

GAHC010233232023



2024:GAU-AS:8184

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

Case No. : Crl.Pet./1121/2023

MRIDUL KUMAR BORAH @ MRIDUL KR. BORAH
S/O SRI DINAI BORAH
R/O VILL- OUGURI BORBILL
P.S. BHOGAMUKH
P.O. PATHALIAL
DIST. JORHAT, ASSAM
PIN-785683

VERSUS

DIPANJALI BORAH
W/O SRI MRIDUL KR. BORAH
D/O LATE PRADIP BORAH
R/O MOGORAHAT GARKAKHARIA
P.S. SIVASAGAR
DIST. SIVASAGAR, ASSAM
PIN-785666

Advocate for the Petitioner : MR. M H TALUKDAR, MD. S ALOM

Advocate for the Respondent : MR. A R SHOME,

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

19/08/2024

Heard Mr. M H Talukdar, learned counsel for the petitioner and Mr. A J Ghosh, learned counsel for the respondent.

2. This criminal petition has been filed by the petitioner being aggrieved with the impugned judgment dated 27.04.2023 passed by the learned Sessions Judge, Sivasagar in Criminal Revision No. 03(1) of 2023 upholding the impugned final order dated 12.12.2022 passed by the learned Sub-Divisional Judicial Magistrate (S), Sivasagar in Misc Case No. 23/2021 directing the petitioner to pay monthly allowance of Rs. 8,000/- to the respondent as maintenance from the date of passing of the final order.

3. Petitioner stated that said impugned judgment and the final order had been passed without considering the income of the petitioner and ignoring the fact that the petitioner is a person belonging to Below Poverty Line and that the amount of monthly maintenance of Rs. 8,000/- is disproportionate with the income and status of the petitioner.

4. The respondent as an applicant on 22.03.2021 filed Misc Case No. 23/2021 under Section 125 CrPC before the learned Chief Judicial Magistrate, Sivasagar praying for monthly maintenance of Rs. 30,000/- and interim maintenance of Rs. 10,000/- from the petitioner stating that her marriage was solemnized with the petitioner on 12.12.2016. But her marriage could not be consummated as she was ill treated by the petitioner and for such ill treatment on her by the petitioner she was compelled to leave her matrimonial home on 01.02.2021 as he assaulted her. For such reason, the respondent filed Bhogamukh Police Station Case No. 03/2021 under Section 406 IPC which is pending before the Court of learned Additional Chief Judicial Magistrate, Sivasagar.

5. The respondent adduced her evidence as PW.1 on 05.04.2022 in her petition under Section 125 CrPC and she was cross-examined by the petitioner on 12.08.2022.

6. Petitioner stated that the respondent during her cross-examination admitted the fact that her brother who is serving in the police department of the State, her sister is having a private job

and she is staying with them at her paternal home and that she does not know who is the owner of the tent house and also admitted that she used to have a ration card while she was at her matrimonial home.

7. Petitioner filed his evidence-in-chief as DW. 1 on 12.10.2022 in said Misc Case No. 23/2021 under Section 125 CrPC preferred by the respondent against him, denying the allegations made against him by the respondent. He stated that during evidence he placed before the Court that he belongs to BPL family, has a rural pharmacy with permission to sale drugs like vitamin and Paracetamol like medicines only and earns Rs. 3,000/- to Rs.4,200/- per month from his said pharmacy denying that he has no tent house but stated that the tent house is owned by his brother and from it he does not get any share of income.

8. The contention of the petitioner before the Court is that the learned SDJM(S), Sivasagar as well as the learned Sessions Judge, Sivasagar committed error in law in directing him to pay Rs. 8,000/- P.M. to the respondent as monthly maintenance, as the same has been directed without ascertaining the income of the petitioner. It is also stated that both the Magistrate as well as the learned Sessions Judge also committed illegality in holding that his annual income is more than Rs. 1,00,000/-.

9. Accordingly, both the learned SDJM(S), Sivasagar as well as the learned Sessions Judge, Sivasagar without first ascertaining his income has passed the direction for payment of Rs. 8,000/- P.M. to the respondent towards her maintenance.

10. Mr. Ghosh, learned counsel appearing for the respondent denied the claims of the petitioner and submitted that the learned SDJM(S), Sivasagar as well as the learned Sessions Judge, Sivasagar rightly passed the orders of payment of Rs. 8,000/- P.M. as maintenance to her payable by the petitioner.

11. Heard the learned counsels for the parties and perused the records of Criminal Revision No. 03(1) of 2023 of the Court of learned Sessions Judge, Sivasagar as well as the records of Misc Case No. 23/2021 of the Court of learned SDJM(S), Sivasagar.

12. Law is well settled that right to receive maintenance by the wife from her husband under Section 125 CrPC, unless disqualified, is an absolute right. Procedure under Section 125 CrPC is summary in nature. It is also settled that Court should consider the possibility of compromise between the parties before awarding maintenance.

13. It is seen from the records that both the petitioner as well as the respondent submitted their respective assets and liabilities. However, it is seen that the learned SDJM(S), Sivasagar in said Misc Case No. 23/2021, proceeding under Section 125 CrPC, did not consider in terms of the decision of the Hon'ble Supreme Court in the case of *Rajnesh -Vs- Neha and Others*, reported in (2021) 2 SCC 324.

14. After hearing the learned counsels for the parties and considering the entire aspect of the matter, both the final order dated 12.12.2022 passed by the learned SDJM(S), Sivasagar in Misc Case No. 23/2021 as well as the judgment dated 27.04.2023 passed in Criminal Revision No. 03(1) of 2023 by the learned Sessions Judge, Sivasagar are hereby set aside and quashed, remanding the matter to the learned Sub-Divisional Judicial Magistrate (S), Sivasagar directing it to pass a fresh Final Order after considering the respective assets and liabilities of both the petitioner as well as the respondent as provided in the judgment of the Hon'ble Supreme Court in the case of *Rajnesh -Vs- Neha* (supra) reported in (2021) 2 SCC 324.

15. For the said purpose, the learned SDJM(S), Sivasagar shall decide the Misc Case No. 23/2021 of the respondent from the stage of submission of respective assets and liabilities of both the petitioner as well as the respondent.

16. Till such decision of the learned SDJM(S), Sivasagar in said Misc Case No. 23/2021, the petitioner shall pay an interim maintenance to the respondent @ Rs. 4,000/- per month.

17. Needless to say that the Court of learned SDJM(S), Sivasagar shall dispose of the Misc Case No. 23/2021 under Section 125 CrPC preferred by the respondent at the earliest, in accordance with law.

18. With the above observations and directions, this criminal petition, stands allowed to the extent above.

JUDGE

Comparing Assistant