

GAHC010175352022



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

Case No. : Crl.Rev.P./438/2022

RAKIBUL HUSSAIN
S/O ABUL HUSSAIN
VILL- MANDIA, P.O.MANDIA
P.S. BAGHBAR
DIST. BARPETA, ASSAM

VERSUS

ARIFA NASRIN
D/O SUKUR MAHMUD
VILL AND P.O. MANDIA
P.S. BAGHBAR
DIST. BARPETA, ASSAM
PIN-781308

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : MR. M AHMED

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 22.02.2024

Heard Mr. H. A. Ahmed, learned counsel for the petitioner. Also heard Mr. M. Ahmed, learned counsel for the respondent.

2. This is an application under Sections 397/401 *read with* Section 482 of the Code of Criminal Procedure, 1973 for setting aside and quashing the impugned judgment and order dated 08.08.2022, passed by the learned Principal Judge, Family court, Barpeta, in F.C. (CrI) No. 465/2021, under Section 125 of the Cr.P.C., directing the petitioner/2nd party to pay maintenance allowances @ Rs. 5,000/- per month to the respondent/1st party from the date of filing of the petition.

3. It is submitted by Mr. H. A. Ahmed, learned counsel for the petitioner, that the learned Court below did not consider the evidence adduced by the petitioner and came to an erroneous finding and passed the order only considering the evidence of the respondent/1st party. The learned Court below also failed to consider the income of the petitioner. At the relevant point of time, the petitioner was working in a cycle shop and was earning Rs. 6,000/- per month. But, after completion of his graduation, he has been searching for a job and at present he has no such income of his own. The respondent could not prove the income of the petitioner and she did not plead anything in her petition as well as evidence in regards to income of the petitioner. But, without considering the

income of the present petitioner, the learned Court below passed the impugned judgment and order dated 08.08.2022, directing the petitioner to pay Rs. 5,000/- as maintenance allowance to the respondent which is not justified and thus, the impugned judgment and order is bad in law and the same is liable to be set aside and quashed.

4. Further it is submitted that the respondent has not submitted any document regarding her assets and liabilities before the learned Principal Judge, Family Court, Barpeta during the trial, though as per the guideline of Hon'ble Supreme Court in case of **Rajnesh Vs. Neha & Anr.**, reported in **(2021) 2 SCC 324**, has held that party claiming maintenance should be required to file an affidavit of disclosure of assets and liabilities before the concerned Court as a mandatory requirement. But, here in the instant case, the respondent failed to submit her affidavit disclosing assets and liabilities and the order of maintenance has been passed without considering the assets and liabilities of the party and only on the basis of the evidence adduced by the respondent.

5. The learned counsel for the petitioner also relied on another decision of the Hon'ble Apex Court reported in **2023 SCC OnLine SC 1451 (Aditi Alias Mithi Vs. Jitesh Sharma)**, wherein also, it has been held that all the Courts should mandatorily follow the guideline passed in the case of **Rajnesh Vs. Neha & Anr.** Accordingly, the learned counsel for the petitioner submitted that the matter may be remand back to the concerned Court directing both the petitioner and the respondent to furnish the assets and liabilities before the learned Principal Judge, Family Court, Barpeta and on furnishing the affidavit on assets and liabilities, the Court may consider the matter afresh regarding the

quantum of maintenance.

6. In this context, Mr. M. Ahmed, learned counsel for the respondent, raised no objection and submitted that the respondent side is also ready to file her affidavit disclosing the assets and liabilities before the learned Principal Judge, Family Court, Barpeta. However, it is submitted by the learned counsel for the respondent that as per the direction of this Court, dated 16.08.2023, the respondent has already filed their additional affidavit disclosing the assets and liabilities.

7. I have considered the submissions made by the learned counsels for both sides and it is seen that the impugned judgment and order was passed by the learned Principal Judge, Family court, Barpeta, in F.C. (Crl) No. 465/2021, under Section 125 of the Cr.P.C., without considering the assets and liabilities of both the parties.

8. The Hon'ble Apex Court in the case of **Rajnesh (supra)** has held as under:

"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 [Section 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, alongwith 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 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.”

9. Accordingly, considering the view of the Hon’ble Apex Court as well as the submissions made by the learned counsels for both sides, the present petition stands allowed. The matter is remanded to the learned Principal Judge, Family Court, Barpeta, to decide afresh the quantum of maintenance considering the assets and liabilities to be furnished by the petitioner as well as the respondent. Both the parties are accordingly directed to appear before the learned Principal Judge, Family Court, Barpeta, with their respective affidavits disclosing the assets and liabilities on or before 04.03.2024 and the learned Court below will hear the matter afresh and will pass necessary order within 1 (one) month from date of this order. If any payment has already been made by the petitioner that may be adjusted accordingly.

10. In terms of above, the present criminal petition stands disposed of.

JUDGE

Comparing Assistant