

GAHC010224352022



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

Case No. : Crl.Rev.P./534/2022

SHAHZAHAN ALI @ AMIN
S/O LATE MOKBUL HUSSAIN SARKAR
VILL- BASIMARI (KALGACHIA)
P.O. AND P.S. KALGACHIA
DIST. BARPETA, ASSAM

VERSUS

SABINA EASMIN
W/O SHAHZAHAN ALI
VILL- KATAJHAR PATHAR
P.O KATJHAR BAZAR
P.S. BARPETA ROAD,
DIST. BARPETA, ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : MR. S A AHMED

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 18-01-2024

1. Heard Mr. R. Ali, learned counsel for the petitioner and Mr. S.A. Ahmed, learned counsel for the respondent.
2. Petitioner has filed this application u/s 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC for short) seeking quashing and setting aside of the order dated 16.07.2022 passed by the Principal Judge, Family Court, Barpeta in connection with F.C. (Crl.) Misc. Case No.

99/2021 arising out of M.R. Case No. 658/2008.

3. The respondent filed an application u/s 125 Cr.PC before the Chief Judicial Magistrate, Barpeta alleging *inter alia* that her marriage was solemnised with the petitioner according to Islam Shariat. The couple are blessed with two children. The petitioner then started demanding dowry and the respondent was meted out with cruelty to fulfil the petitioner's illegal demand of dowry. Finally the petitioner neglected to maintain his wife and two children. The respondent is unemployed and has no source of income whereas the petitioner has a pharmacy and earn around Rs. 8,000/- to 10,000/- per month. He is the owner of a parcel of land admeasuring 1 Bigha. The petitioner contested the proceeding u/s 125 Cr.PC and submitted written statement *inter alia* denying the allegations. It was submitted that the respondent belongs to an affluent family. The petitioner on the other hand was working in a venture school and the respondent insisted that the petitioner should stay with her parents as "Ghor Jowai". When the petitioner refused to sell the land and stay with the respondent as "Ghor Jowai", the respondent deserted him and she took away her children along with her. After hearing both the parties, the learned CJM, Barpeta vide order dated 31.12.2009 directed the petitioner to pay Rs. 600/- per month to the respondent and Rs. 500/- per month each to their minor daughters. Meanwhile the respondent prayed for enhancement of maintenance u/s 127 of the Cr.PC due to the change of circumstances and the prevailing inflation. Vide order dated 10.06.2022, a last opportunity was granted to the petitioner by the learned Principle Judge, Family Court in F.C.(Crl.) Misc. Case No. 99 of 2021. When the petitioner failed to appear, an ex parte order was passed enhancing the maintenance to Rs. 5,000/- per month for the respondent and Rs. 3,000/- per month for the minor daughter. One daughter has attained majority.

4. It is contended that the learned Principal Judge, Family Court has failed to appreciate the records and material facts and passed the impugned order dated 16.07.2022 which is liable to be set aside and quashed. The petitioner's elder daughter is 21 years old and she is not entitled to any maintenance. It is also averred that the petitioner's salary slip was not considered by the learned Principal Judge as his monthly salary only Rs. 12,600/-. It is also averred by the petitioner that enhancement u/s 127 was filed after a lapse of 12 years. The petitioner is willing to contest the proceeding and place his case before the learned Principal Judge, Family Court.

5. The learned counsel for the respondent has also submitted that the petitioner may contest his proceeding, but the petitioner has not paid a farthing to the respondent and her daughters. It is submitted that the petitioner may be directed to pay the arrear of the maintenance in compliance of the order dated 31.12.2009 in connection with the earlier proceeding being M.R. Case No. 658/2008. The learned counsel for the petitioner has submitted that the order passed by the learned CJM in M.R. Case No. 658/2008 will be complied with. The petitioner is also willing to abide by any order which would be passed by the learned Principal Judge, Family Court in connection with Case No. F.C. (Crl.) Misc. 99/2021.

6. After considering the submissions at the Bar I deem it proper to set aside and quash the order dated 16.07.2022 passed by the learned Principal Judge, Family Court in connection with F.C. (Crl.) Misc. Case No. 99/2021 and the petitioner is directed to appear before the Court and contest the proceeding.

In terms of the above observations, petition is disposed of.

JUDGE

Comparing Assistant