

GAHC010170692022



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

Case No. : Crl.Rev.P./432/2022

FARNAZ NOURIN ZAMAN
C/O MUKIBUR RAHMAN
HOUSE NO. 11,
NILKAMAL PATH, HATIGAON CHARIALI,
GUWAHATI, P.S. HATIGAON,
DIST. KAMRUP (METRO), ASSAM, PIN-781038

VERSUS

THE STATE OF ASSAM AND ANR
THROUGH THE PP, ASSAM

2:MD. ZIYAUH RAHMAN
S/O AMIRUDDIN BARBHUYAN

PERMANENT RESIDENT OF VILL- TARKATA
P.S. MURAJHAR
DIST. HOJAI
ASSAM
PIN-782439.
AT PRESENT RESIDING AT FLAT NO. 221B
MADHURJYA ENCLAVE
P.O. AND P.S. HATIGAON

DIST. KAMRUP (METRO)
ASSAM

PIN-78103

Advocate for the Petitioner : MR. U DUTTA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 08.02.2024

Heard Mr. U. Dutta, learned counsel for the petitioner and Mr. R.J. Baruah, learned Addl. Public Prosecutor for the State respondent No. 1. Also heard Mr. A.K. Talukdar, learned counsel for the respondent No. 2.

2. The judgment and order dated 16.06.2022, passed by the learned Principal Judge, Family Court No. 1, Kamrup(M) at Guwahati, in F.C.(Crl.) Case No. 207/2019, under Section 125 Cr.P.C., is challenged in this revision petition, under Section 19(4) of the Family Courts Act, 1984, read with Section 397 of the Cr.P.C..

3. It is to be noted here that vide impugned judgment and order dated 16.06.2022, the learned Court below has granted maintenance @ Rs. 4,000/- each to the two daughters of the petitioner, from the date of filing of the petition i.e. 09.04.2019.

4. It is submitted at the bar that before passing the impugned judgment and order by the learned Court below, the respondent No. 2 had not filed his affidavit, disclosing his assets and liabilities and filing of such affidavit at the time of deciding the quantum of maintenance is mandated by the Hon'ble Supreme Court in the case of *Rajnish Vs. Neha & Anr.*, reported in (2021) 2 SCC 324, in the paragraphs, extracted below:

“64. In the first instance, the Family Court in compliance with the mandate of Section 9 of the Family Courts Act, 1984 must make an endeavour for settlement of the disputes. For this, Section 6 provides that the State Government shall, in consultation with the High Court, make provision for counsellors to assist a Family Court in the discharge of its

functions. Given the large and growing percentage of matrimonial litigation, it has become necessary that the provisions of Sections 5 and 6 of the Family Courts Act are given effect to, by providing for the appointment of marriage counsellors in every Family Court, which would help in the process of settlement. If the proceedings for settlement are unsuccessful, the Family Court would proceed with the matter on merits.

65. *The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law 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 court concerned, as a mandatory requirement. On the basis of the pleadings filed by both 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 towards maintenance at the interim stage."*

5. As the mandate of the Hon'ble Supreme Court in the aforementioned case has not been followed by the learned Court below here in this case, it cannot be said that the impugned judgment and order dated 16.06.2022, withstands the legal scrutiny.

6. Accordingly, as agreed by learned Advocates of both sides, the impugned judgment and order dated 16.06.2022, stands set aside and the matter is remanded back to the learned Court below to afford the respondent No. 2 an opportunity to file affidavit, disclosing his assets and liabilities, and thereafter to hear the matter afresh and pass necessary order.

7. In terms of above, this petition stands disposed of.

JUDGE

Comparing Assistant