

GAHC010178852022



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

Case No. : Crl.Pet./897/2022

ASHOK DUTTA
SON OF LATE ROHINI DUTTA
R/O LALGANESH MILAN NAGAR
H/NO. 22,
P.O. LALGANESH, PIN- 781034, P.S. FATASHIL AMBARI
DIST. KAMRUP (M), ASSAM
ALTERNATE ADDRESS-
LAKHRA HIGHWAY GARAGE, NEAR PETROL PUMP, P.S. GORCHUK, P.O.
GORCHUK, IN THE DISTRICT OF KAMRUP (M).

VERSUS

LILA DUTTA
W/O ASHOK DUTTA
R/O MILAN NAGAR,
H/NO. 22, P.O. LALGANESH PIN- 781034, PS FATASHIL AMBARI, DIST.
KAMRUP (M), ASSAM

Advocate for the Petitioner : MR H GUPTA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 20.02.2024

Heard Mr. H. Gupta, learned counsel for the petitioner and Mr. M.K. Shah, learned counsel for the respondent.

2. In this petition, under Section 482 Cr.P.C, the petitioner, namely, Sri Ashok Dutta has put to challenge the order dated 07.10.2021 passed by the learned Principal Judge, Family Court No. 1, Kamrup(M) at Guwahati in F.C.(Crl.) Case No. 533/2019.

3. It is to be noted here that vide impugned order dated 07.10.2021, the learned Court below has directed the petitioner to pay interim maintenance to the respondent @ Rs. 6,000/- per month.

4. The background facts leading to filing of the present petition is that the respondent Smt. Lila Dutta has filed a petition before the Court of learned Principal Judge, Family Court, Kamrup(M), under Section 125 of the Cr.P.C., seeking maintenance @ Rs. 45,000/- per month from the petitioner. The petitioner has contested the petition by filing written statement. Upon the said petition, the learned Court below, vide impugned order dated 07.10.2021, has directed the petitioner pay interim maintenance to the respondent @ Rs. 6000/- per month.

5. Mr. Gupta, learned counsel for the petitioner submits that in the said petition, the petitioner has filed written objection denying the averments made by the respondent in her petition and thereafter, considering the same, the learned Court below has passed the impugned order dated 07.10.2021. Mr. Gupta further submits that while deciding the quantum of interim maintenance,

the learned Court below has not considered the mandate of law so laid down by Hon'ble Supreme Court in the case of *Rajnesh Vs. Neha & Anr.*, reported in (2021) 2 SCC 324, and decided the quantum of maintenance in absence of the affidavit disclosing the assets and liabilities of both the parties to the proceeding, and as such, Mr. Gupta submits, the impugned order failed to withstand the test of legality, and therefore, it is contended to set aside the same and to remand the matter back to the learned Court below to afford an opportunity to both the parties to submit their affidavits disclosing their assets and liabilities and thereafter, to hear and decide the matter afresh.

6. On the other hand, Mr. Shah, learned counsel for the respondent, submits that the petitioner in his written objection filed before the learned Court below, has also filed an affidavit disclosing his income and as such, the said affidavit has served the purpose as mandated by the Hon'ble Supreme Court in the case of *Rajnesh (supra)*, and therefore, it is contended to dismiss this petition.

7. However, to a pointed query of this Court, the learned counsel for the respondent submits that before the learned Court below, none of the parties have filed their affidavits disclosing their assets and liabilities.

8. It is to be mentioned here that while dealing with the issue of granting interim maintenance, Hon'ble Supreme Court in paragraphs 64 and 65 of its judgment in *Rajnesh (supra)*, has stated 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 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."*

9. In the case at hand, admittedly, the learned Court below, while passing the impugned order dated 07.10.2021, has not given the parties an opportunity to file affidavits disclosing their assets and liabilities, as mandated by Hon'ble Supreme Court in paragraphs 64 and 65 of its judgment in *Rajnish (supra)*.

10. Mr. Gupta, learned counsel for the petitioner also submits that the petitioner has prepared one affidavit disclosing his assets and liabilities and filed the same before the learned Court below, but, he was not allowed to file the said affidavit before the learned Court below.

11. Under the aforementioned facts and circumstances and as the mandate of paragraphs 64 and 65 in the case of *Rajnish (supra)* has not been followed by the learned Court below and as the petitioner was not allowed to file affidavit disclosing his assets and liabilities, this Court is of the considered opinion that the impugned order dated 07.10.2021, fails to withstand the legal scrutiny as the same has been passed ignoring the law laid down by Hon'ble Supreme Court in the case of *Rajnish (supra)*.

12. In the result, this Court is inclined to allow this petition. Accordingly, the impugned order dated 07.10.2021, stands set aside and quashed and the matter is remanded back to the learned Court below to afford an opportunity to both the parties to file their affidavits disclosing their assets and liabilities and

thereafter, to hear the matter afresh and to pass necessary order.

13. The aforesaid exercise has to be carried out within a period of 1(one) month from today. If pursuant to the impugned order dated 07.10.2021, any maintenance has been paid, the same shall be adjusted against the order to be passed on interim maintenance.

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

JUDGE

Comparing Assistant