

GAHC010151822023



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

Case No. : Crl.Rev.P./459/2023

JAHANGIR ALOM
S/O LATE HAJARAT ALI, R/O VILL.-KADAMTALA, P.S.-ALOPATI CHAR,
DIST.-BARPETA, ASSAM.

VERSUS

NUR NEHAR
D/O SWAHID ALI, R/O VILL.-3 NO. BAGHMARA CHAR, P.S.-ALOPATI CHAR,
DIST.-BARPETA, ASSAM.

Advocate for the Petitioner : MD A ALI

Advocate for the Respondent : MR. S AHMED

BEFORE

HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

O R D E R

22.01.2024

1. Heard Mr. A. Ali, learned counsel for the petitioner. Also heard Mr. S. Ahmed, learned counsel for the respondent.
2. This is an application under Section 397/401 of the Criminal Procedure Code, 1973, challenging the impugned Ex-parte order dated 01.11.2022 passed by the learned Principal Judge, Family Court, Barpeta in connection of case No. FC(Cr) 214/2021 directing the petitioner to pay an amount of Rs. 4,000/- per month to the respondent from the date of filing the maintenance claim petition.
3. The fact of the case is that the respondent has filed an application under Section 125 of the Code of Criminal Procedure seeking grant of maintenance allowance from the petitioner for herself. The respondent was married to the petitioner on 05.12.2020 as per Sariyat and after one year of their marriage, the petitioner is alleged to have tortured her mentally and physically by demanding of Rs. 1,00,000/- from her. It is further alleged that the respondent was not given proper foods, cloths and was also assaulted severely and drove out from his matrimonial home. Notice was sent to the petitioner in the aforesaid case under Section 125 Cr.P.C. However, in terms of the report submitted by the process server on 24.08.2022, the said notice could not be served upon the petitioner as he was not found available in his house.
4. Accordingly, the notice was served upon the neighbor. Thereafter, the

matter was proceeded Ex-parte and by the judgment and order dated 01.11.2022, the petition under Section 125 Cr.P.C was allowed and the petitioner was directed to pay maintenance at Rs. 4,000/- per month to the respondent. The said order is under challenge before this Court.

5. On 09.01.2024, since, the respondent did not appear before this Court, this Hon'ble Court had observed that if on the next consecutive date, the respondent fails to appear, the present petition shall be heard without the presence of the respondent.

6. Today, when the matter was called for, the respondent has not appeared and accordingly, the matter is taken up in the absence of the respondent.

7. I have considered the submissions made by the learned counsel for the petitioner and also perused the materials on record, including the ex-parte impugned order dated 01.11.2022. The report of the process server dated 24.08.2022 is reproduced herein below:-

*”Translated copy of process server report
(Relevant Portion)*

Signature and address of the person upon whom the notice is served.

*Anowar Hussain,
S/O-Late Sukur Ali,*

Vill- Kadamtala.

Sir,

The humble submission is that as deployed, I went to the house of the person mentioned in the notice, I did not meet the person but I met one of his neighbor brother and send back this notice to the Hon'ble Court after serving this notice upon that neighbor.

*Yours faithfully,
08 Aynal Hoque, P.S- Alopatis Char, Dist- Barpeta,
Assam.*

Returned after serve,

Signature

Officer-in-charge

Alopati Char police station

Dist- Barpeta, Assam

Date-24.8.22."

8. A perusal of the said report indicates that the process server could not serve the notice of the proceedings under Section 125 Cr.P.C to the petitioner. In fact, the notice was served on a neighbor whose identity is also not revealed in the report. Be that as it may, the said service on the neighbor cannot be considered to be sufficient service of notice on the petitioner. Consequently, the petitioner was absent when the said proceeding was taken up for hearing on 19.10.2022.

9. In view of the above, since the said proceeding was held in the absence of the petitioner and without service of notice to the petitioner, the proceedings are non-est in the eye of law and therefore, not valid. Accordingly, the impugned order dated 01.11.2022 is hereby set aside and quashed.

10. Accordingly, I deem it fit and proper to remand the matter back to the Court of Principal Judge, Family Court, Barpeta for re-hearing.

11. With the above observation and direction, the application stands allowed with a direction to the Court of Principal Judge, Family Court, Barpeta for re-

hearing the matter upon receipt of the LCR.

Send back the LCR.

JUDGE

Comparing Assistant