

GAHC010103412024



2024:GAU-AS:13054

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

Case No. : Crl.Pet./625/2024

JOY CHANDRA BHUYAN
S/O LATE SARUKAN BHUYAN, R/O VILL- GORBHANGA GAON, P.O.-NITAI
PUKHURI, DIST-SIVSAGAR, ASSAM, PIN- , PRESENT ADDRESS - KARBI
PATH BYE LANE NAMARI PATH HATIGAON CHARIALI, P.S.-GEETA NAGAR,
GUWAHATI-781021, DIST- KAMRUP (M), ASSAM

VERSUS

SMTI. REEMA BHUYAN
D/O SRI SUREN SAIKIA, R/O JUTA GAON (MATEKA), P.O.-METEKA, DIST-
SIVASAGARM ASSAM, PIN-785697

Advocate for the Petitioner : M MR. K R BOROOAH, LD. ADV.

Advocate for the Respondent : MR. R DE, LD. ADV.

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 06.12.2024

Date of Judgment : 20.12.2024

JUDGMENT & ORDER (CAV)

Heard Mr. K. R. Borooah, learned counsel for the petitioner. Also heard Mr. R. De, learned counsel for the respondent.

2. This application is filed under Sections 482 and 397 of the Code of Criminal Procedure, 1973, read with Section 401 of Cr.P.C., praying for the setting aside and quashing of the order dated 06.04.2024, passed by the learned Chief Judicial Magistrate, Sivasagar, Assam, whereby, the petitioner was directed to pay the arrears of monthly allowances from 02.10.2021 to the respondent, in addition to paying the enhanced monthly maintenance allowance of Rs. 7,000/- per month.

3. The case of the petitioner, in brief, is that the respondent was the legally married wife of the petitioner, and two children were born out of their wedlock: one son and one daughter. The daughter is about 20 years old, and the son is about 18 years old. Both the petitioner and the respondent have been living separately for a long time. The daughter is staying with the petitioner (father), and the son is staying with the respondent (mother). The marriage between the parties was dissolved by a decree dated 08.09.2015.

4. It is contended by the petitioner that the respondent filed a maintenance case under Section 125 of the Cr.P.C., numbered as Misc. Case No. 11/2008, seeking maintenance for herself and her minor son before the learned Chief Judicial Magistrate, Sivasagar. In that case, the Court, by its order dated 29.10.2009, directed the petitioner to pay a maintenance allowance of Rs. 5,000/-, i.e., Rs. 3,000/- to the respondent and Rs. 2,000/- to the minor son. Thereafter, the present petitioner filed a

revision petition before the Sessions Judge, Sivasagar, challenging the order dated 29.10.2009. Accordingly, the learned Revisional Court, by order dated 10.05.2010, fixed the maintenance amount at Rs. 4,000/- [Rs. 2,000/- each to the respondent and the minor son]. The petitioner was regularly paying the said amount of Rs. 4,000/- to the respondent as monthly maintenance, in compliance with the order dated 10.05.2010.

5. However, in 2017, the respondent filed another application under Section 127 of the Cr.P.C. before the learned Chief Judicial Magistrate, Sivasagar, seeking an enhancement of the monthly maintenance from Rs. 4,000/- to Rs. 12,000/- per month, which was numbered as Misc. Case No. 2/2017. The Trial Court, by an order dated 02.02.2019, enhanced the amount from Rs. 4,000/- to Rs. 7,000/-.

6. It is contended by the petitioner that from March 2019, the respondent remained absent on various dates before the learned Trial Court. As a result, the case numbered as Misc. Case No. 2/2017 was closed on 26.09.2019. In fact, there was a mutual agreement between the parties to reside together as husband and wife, considering the future of their children. For this reason, the respondent did not claim the monthly maintenance and did not appear before the learned Trial Court for the execution of the order. From April 2019 to May 2020, the respondent resided with the petitioner at their rented house in Guwahati. However, after May 2020, the respondent left the petitioner's house on 18.05.2020 without any reason and began staying with her parents at Sapekhati in the district of Charidew.

7. On 07.09.2022, after two years of leaving the petitioner's house, the respondent submitted an application before the learned Chief Judicial Magistrate, Sivasagar, for reopening the maintenance case (Misc. Case No. 2/2017). Upon receiving the said application, the trial court passed an order on 07.09.2022, reopening the maintenance case and issuing a notice to the petitioner, fixing the matter for 21.09.2022. Upon receiving the notice, the petitioner appeared before the learned Trial Court and

submitted an objection against the notice dated 26.10.2022, praying for it to be set aside and recalled. However, on 26.10.2022, the learned Trial Court issued a fresh notice to the petitioner, directing him to pay an amount of Rs. 1,96,000/- as arrear maintenance from 15.05.2020 to 20.09.2022.

8. Upon receipt of this notice, the petitioner appeared before the Trial Court and filed a petition praying for the order dated 26.10.2022 to be set aside and recalled, on the grounds that there was a compromise between the parties and that both the petitioner and the respondent had resumed their conjugal life as husband and wife, along with their children. The respondent had not claimed maintenance from the petitioner since November 2018, as there was an ongoing reconciliation process, and she had resumed living with the petitioner in his rented premises. Therefore, the respondent is barred from claiming maintenance from May 2018, as she had been staying with the petitioner as his wife.

9. It is further contended by the petitioner that the respondent submitted an objection on 24.03.2023 against the petition filed by the petitioner for setting aside and recalling the order dated 26.10.2022. The respondent, on 13.02.2023, filed an application under Section 473 of the Cr.P.C. for condonation of delay in filing the petition for reopening Misc. Case No. 02/2017, which was closed on 26.09.2019, stating the ground that she was residing at Guwahati with her husband until 14.05.2020. She further stated that due to the COVID-19 pandemic and the lockdown, she could not inform the competent court. In response to the said condonation petition, the petitioner submitted his objection, stating that no day-to-day delay had been explained, and there was no SOP for the lockdown from January 2022. However, the learned Trial Court, without considering the fact that there was a compromise between the parties, passed the impugned Order dated 06.04.2024, directing the petitioner to pay the arrears of monthly allowances from 02.10.2021 to the respondent, in addition to the monthly maintenance of Rs. 7,000/- per month.

10. Being highly aggrieved and dissatisfied with the order dated 06.04.2024 passed by the learned Chief Judicial Magistrate, Sivasagar, in Misc. Case No. 2/2017, the petitioner has preferred the instant petition, praying for the setting aside and quashing of the impugned Order dated 06.04.2024.

11. It is submitted by Mr. Borooah, learned counsel for the petitioner, that the petitioner was an employee of a private firm and is about 60 years old. Moreover, he has the responsibility of his daughter, who is studying at Handique College, Guwahati. Currently, the petitioner is suffering from various ailments, including heart disease, and is therefore not in a position to work regularly. As a result, the petitioner was discharged from service on 31.03.2023. The petitioner is currently without a job and is facing great financial hardship. In such circumstances, he is unable to pay the arrears of monthly allowances as well as the monthly maintenance allowances as directed by the learned Trial Court, by its order dated 06.04.2024.

12. He further submits that the learned Trial Court failed to appreciate the fact that the respondent, by mutual agreement, decided to stay with the petitioner as husband and wife, along with their children. As such, the cause of action for the earlier petition (Misc. Case No. 2/2017) has come to an end. The respondent cannot claim maintenance based on the earlier grounds of separation. The respondent failed to establish the reason for leaving the petitioner's house on 14.05.2020. He further submitted that the Trial Court also failed to consider that the respondent had not claimed maintenance from the petitioner since 2018, and that the matter was closed on 26.09.2019 due to a compromise between the parties.

13. He further submits that the date 06.04.2024 was fixed for the hearing on the condonation of delay, but the learned Court, instead of condoning the delay, passed an order for the payment of arrear maintenance. The maintenance case was decided without considering the petitioner's financial position. As the respondent had left the

petitioner's house by her own will, therefore, she cannot claim maintenance from the petitioner under Section 125 of the Cr.P.C. Accordingly, the learned court below erroneously concluded that the respondent is entitled to monthly maintenance from 02.10.2021 without any basis, and as such, this conclusion is liable to be set aside and quashed.

14. Hearing the submissions made by the learned counsels for both sides, I have perused the case record and the annexures attached to the petition. It is an admitted fact that both the respondent and the petitioner were husband and wife, and out of their wedlock, two children were born. The daughter is staying with the petitioner (father), and the son is staying with the respondent (mother). At the same time, it is an admitted fact that the marriage between the parties was dissolved by a decree of divorce dated 08.09.2015. Further, it is seen that the maintenance case was filed by the respondent, and accordingly, by order dated 29.10.2009, maintenance was allowed directing the petitioner to pay an amount of Rs. 3,000/- to the respondent and Rs. 2,000/- to the minor son.

15. Thereafter, upon filing of the revision petition by the petitioner, the maintenance allowance was reduced to Rs. 4,000/-, which was regularly paying by the petitioner. However, the respondent again filed a petition seeking enhancement of the maintenance from Rs. 4,000/- to Rs. 12,000/- per month. The learned Chief Judicial Magistrate (CJM) accordingly enhanced the maintenance allowance from Rs. 4,000/- to Rs. 7,000/- per month.

16. However, since April 2019, the respondent remained absent, and as a result, the Miscellaneous Case was closed by order dated 26.09.2019 due to the non-appearance of the parties. It is the claim of the petitioner that during that period, there was reconciliation between the parties, and the respondent, along with her minor son, started living with the petitioner as husband and wife. For this reason, she did not claim maintenance.

17. After a gap of two years, the respondent filed an application for reopening Misc. Case No. 02/2017 on 07.09.2022, and on the basis of that application, a notice was issued to the petitioner. It is also seen that the petitioner filed an objection, but the learned Trial Court passed an order on 06.04.2024 directing the petitioner to pay arrear maintenance in the amount of Rs. 1,96,000/- and also to pay Rs. 7,000/- per month towards the maintenance allowance.

18. From the order passed by the learned Trial Court dated 06.04.2024, it is clear that the trial court passed a detailed order, discussing all the pros and cons of the case. It is a fact that there was a delay in filing the petition for reopening the case, and the petition was not supported by any petition for condonation of delay. However, after the petitioner raised objections, the respondent filed a petition for condoning the delay, citing the ground of covid pandemic. Considering this aspect and other circumstances of the case, the petition was allowed, and the delay was condoned by the learned Trial Court.

19. Furthermore, to evaluate the actual facts of the case, both parties were directed to adduce evidence. The respondent appeared as P.W.1 and was examined by the petitioner's side. From the discussion in the learned Trial Court's order, it is also evident that the respondent admitted that she was staying with the petitioner, along with her son, until 14.05.2020, and during that period, all expenses were borne by the petitioner. The respondent herself stated in her evidence that she has no claim for the period when she was living with the petitioner, and that during that period, the petitioner bore all her maintenance expenses. Accordingly, the learned Trial Court exempted the period of maintenance from 02.02.2019 to 14.05.2020.

20. The learned Trial Court further observed that the first party (respondent) has the right to claim the amount due within one year from the date of the order, and not beyond that for a particular month. Considering all aspects, the learned Trial Court concluded that the respondent is entitled to claim arrear maintenance w.e.f.

02.10.2021 and not before that. Accordingly, the petitioner was directed to pay arrears of monthly maintenance starting from 02.10.2021, in addition to the enhanced monthly maintenance of Rs. 7,000/- per month.

21. The learned Trial Court had rightly passed the order by considering the entire aspects of the case, including exemption of the period when the respondent was residing with the petitioner, and also the provisions of Section 125(3) of the Cr.P.C. is considered. It is held that the respondent is entitled to claim maintenance from 02.10.2021 and not before that. Therefore, the learned Trial Court committed no error or illegality while passing the order, and there is no need for interference with the order dated 06.04.2024 passed in Misc. Case No.02/2017. Accordingly, the petition stands dismissed.

22. Further, the learned Trial Court is hereby directed to pass an appropriate order, considering the present financial status of the petitioner, by directing him to pay the arrear maintenance on installment basis.

23. With above observation this petition stands disposed of.

JUDGE

Comparing Assistant