

GAHC010219862012



2024:GAU-AS:11351

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

Case No. : Crl.Pet./630/2012

MD. AFTAB ALI
S/O LT. AARZAD ALI R/O OUGURI CHAPORI, MOUZA- MORANGI, P.S.
GOLAGHAT, DIST. GOLAGHAT, ASSAM, PIN- 785621

VERSUS

MUSST. SAHARA BEGUM and ANR
W/O MD AFTAB ALI R/O LATEKOO CHAPORI MOUZA- MORANGI, P.S.
GOLAGHAT, DIST. GOLAGHAT, ASSAM,

2:THE STATE OF ASSA

Advocate for the Petitioner : MS.R RONGMAI, MSU BHARALI,MR.R DEV

Advocate for the Respondent : PP, ASSAM, MR.B HUSSAIN,MR.P B MAZUMDER,MS.H CHOUDHURY

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

14.11.2024

1. None appears for the parties on call.
2. The present application is filed under Section 482 of the Cr.P.C. assailing a judgment and order dated 02.06.2011 passed by the learned CJM, Golaghat in Misc Case No. 02/2011 under Section 125 Cr.P.C. filed by the

respondent wife whereby the present petitioner was directed to pay a monthly maintenance allowance of Rs. 2,000/ each to the two sons, one daughter and to the respondent wife. Such determination was assailed before the learned Sessions Judge, Golaghat in criminal revision petition No. 12/2011 before the learned Sessions Judge, Golaghat in Criminal Revision Petition No. 12/2011 and the learned Sessions Judge by its judgment and order dated 03.07.2012 declined to interfere with the judgment impugned in the aforesaid revision petition and accordingly, the present application is filed.

3. The ground urged in this present petition is that the learned court below have committed serious error of law as well as fact in arriving at the aforesaid conclusion, more particularly, for the reason that during the cross-examination, the respondent wife stated that her younger son, who is studying in Madrassa at Nagaon is not residing with her and he used to reside with the 2nd party petitioner. Therefore, in the backdrop of aforesaid admitted position, both the learned courts below could not have awarded maintenance in favour of the son.

4. It is the further case that at the relevant point of time, the age of the one of the sons of the petitioner was aged more than 18 years and doing some business and therefore, the maintenance could not have been awarded. It is a further case that the respondent wife has failed to prove the income of the present petitioner and therefore erroneously awarded the maintenance.

5. Since a perversity has been alleged, this court would like to go through the evidence of the witnesses, more particularly, the PW1. In her evidence, the PW1, i.e. the mother deposed that the children are staying with her, elder son was supposed to appear in the Matric examination but could not appear. The second son was reading in Class-VIII. She further deposed that she

does not have any income for pursuing their studies and the youngest one is reading in a Madrassa at Nagaon. The second party i.e. the present petitioner took the younger boy forcefully with him. She further deposed that she does not have any source of income and her children are minor. During cross-examination, though it is urged that she has admitted that one of her sons to be major, however, such assertion or statement is not there in the cross-examination. What is discernible from the cross-examination is that the petitioner projected a case that the wife wilfully left the house of the husband. She deposed that younger boy is not with her and he is with 2nd party. Through the evidence of PW2, who is an independent person and a neighbour it is established that wards of the petitioner were minor, one was around 17 years and other was 12 years at that relevant point of time. Similar is the position as regards the other witnesses adduced by the petitioner. The present petitioner as respondent also examined himself as DW1. From his evidence, it is seen that it is his projected case that the wife has parted his company on her own will. According to him, he divorced her in front of the Kazi. He deposed in his evidence that he has three shops which is in rent and earned Rs. 9,000/- per month from there and had three Bighas of land but those were sold out and he is having one car though it is not in a running condition and also deposed that his son Sarifuddin was doing business. During cross-examination, he asserted that his son and daughter are staying with him. During cross-examination, he has also admitted that his daughter is 16 years old and she is staying with her mother. He also adduced evidence of one Abdul Kalam as DW2. Nothing material has been deposed by this witness so far relating to award of maintenance and inability of wife to maintain herself.

6. After taking note of all the aforesaid deposition and evidence available

on record, learned trial court concluded that no maintenance has been provided to the petitioner by her husband. As regard age of one of the sons to be more than 18 years, the learned trial court concluded that though it was projected that the son is above 18 years, however, no evidence was produced by the husband to support such contention. So far relating to the age of the daughter to be 14 years and the youngest son to be 12 years, the learned court relied on the statement of the DW1, who in his examination-in-chief has admitted the aforesaid position. Accordingly, it was concluded that the three children of the parties are minor and therefore they are entitled to monthly maintenance.

7. So far relating to quantum of maintenance, the learned trial court took note of the material evidence that the petitioner besides having rental income was also having a truck and he has never pleaded shortcoming of his earnings. Accordingly, a conclusion was arrived at that he is having sufficient means of income but he neglected the petitioner and his minor children. Accordingly, monthly maintenance of Rs. 2000/- each was directed to be paid by the petitioner to his wife and children. Such determination was up-held by the learned Sessions Judge in Criminal Rev. P. No. 12/2011 and concluded that the learned trial court has rightly arrived at the conclusion after scrutinising the evidence of the parties and accordingly, noted that the court did not find anything to interfere with the impugned judgements in exercise of its revisional jurisdiction.

8. In exercise of revisional power under Section 482 Cr.P.C., this court can set right patent defect or an error of jurisdiction or of law. Such power can also be exercised where the decision under challenge is grossly erroneous or where there is non-compliance with the provision of law or the finding recorded is based on no evidence and/ or material evidence is ignored or judicial

discretion is exercised arbitrarily or perversely. It is equally well settled that a revisional jurisdiction of High Court should not be exercised in a routine manner. The Hon'ble Apex Court in the case of ***Chandra Babu Vs State*** reported in ***2015 (8) SCC 774*** laid down a ratio that normally revisional jurisdiction should be exercised in a question of law, however, when factual appreciation is involved, then such exercise is to be carried out in a class of cases resulting in a perverse finding. It is further held that the power is required to be exercised so that justice is done and there is no abuse or power by the court.

9. In the backdrop of aforesaid settled proposition of law and the evidence and the facts which are discernible from the material, this court is of the view that the learned trial courts below have not committed any patent error of jurisdiction or of law. The findings recorded by the learned courts below are based on sound reasoning. Both the learned courts below have duly appreciated the evidence on record and the conclusion arrived at on the basis of such appreciation of evidence cannot be termed as a decision which would not have been arrived at by a reasonable man on the basis of material available on record.

10. In view of the aforesaid, this court is not inclined to interfere with the determination made by the learned courts below in exercise of its revisional power. However, this court cannot also be unmindful of the fact that when the impugned judgments were passed admittedly, one of the sons was around 18 years, another son was aged about 14 years and the daughter was 12 years. The matter is pending since 2012 and therefore, from that perspective, the children would have become major by this time. Therefore, while parting with the record, it is provided that the petitioner shall be at liberty to approach the learned trial court below under Section 127 Cr.P.C. and on such application

being filed the learned trial court shall consider the same as per law.

11. With the aforesaid observation, the criminal petition stands dismissed. Interim order, if any, stands vacated. The LCR be returned.

JUDGE

Comparing Assistant