

GAHC010245742022



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

Case No. : Crl.Rev.P./562/2022

FARDIN AKHTER
S/O MD. AKHTER HUSSAIN,
R/O HOUSE NO. 13 (A) K.K HANDIQUE PATH, MATHURA NAGAR, BEHIND
DOWN TOWN HOSPITAL,
P.O. AND P.S.- DISPUR, GUWAHATI- 6,
DIST.- KAMRUP (ASSAM), PIN- 781006.

VERSUS

ROSELINE FIROZ
D/O MD. FIROZ ALI,
EX-W/O FARDIN AKHTER,
R/O SANTIPUR HILLSIDE, PNGB ROAD, MUNIR PATH,
P.O. AND P.S.- BHARALUMUKH,
DIST.- KAMRUP (M), ASSAM, PIN- 781009.

Advocate for the Petitioner : MR. M U MAHMUD, Ld Adv.

Advocate for the Respondent : MS. N S THAKURIA, Ld Adv.

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 19.04.2024

Date of Judgment : 31.07.2024

JUDGMENT & ORDER (CAV)

Heard Mr. M. U. Mahmud, learned counsel for the petitioner. Also heard Ms. N. S. Thakuria, learned counsel for the respondent.

2. This application filed under Sections 397/401 of Cr.P.C. *read with* Section 482 of the Code of Criminal Procedure, 1973, challenging the Order dated 29.10.2022 passed by the learned Principal Judge, Family Court No.1, Kamrup (M), Guwahati in Crl. Execution Case No.84/2018 arising out of F.C.(Crl) Case No.413/2014, whereby, the petitioner was directed to pay Rs,1,80,000/- (Rupees One lakh eighty thousand) only as an arrear of outstanding amount to the present respondent.

3. The brief facts of the case is that; the respondent is the ex-wife of the present petitioner. A divorce case was instituted by the respondent against the petitioner vide F.C.(C)226/2016, in which the Court was pleased to pass a decree of divorce between them on 26.09.2017. Thereafter, the respondent claimed permanent alimony by filing Misc.(J) Case No.173/2017, before the learned Family Court, wherein, the petitioner was directed to pay a sum of Rs.8,00,000/- (Rupees Eight lakhs) only by order, dated 16.08.2018. On the contrary, the petitioner approached before this Court by filing Mat. Appeal No.71/2018 challenging the said Order dated 16.08.2018 and this Court by order dated 29.11.2018 directed the petitioner to deposit an amount of Rs.2,00,000/- (Rupees Two lakhs) only before the Registry of the Gauhati High

Court till disposal of the case and stayed the aforesaid order. Accordingly, the aforesaid amount was deposited by the petitioner and the respondent had also received the amount. Further, as the petitioner was not in a position to pay the entire amount and this Court vide its Order dated 18.02.2020 passed in Mat App. Case No.71/2018; after hearing both the parties had allowed the petitioner to pay the amount in installments and accordingly, the petitioner paid the amount of Rs.6,00,000/- (Rupees Six Lakhs) only by installments and the I.A. (C)1563/2020 filed by the respondent was finally closed on 23.07.2021 after confirming from the learned engaged counsel appearing on behalf of the respondent that her client has received the full and final amount of the permanent alimony which has been granted by this Court.

4. But, the respondent again filed a Criminal Execution Case No.84/2018 arising out of F.C. (Crl)/413/2014 whereby, the learned Principal Judge, Family Court No.-1, Kamrup (M) vide its order dated 29.10.2022 directed the petitioner to pay the amount of Rs.1,80,000/- (Rupees one lakh eighty thousand) only to the respondent within 4(four) months. It is further stated that vide order dated 18.06.2019 passed in Misc. Case No.50/2019, in connection with F.C. (Crl)413/2014 inter alia the petitioner was directed to pay a sum of Rs.3,000/- (Rupees Three thousand) only per month as maintenance till disposal of the matrimonial appeal. Thereafter, the matrimonial appeal was disposed of on 18.02.2020 and the order for payment of Rs.3,000/- (Rupees three thousand) only per month was passed on 18.06.2019, and thus the petitioner is not liable to pay any amount after 18.02.2020 i.e. from the final disposal of the appeal. But, the learned Principal Judge, Family Court No.-1, Kamrup (M) passed the impugned order dated 29.10.2022 asking the petitioner to pay another amount of Rs.1,80,000/- (Rupees one lakh and eighty thousand) only in 4 installments,

despite, the fact that the petitioner had already paid the entire amount of Rs.6,00,000/- (Rupees six lakhs) only to the respondent.

5. Mr. Mahmud, learned counsel for the petitioner has submitted that under no circumstances, the respondent is entitled for any further amount after accepting the permanent alimony of Rs.6,00,000/- (Rupees Six Lakhs) only, but even then, the learned Family Court again directed the petitioner to pay Rs. 1,80,000/- (Rupees One lakh eighty thousand) only by order dated 29.10.2022. He further submitted that the learned Principal Judge, Family Court No.-1, Kamrup (M) had passed the order dated 29.10.2022 without considering the entire aspect of the case, wherein, the petitioner was directed to pay Rs.3,000/- (Rupees Three Thousand) per month only till final disposal of the Matrimonial Appeal which was disposed on 18.02.2020 and the order for payment of Rs.3000/- per month was passed on 18.06.2019 and hence, the petitioner is not liable to pay any amount after 18.02.2020.

6. On being dissatisfied and aggrieved by the impugned order dated 29.10.2022 passed by the learned Principal Judge, Family Court No.-1, Kamrup (M) in Criminal Execution Case No.84/2018 arising out of F.C (Crl) No.413/2014, the petitioner preferred the instant petition praying for setting aside and quashing of the aforesaid impugned order.

7. In this regard, Ms. Thakuria, learned counsel for the respondent has submitted that it is a fact that this Court, directed the petitioner to deposit Rs.2,00,000/- (Rupees two lakhs) only during the pendency of the appeal, and accordingly stayed the order dated 16.08.2018 passed by the learned Trial Court. But, the petitioner did not pay the remaining amount immediately to the respondent even after passing of the judgment by this Court. And thus, finding

no other alternative, the respondent filed one I.A.(C) Case No.1563/2020 for non-payment of the remaining amount and thereafter, only the petitioner paid the amount of Rs.2,00,000/- (Rupees two lakhs) only to the respondent on the basis of which the Interlocutory Application was disposed of. More so, the petitioner suppressed the actual fact of the case and did not annexed the copy of the petition filed by the respondent, wherein, the said respondent has stated before the Trial Court in regards to unpaid arrear by the petitioner.

8. She further submitted that as per Section 127 (3) (b) of Cr.P.C. wherein, it has been stated that a woman is entitle for the arrear maintenance till the payment of the entire amount of the permanent alimony. She further submitted that if, the petitioner would have paid the said amount to the respondent immediately after passing of the judgment dated 18.02.2020, then, she would not have filed the Criminal Execution No.84/2018 in F.C.(CrI)413/2014 for the arrear amount. More so, she has not claimed any maintenance after receipt of full and final payment towards the permanent alimony. As per her calculation she is entitled to receive an amount of Rs.2,63,000/- (Rupees Two lakhs sixty three thousand) only, but the learned court below after considering the overall matter and considering the case record came to an conclusion and the petitioner was directed to pay the amount of Rs. 1,80,000/- to the present respondent. Thus, the learned Principal Judge, Family Court No.-1, Kamrup (M) had rightly passed the order dated 29.10.2022 directing the present petitioner to pay the amount of Rs. 1,80,000/- in 4 installments. Accordingly, it is submitted by the learned counsel for the respondent that there is no illegality and infirmity in the order passed by the learned Trial Court and thus, there is no reason to make any interference in the order passed by the learned Principal Judge, Family Court No.-1, Kamrup (M) in Criminal Execution Case No.84/2018

arising out of F.C (Crl) No.413/2014 and accordingly she submits that this petition is liable to be dismissed.

9. After hearing the submissions made by the learned counsels for both sides, I have perused the case record and the order passed by the learned Principal Judge, as well as the order passed in Mat. Appeal No.71/2018 dated 18.02.2020. It is fact that the Divisional Bench of this Court had interfered with the permanent alimony and fixed the amount to Rs.6,00,000/- (Rupees six lakhs). Further from the order passed in I.A.(C) Case No.1563/2020, it is seen that there was full and final satisfaction of the amount and it is admitted by the respondent that she had received the entire amount of Rs.6, 00,000/- (Rupees six Lakhs) only towards the permanent alimony. But, issue raised, when the respondent filed the Criminal Execution No.84/2018 arising out of FC(Crl)413/2014 claiming arrear maintenance amount stating that before the order of permanent alimony was passed by this Court, the present petitioner defaulted in payment of the monthly maintenance to the respondent. Accordingly, she prayed for, releasing the said arrear maintenance amount which is due to her before the disposal of the Mat. Appeal No.71/2018. As per the respondent, she is entitled for arrear amount of Rs.2,63,000/- (Rupees two lakhs sixty three thousand) only. However, the learned Principal Judge, after calculation it has come to the conclusion that the respondent is entitled to get an amount of Rs. 1,80,000/- (Rupees One lakh eighty thousand) only as an outstanding amount which is to be paid by the petitioner and both the parties also agreed to the same. Accordingly, the petitioner was directed to pay the amount of Rs. 1,80,000/- (Rupees One lakh eighty thousand) only in four installments in a period of 4 months i.e. Rs.45,000/- each month.

10. But, it is seen that if the present petitioner did not comply with the order passed by the learned Principal Judge, and filed the instant petition claiming that the respondent is not entitled for further payment after full and final satisfaction at an amount of Rs.6,00,000/- (Rupees six lakhs) only towards the permanent alimony, but it was the specific order passed by the learned Court below that till disposal of the Mat. Appeal, the petitioner cannot absolve himself from paying maintenance to the respondent and accordingly an amount of Rs.3,000/- (Rupees three thousand) only was asked to pay by the petitioner to the respondent till final disposal of the Mat Appeal. Against the said direction the petitioner did not move any application and thus, it is seen that he agreed to pay Rs.3,000/- (Rupees three thousand) only per month till disposal of the Mat. Appeal. Being the able bodied person and husband of the respondent, it is his duty to pay maintenance to his wife/respondent and he cannot abstain himself from his liability. It is also admitted that the order of payment of Rs. Rs.3,000/- (Rupees three thousand) only was passed by the learned Principal Judge, on 18.06.2019 and the Mat appeal was disposed on 18.02.2020. Thus, it is seen that the respondent is entitled to monthly maintenance from the order of the learned Trial Court passed on 18.06.2019 till disposal of the Mat. Appeal i.e. 18.02.2020. Thus, from the simple calculation, it is seen that the respondent is entitled for the arrear maintenance for 8/9 months. But, it is seen that prior to passing of the order dated 18.06.2019, the petitioner earlier defaulted in payment of monthly maintenance to the respondent before the order passed by the learned Court below 18.06.2019. From the affidavit-in-opposition filed by the respondent, it is seen that prior to passing of the judgment and order in Mat Appeal dated 18.02.2020, the petitioner did not pay the amount and for which the respondent had to file the Criminal Execution Case No.84/2018 seeking for

payment of arrear amount.

11. Thus, it cannot be denied that the petitioner did not pay the permanent alimony amount even after passing of the order and in the same time it cannot be denied that prior to order of Mat Appeal dated 18.02.2020, the petitioner had defaulted in payment of the monthly maintenance of Rs.3,000/- (Rupees three thousand) only and prior to the order passed by the learned Principal Judge another arrear amount was due from the year 2017, when the order of maintenance for Rs.8,000/- (Rupees eight thousand) only was passed. More so, as per the order dated 29.10.2022, the learned Principal Judge had calculated an amount of Rs. 1,80,000/- (Rupees one lakh eighty thousand) only as an arrear maintenance allowance and to which both the parties agreed.

12. So, from the entire discussions made above, I am of the opinion that the learned Principal Judge, Family Court No.1, Kamrup (M), Guwahati committed no illegality or mistake while passing the impugned order dated 29.10.2022 in Crl. Execution Case No.84/2018 arising out of F.C.(Crl) Case No.413/2014, whereby, the petitioner was directed to pay Rs,1,80,000/- (Rupees One lakh eighty thousand) only as an arrear of outstanding amount to the present respondent and hence, I find that the impugned order 29.10.2022, against which the present revision petition has been filed by the petitioner, do not suffer from any illegality or impropriety or correctness for any interference of this Court.

13. In the result, I find no merit in this petition and accordingly, the same stands dismissed. The parties have to bear their own cost.

JUDGE

Comparing Assistant