

GAHC010122092024



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

Case No. : Crl.Pet./703/2024

SMTI. RUKMINI MALLIK
W/O SHRI BHOLA MALLIK, R/O VILL- GOGOMUKA RAILWAY COLONY, P.O.
AND P.S.-GOGOMUKH, DIST-DHEMAJI, ASSAM, PIN NO. 787057

VERSUS

BHOLA MALLIK
S/O LATE ASFRI MALLIK, R/O VILL- GOGOMUKA RAILWAY COLONY, P.O.
AND P.S.-GOGOMUKH, DIST-DHEMAJI, ASSAM, PIN NO. 787057

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent :

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 19.06.2024

Heard Mr. S. C. Biswas, learned counsel for the petitioner.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 for setting aside and quashing criminal proceeding under Section 127 (1) Cr.P.C., pending before the Court of learned Judicial Magistrate First Class, Dhemaji.

3. In brief, the case of the petitioner is that the learned Additional Chief Judicial Magistrate, Dhemaji passed the judgment and order dated 12.12.2023, in Misc Case No. 44/2013, under Section 125 Cr.P.C., directing the respondent to pay maintenance @ Rs. 3,000/- per month to the petitioner/first party and Rs. 1,000/- per month to her minor son from the date of filing of the maintenance petition. But, on 15.02.2024, the respondent filed another application before the learned Court below under Section 127(1) Cr.P.C. to stop payment of maintenance to the petitioner on the plea that the petitioner is a government employee and he is not in a position to provide maintenance to the petitioner and her son. The said petition is accordingly registered as Misc. Case No. 05/2024 and process was issued against the present petitioner, which is pending before the Court of learned Judicial Magistrate First Class, Dhemaji. By an order dated 21.05.2024, learned Judicial Magistrate First Class allowed the prayer for amendment of the cause title of the petition and fixed the case on 20.06.2024 for filing of the amendment petition.

4. It is submitted by Mr. Biswas, learned counsel for the petitioner, that the same plea of the petitioner being a government employee was taken before the learned Trial Court below during the pendency of the petition, being Misc. Case No. 44/2013, under Section 125 Cr.P.C., and hence, the same issue cannot be raised in the subsequent application by the present respondent and as such, it is a fit case where this Court can invoke the inherent power under Section 482 Cr.P.C. to prevent the abuse of the process of law by setting aside and quashing the entire proceeding under Section 127 (1) Cr.P.C., which is registered as Misc. Case No. 05/2024, pending before the Court of learned JMFC, Dhemaji. More so, the petition is not filed before the appropriate forum and hence, on the said ground also, the petition is liable to be set aside and quashed. He further submitted that at present the petitioner is not serving as a government employee and she has already left her job. However, he admitted that the son of the petitioner has already become major during the pendency of the case.

5. After hearing the submission made by the learned counsel for the petitioner, I have also perused the case record and it is seen that the order of maintenance was passed by the learned Additional Chief Judicial Magistrate, Dhemaji vide judgment and order dated 12.12.2023, in Misc Case No. 44/2013, under Section 125 Cr.P.C., whereby the respondent was directed to pay maintenance @ Rs. 3,000/- per month to the present petitioner and Rs. 1,000/- per month to her son.

6. As per Section 127 Cr.P.C., either of the party has the right to file application if any alteration or modification is required. Accordingly, the

respondent filed an application with the plea that the petitioner/first part is not entitled for maintenance as she is a government employee and that apart, he took the plea that the respondent is not in a position to pay maintenance as per the order passed by the learned Additional Chief Judicial Magistrate, Dhemaji, vide judgment and order dated 12.12.2023.

7. Thus, it is seen that the respondent approached the learned Court below with an application under Section 127 (1) Cr.P.C. for alteration/ modification of the order of maintenance passed by the learned Additional Chief Judicial Magistrate, Dhemaji, whereby he was directed to pay Rs. 4,000/- towards maintenance for the petitioner/first party and her son. Further it is seen that the petition under Section 127 (1) Cr.P.C. is still pending for disposal before the Court of learned Judicial Magistrate First Class and the next date is only fixed for filing of the amended petition as the respondent sought for amendment of the cause title of the petition. Thus, it is seen that the said petition is not yet heard or decided by the learned Court below and the learned Court below committed no illegality while entertaining the petition under Section 127 (1) Cr.P.C., whereby the respondent prayed for alteration/modification of the order of maintenance. Accordingly, I find no reason to set aside or quash the order passed by the learned Trial Court below or to quash the entire proceeding which is pending before the Court of learned Judicial Magistrate First Class under Section 127 (1) Cr.P.C. by invoking the power under Section 482 Cr.P.C.

8. In view of above, I find no merit in this petition and accordingly the same stands dismissed.

9. However, for proper adjudication of the matter, I find that the petition under Section 127 (1) Cr.P.C. should be tried and disposed of by the same Court which has already awarded the maintenance. Accordingly, the learned Chief Judicial Magistrate, Dhemaji is hereby directed to tag both the applications before the one and the same Court.

10. With the above observation, the present petition stands disposed of.

JUDGE

Comparing Assistant