

GAHC010245442023



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

Case No. : Crl.Rev.P./468/2023

RUBUL ALI
S/O MD. ISMAIL ALI, VILL-BHADRA BANGAL, P.S.-GHOGRAPAR, P.O.-
ALLIA, PIN-781369, DIST-NALBARI (ASSAM)

VERSUS

MRS. JESMIN BEGUM
W/O RUBUL ALI, D/O JAHIR ALI, VILL- BORBISHTUPUR, P.S.-GHOGRAPAR,
P.O.-KHATIKUCHI, PIN-781369, DIST- NALBARI, ASSAM

Advocate for the Petitioner : MS F BEGUM

Advocate for the Respondent : MR. A K TALUKDAR

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

09.05.2024

Heard Mr. S. Paul, learned counsel for the petitioner and Mr. A.K. Talukdar, learned counsel for the sole respondent.

2. In this petition, under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973, the petitioner, namely, Rubul Ali, has put to challenge the order dated 07.09.2023 passed by the learned Principal Judge, Family Court, Nalbari, in Misc. Case No. 02/2023 and also the order dated 11.04.2023, passed in Case No. 147/2022, under Section 125 of the Cr.P.C.

3. It is to be noted here that vide impugned order dated 07.09.2023, the learned Principal Judge, Family Court, Nalbari, has dismissed the Misc. Case No. 02/2023 filed by the petitioner for vacating the ex-parte order dated 11.04.2023, passed in Case No. 147/2022, under Section 125 of the Cr.P.C. and vide impugned ex-parte order dated 11.04.2023, the learned court below has directed the petitioner to pay maintenance to the sole respondent @ Rs. 1,500/- per month and to her child @ 1,000/- till attaining majority.

4. Mr. Paul, learned counsel for the petitioner submits that the impugned ex-parte order dated 11.04.2023 was passed by the learned court below without proper service of notice upon him and therefore, the petitioner had also filed a petition for vacating the said ex-parte order, but the learned court below had dismissed the same also for which the petitioner got no opportunity to present his case and as such, grave prejudice is caused to the petitioner and on such count both the impugned orders have failed to withstand the legal scrutiny and therefore, contended to allow the petition and to remand the matter back to the learned court below to decide the same afresh.

5. Mr. Talukdar, learned counsel for the sole respondent submits that the petitioner has received notice from the learned trial court and in spite of receipt of notice, he failed to turned up without any reason and therefore, the learned trial court has passed the impugned order, by directing the petitioner to pay maintenance @ Rs. 1,000/- for the child and Rs. 1,500/- for the sole respondent. Mr. Talukdar further submits that he has no objection in the event of setting aside the impugned order and remanding the matter to the learned trial court, but, his only contention is that the petitioner may be directed to make payment of the maintenance, so granted vide order dated 11.04.2023.

6. Having heard the submissions of learned counsel for both the parties

and also considering the given facts and circumstances on the record and also as agreed upon by learned counsel for both the parties, this Court is inclined to dispose of this petition by setting aside the impugned order dated 07.09.2023, passed by the learned Principal Judge, Family Court, Nalbari in Misc. Case No. 02/2023 and also the ex-parte order dated 11.04.2023, passed in Case No. 147/2022, under Section 125 Cr.P.C.

7. The matter is remanded back to the court of learned Principal Judge, Family Court, Nalbari with a direction to the concerned parties to appear before learned court below on **20.05.2024**, and on their appearances the learned court below shall afford an opportunity to the petitioner to file written statement and thereafter, to hear the matter and decide the same afresh. The parties are also directed to submit their affidavits, disclosing their assets and liabilities as mandated by Hon'ble Supreme Court in the case of **Rajnesh vs. Neha and Anr.**, reported in **(2021) 2 SCC 324**.

8. It is also provided that if the sole respondent file a petition seeking interim maintenance, the learned court below shall consider the same in accordance with law, within a period of 1 (one) month from the date of filing such an application.

JUDGE

Comparing Assistant