further submitted that the petitioner not only subjected the respondent to mental and physical abuse but also, on 30.09.2021, sent private photos of the respondent and circulated them on social media with the intent to damage her reputation. As a result, the respondent's father filed an FIR with the Officer-in-Charge of Kalgachia Police Station, which was registered as Kalgachia P.S. Case No. 658/2021 under Section 498(A) of the IPC, *read with* Section 67(A) of the IT Act. Thus, the petitioner's conduct suggests that the mistreatment he

inflicted on his wife/respondent led her to file an FIR and ultimately leave her matrimonial home.

12. Moreover, the petitioner also filed a Title Suit (Matrimonial) registered as T.S. (Mat.) F.C. Case No. 06/2022, which was contested by the respondent. After hearing both parties, the trial court observed that the petitioner himself had forced the respondent to live in a separate house. Consequently, the case was decided in favor of the respondent, and the suit was dismissed with costs amounting to Rs. 8,000/-.

13. Mr. Ali, learned counsel for the respondent, has submitted that the Trial Court rightly decided the case and ordered maintenance of Rs. 4,000/- per month, which is not even sufficient for the respondent to maintain herself. He contended that there is no reason for this Court to interfere with the impugned Judgment and Order dated 08.02.2023, passed by the learned Principal Judge, Family Court, Barpeta, in F.C. (Crl.) Case No. 491/2021. Furthermore, he submitted that there is no evidence to support the petitioner's claim that he is still pursuing his studies; this plea appears to be merely a strategy to avoid paying maintenance to his legally married wife, the respondent.

14. After hearing the submissions made by the learned counsels for both sides, I have perused the case record and the Judgment and Order dated 08.02.2023, passed by the learned Principal Judge, Family Court, Barpeta, in F.C. (Crl.) Case No. 491/2021. It is admitted that the respondent is the legally wedded wife of the petitioner and that she has been living separately from him since she left her matrimonial home. It is also undisputed that the petitioner has not provided any maintenance to the respondent since the day she left her matrimonial house.

15. The record shows that the respondent, as PW-1, provided evidence to support her claim of having been subjected to mental and physical torture due to dowry demands. She also testified that since leaving her matrimonial home, the petitioner has neither enquired about her nor provided any maintenance. On the other hand, the petitioner submits that the respondent is of adulterous character and has relationships with other men, which is a very serious allegation. However, he did not present any evidence to substantiate this claim or to prove that the respondent left her matrimonial home on her own volition and is therefore not entitled to maintenance.

16. Moreover, although the petitioner claimed that he is still pursuing his studies and has no source of income, he did not provide evidence to substantiate this claim that he is unable to provide maintenance to the respondent. Nevertheless, the trial court awarded a reasonable maintenance amount of Rs. 4,000/- per month to the respondent. Even if it is assumed that the petitioner is still studying, he cannot avoid his obligation to provide maintenance to his legally wedded wife, as it is undisputed that the marriage was conducted according to Muslim Shariat.

17. Considering the cost of essential commodities and the respondent's standard of living, I find that the impugned Judgment and Order dated 08.02.2023, against which the present revision petition has been filed, does not suffer from any illegality or impropriety warranting interference by this Court. The learned Principal Judge, Family Court, Barpeta, reasonably assessed the maintenance allowance. Therefore, this Court is of the opinion that no interference is necessary with the impugned Judgment and Order dated 08.02.2023, passed by the learned Principal Judge, Family Court, Barpeta, in F.C. (Crl.) Case No. 491/2021. Accordingly, the Judgment and Order dated

08.02.2023 is affirmed.

18. In the result, I find no merit in this petition and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant