

GAHC010111762024



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

Linked Case : Crl.Rev.P./434/2023

SADDAM HUSSAIN
S/O LATE HAJI NASIM UDDIN @ NASIM UDDIN
VILL.-SADHADUBHASHA
PART-IV
P.O.-MAKRIJHARA
P.S.-GAURIPUR
DIST.-DHUBRI
ASSAM
PIN-783349.

VERSUS

AMINA KHATUN
D/O IMAN ALI
VILL.-SADHADUBHASHA
PART-IV
P.O.-MAKRIJHARA
P.S.-GAURIPUR
DIST.-DHUBRI
ASSAM
PIN-783349.

Advocate for : MR H R A CHOUDHURY
Advocate for : MR A ALI appearing for AMINA KHATUN

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

ORDER

20.09.2024

Heard learned counsel Mr A Ahmed, for the petitioner-X and Ms S Medhi, learned counsel appearing on behalf of the respondent/opposite party-Y.

2. The petitioner has filed this application under Section 397, read with Section 401 of the CrPC, challenging the *ex parte* order dated 18.12.2021, passed by the learned Principal Judge, Family Court, Dhubri, Assam, in a petition filed by the respondent/opposite party under Section 125 CrPC. Vide order dated 18.12.2021, in FC (Crl.) Case No. 03/2020, the learned trial Court directed the petitioner to pay Rs. 5,000/- per month as monthly maintenance to his wife and Rs. 2,000/- per month as monthly maintenance to his child.

3. The learned counsel for the respondent/opposite party has prayed to dismiss this petition as the respondent is unable to fend for herself and bear her own expenses as she has no income. While on the contrary, the petitioner is the owner of a tractor. He earns Rs. 30,000/- per month. The learned counsel for the respondent has submitted that the object of Section 125 of the CrPC falls within the constitutional sweep of Article 15 of the Constitution of India and it is a beneficial legislation to avoid vagrancy and destitution.

4. Learned counsel for the petitioner laid stress in his argument that the petitioner was not given an opportunity to present his case and this order was passed *ex parte* to the

detriment of the petitioner. The petitioner is desirous to contest the proceeding and to present his case as he has a good case against the respondent. Moreover, it is submitted that the direction of Hon'ble the Supreme Court in the Judgment of ***Rajnesh –vs- Neha and Another***; reported in **(2021) 2 SCC 324**, has not been complied with. The statements of Assets and Liabilities have not been placed by the respondent. The petitioner is also willing to submit his statement of Assets and Liabilities, in the light of the decision of Hon'ble the Supreme Court in ***Rajnesh's case (supra)***.

5. Admittedly, the parties have not submitted their affidavits disclosing their Assets and Liabilities in the proceeding FC (Crl.) No. 03/2020.

6. The scanned copies of the learned trial Court record reveals that at times, the respondent was also not present and she was absent without steps. Thereafter, Court works got affected by the COVID-19 pandemic. When the Court works were restored after the pandemic, the petitioner remained continuously absent. The petitioner was not aware of the *ex parte* order passed vide order dated 18.12.2021 and, thereafter, for the execution of the order warrant was issued to the petitioner.

7. It is submitted on behalf of the petitioner that immediately, when summons were issued against the petitioner at first instance, Court works got affected by the COVID-19 pandemic, and, thereafter, Court works were kept suspended till the pandemic was over. The petitioner was not at all aware of the proceeding and suddenly, he has received the warrant of arrest for execution of the *ex parte* order impugned by the petitioner.

8. I have considered the submissions on behalf of the parties, with circumspection.
9. It is true that this case was registered on 07.01.2020, and, thereafter, the Court works got affected by the pandemic.
10. I have also considered the submission that the petitioner is willing to contest the proceeding. I believe an opportunity ought to be afforded to the petitioner to contest the proceeding. The order was also passed without the affidavit of statements of Assets and Liabilities being submitted in the learned trial Court. Therefore, I deem it appropriate to direct the petitioner to appear before the learned trial Court and submit his WS and contest the proceeding.
11. The order dated 18.12.2021, is hereby set aside and both the parties are directed to appear before the learned trial Court and present their case.
12. In terms of the above observations, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant