

GAHC010103422024



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

Case No. : Crl.Pet./609/2024

ANOWAR HUSSAIN
S/O LATE JANGSHER ALI, VILL- KAYAKUCHI PAM, P.S.-BARPETA, DIST-
BARPETA, ASSAM

VERSUS

NAMITA DAS
W/O ARABINDA DAS, D/O LATE SUREN DAS, VILL- MAJRABARI, P.O. AND
P.S.-SIMLA, DIST- BAKSA (BTAD), ASSAM, PIN-781330

Advocate for the Petitioner : MR. R ALI
Advocate for the Respondent :

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

25.06.2024

Heard Mr R Ali, learned counsel for the petitioner, who has filed this application under Section 482 of the Code of Criminal Procedure, 1973, with prayer for quashing the entire proceeding of FC (Crl.) No. 844/2023, pending before the learned Principal Judge, Family Court, Barpeta.

2. It is submitted that the impugned order dated 02.05.2024, was passed without

considering the petitioner's side of the story.

3. It is submitted on behalf of the petitioner that the respondent has fraudulently brought up a case under Section 125 CrPC against the petitioner, misrepresenting herself to be the petitioner's legally married wife. In reality, the respondent is not the petitioner's legally married wife. The respondent has given false name and address in the petition under Section 125 CrPC. The Annexure-1 of the petition clearly reveals that the name and address of the respondent is not similar to the name and address given in the cause title of this petition. However, the case was registered and the first order was passed on 08.12.2023, issuing notice to the petitioner and the date was fixed on 17.02.2024. The order dated 17.02.2024, clearly reflects that the notices were served on the petitioner and the next date was fixed on 02.04.2024. On 02.04.2024, the petitioner, prayed for time to file his written statement and without allowing an opportunity to the petitioner to file his written statement, the impugned order dated 02.05.2024 was passed *ex parte*. The order clearly reflects that the petitioner was busy on election duty during the parliamentary elections and he was not accorded sufficient time to present his case. The petitioner also did not have the opportunity to file his Statement of Assets and Liabilities and the respondent fraudulently did not file her own Statement of Assets and Liabilities, thus, violating the guidelines of Hon'ble the Supreme Court in ***Rajnish –Vs- Neha***; reported in (2021) 2 SCC 324.

4. In addition to the above discrepancies, the Annexure-6 of the petition, clearly

reveals that the respondent's daughter is not the petitioner's daughter. Her father's name is mentioned in the birth certificate, which is annexed as Annexure-6 of the petition. The Gaoburah's certificate clearly reveals that the respondent's husband is not the petitioner, but another person, who is a resident of Village-Majrabari, P.O.-Simla, P.S.-Simla, District-Baksa (BTR). The Gaonburah's certificate is marked as Annexure-7 of the petition.

5. It is submitted that in a subterfuged manner, the respondent has concealed her identity and has fraudulently procured the order of maintenance and the order is thus liable to be set aside.

6. The learned counsel for the petitioner has prayed that as the learned Principal Judge, Family Court, Barpeta, has directed the petitioner to pay maintenance @ Rs. 10,000/- per month, without deciding the quantum of interim maintenance based on the Statements of Assets and Liabilities of the petitioner, the impugned order is thus bad in law and is liable to be set aside.

7. I have considered the submissions at the Bar with circumspection.

8. I have scrutinized the documents submitted to buttress the respondent's claim.

9. I have also considered the submission that the petitioner is willing to contest the proceeding and present his case before the learned Family Court. The petitioner has also prayed for an opportunity to submit his Statements of Assets and Liabilities, along with his written statement. Pragmatic view is taken. Instead of quashing the entire

proceeding, I deem it proper to accord an opportunity to the petitioner to present his case before the learned Principal Judge, Family Court, Barpeta.

10. Considering all aspects and in view of my foregoing discussions, the impugned order dated 02.05.2024, is hereby set aside and the petitioner is directed to appear before the learned Principal Judge, Family Court, Barpeta, within 2 (two) weeks and present his case.

11. In terms of the above observations, this criminal petition stands disposed of.

JUDGE

Comparing Assistant