

GAHC010164382010



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

Case No. : Crl.Rev.P./264/2010

MD ZAFAR ALI
S/O LT. HASAN ALI, R/O BAZIR SO, P.S. JAMAGURI, DIST. NAGAON,
ASSAM.

VERSUS

SMTI DILRUBA BEGUM
D/O MD KHALILUR ISLAM, SINDU ALI, P.O. JAMUGURI, DIST. NAGAON,
ASSAM.

Advocate for the Petitioner : MR.J U N M LASKAR, MR.J ISLAM,MR.A A R KARIM,MR.A M BARBHUIYA

Advocate for the Respondent : , , ,

BEFORE
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER

09-12-2024

- 1.** None appears for the parties on call.
- 2.** The present criminal revision petition is filed under Section 401 read with

Section 482 of the Code of Criminal Procedure, 1973, assailing the judgment and order dated 10.02.2010 passed by the learned Sub-Divisional Judicial Magistrate (SDJM, in short), Nagaon in Case No. MR Case 58/2009 registered under Section 125 CrPC.

3. The brief facts of the case is to the effect that the respondent wife preferred an application under Section 125 CrPC before the Court of learned SDJM, Nagaon praying for her maintenance which was registered as MR Case No. 58/2009.

4. It is the case of the respondent wife that she is a legally married wife of the petitioner and their marriage was solemnized as per the Islamic rites and customs and out of their wedlock, two children were born to them who were minors.

5. It is further the case of the respondent wife that after the birth of the second child, she was tortured physically and mentally by the petitioner husband at her matrimonial house and was illegally demanded dowry and that she was driven out of her matrimonial house.

6. According to the respondent wife, the husband even after having sufficient means to maintain her and the children, refused to maintain them inasmuch as he is the owner of grocery shop. The husband of the respondent wife who contested the case by filing a written statement, denied all the allegations made against him. His stand was that the first party, i.e., the respondent herein did not perform duty of a wife and she insisted him to stay at her parental home separately from her in laws and that she had left the residence of the petitioner at her own will. It was his further stand that the petitioner tried to take his wife back to his house, but the respondent wife did not return his house.

7. The respondent wife examined witnesses in support of her case. She examined herself as PW-1 and one Md. Khairul Islam as PW-2, who is her father. The

petitioner examined himself as DW-1 and one Md. Hasen Ali as DW-2.

8. After appreciation of the aforesaid evidence, the learned Trial Court below came to a conclusion that the 1st party/respondent wife did not have sufficient means to maintain herself and her children and that the 2nd party i.e. the husband of the respondent had sufficient means to maintain his wife and the children inasmuch as the 2nd party had taken stand that he is the daily labourer and earns his bread and butter by working at different places and that when he is an able bodied man and earns, even as a daily wager, he is liable to maintain his wife and the children. Accordingly, an amount of Rs.800/- per month as maintenance was awarded in favour of the wife and Rs. 500/- per month was awarded for each of the children.

9. This Court has perused the evidence which is part of the record. From the record, it is seen that the statement of the respondent wife as regards alleged torture, demand of money and non-maintenance by her husband remained unshaken and though the defence/petitioner tried to project that he did not have monthly income of Rs. 15,000/-and projection of the wife. He had also denied the fact of having grocery shop.

10. From the materials available on record, it is also seen that the husband has not disputed about their marriage but he disputed that he is a daily wager and earns his bread and butter, therefore, he could not maintain his wife and the children and that his wife had voluntarily left her matrimonial house. The learned Trial Court has duly appreciated the aforesaid materials on record and came to the conclusion as recorded herein above. Accordingly, this Court is of the view that in a proceeding under Section 125 CrPC which is summary in nature, the fundamental thing is required to be proved that the wife has not been able to maintain herself and the husband having means has neglected his wife and the children to maintain them. In the case in

hand, the respondent wife has satisfied and proved the aforesaid factum though her evidence of PW-1.

11. The case of the defence/petitioner is that he is not the owner of grocery shop and he did not earn more than 15,000/- has duly been considered by the learned Trial Court. The award was passed by the learned SDJM, Nagaon taking note of the defence that the husband is only a daily wager.

12. In view of the aforesaid, this Court finds no perversity in the aforesaid judgment and order dated 10.02.2010 passed by the learned SDJM, Nagaon in MR Case No. 58/2009 and the aforesaid order had been passed after proper appreciation of the evidence, therefore, this Court is not inclined to exercise its revisional power to interfere with the impugned judgment and order dated 10.02.2010. Accordingly, this criminal revision petition stands dismissed.

13. While parting with the record, it is made clear that this order shall not preclude the parties to prefer an application under Section 127 CrPC or Section 146 BNSS, if so advised, inasmuch as this matter is pending since, 2010 and there may be some changes in circumstances.

JUDGE

Comparing Assistant