

GAHC010149152022



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

Case No. : Crl.Rev.P./391/2022

SANJAY MUSHAHARY
S/O- LATE THEKLA MUSHAHARY, VILL.- OXIGURI GAON, P.O. KAHITAMA,
P.S. GOBARDHONA, DIST. BAKSA, BTR, ASSAM, PIN- 781315.

VERSUS

DIPAMONI MUSHAHARY AND ANR
D/O- SRI MOHESWAR KHERKOTARI, VILL.- KOTHALORTARI, P.S AND
DIST. BARPETA, ASSAM

2:THE STATE OF ASSAM
REPRESENTED BY THE P.P.
ASSA

Advocate for the Petitioner : MR. A MANNAF

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 05.04.2024

Heard Mr. A. Mannaf, learned counsel for the petitioner. Also
heard Mr. G. Uddin, learned counsel for the respondent No. 1 and Mr.
B.B. Gogoi, learned Additional Public Prosecutor for the

State/respondent No. 2.

2. The petitioner has preferred an application u/s 397 r/w Section 401 Cr.P.C. against the impugned judgment dated 11.05.2022 passed by the learned Principal Judge, Family Court, Barpeta in connection with F.C.(CrI.)/611/2019, whereby directing the petitioner/husband to pay maintenance allowance of Rs.10,000/- per month to the respondent No.1/wife from the date of filing of the petition under Section 125 Cr.P.C.

3. The respondent/wife had filed an application u/s 125 Cr.P.C. before the court of learned Principal Judge, Family Court, Barpeta, claiming maintenance from her husband i.e., the present petitioner. On receipt of the notice, the petitioner appeared before the Family Court. According to learned counsel for the petitioner, on 11.05.2022, the learned trial court had passed the impugned judgment directing the petitioner/husband to pay maintenance allowance of Rs.10,000/- per month to the respondent No.1/wife from the date of filing of the petition.

4. It is also the submission of learned counsel for the petitioner that the learned trial court has failed to appreciate the judgment of the Hon'ble Supreme Court in Rajnesh vs. Neha reported in (2021) 2 SCC 324, makes it mandatory to file an affidavit for disclosure of assets and liabilities of the parties in order to arrive at a calculation for determining the quantum of maintenance.

5. Learned counsel for the petitioner further submits that as the judgment dated 11.05.2022 passed by the trial court is a clear violation

of the guidelines referred in the case of Rajnesh (Supra), the order is liable to be set aside with a direction to decide the matter afresh.

6. Learned counsel for the petitioner also referred another case of this Court in Afzal Hussain vs. Manjuwara Khatun vide CrI.Rev.P./164/2022, wherein it was reflected that the guidelines laid down in the case of Rajnesh (Supra) has to be followed mandatorily by all the courts, while deciding the case of maintenance.

07. The learned counsel for the respondent No. 1 has made no objection if the matter be remitted to the learned trial court to decide the matter afresh.

8. I have considered the submissions of the learned counsel for the parties. I have also perused the judgment of the trial court dated 11.05.2022.

9. As per the direction of the Hon'ble Supreme Court in the case of Rajnesh vs. Neha (Supra) parties were directed to give their declaration regarding their income, assets and liabilities. From the judgment of the trial court dated 11.05.2022, it reveals that this exercise was not undertaken by the learned trial court in spite of the binding direction issued by the Hon'ble Supreme Court.

10. The paragraphs of the judgment of Rajnesh (supra) are reproduced as follows -

“..... At present, the issue of interim maintenance is decided on the basis of pleadings where some amount of guess work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It is often said that

both parties submit scanty material, do not disclose the correct details and suppress vital information, which makes it difficult for the Family court to make an objective assessment for the grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income.

The party claiming maintenance either as a spouse or as a partner in a civil union, leave in relationship, common love marriage, should be required to file a concise application for interim maintenance with limited pleadings along with an affidavit of disclosure of assets and liabilities before the concerned court, as a mandatory requirement.

On the basis of the pleadings filed by both the parties and the affidavits of disclosure, the court would be in a position to make an objective assessment of the approximate amount to be awarded at the interim stage.”

11. In view of the aforesaid legal proposition, it reveals that the maintenance is dependent upon factual situations. The court should mould the claim for maintenance brought before it. It is to be noted down that the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration to arrive at the appropriate quantum of maintenance to be paid.

12. In the case in hand, after going through the judgment of the trial court dated 11.05.2022, it can be said that the trial court passed the judgment without affording any opportunity to the petitioner to disclose their assets and liabilities which is a gross violation of the guidelines laid down by the Hon'ble Supreme Court in Rajnesh (Supra).

13. Hence, the judgment dated 11.05.2022 is set aside with a direction to the trial court to give opportunity to both the parties to submit their respective affidavits disclosing their assets and liabilities and thereafter, to hear the matter afresh and to deliver the judgment in accordance with law.

14. If any payment is made earlier by the petitioner in view of the judgment dated 11.05.2022, the same shall be adjusted accordingly.

15 . In view of the above observation, the criminal revision petition is disposed of at the motion stage.

JUDGE

Comparing Assistant