

GAHC010270852022



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

Case No. : Crl.Rev.P./3/2023

PALLABI NATH
D/O SRI ASHOK KR. NATH
R/O 39, SBI COLONY, HATIGARH CHARIALI, GUWAHATI-24, DIST.
KAMRUP, ASSAM
PH- 9854021760

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:DR. RANJAN KR. BHATTA
S/O TEJANANDA UPADHAYA
R/O ACHYUT NEST
HOUSE NO. 5 F RADHA NAGAR
CHACHAL
P.S. DISPUR
PIN-781022
DIST. KAMRUP (M)
ASSAM
OFFICE ADDRESS-
ASSTT. PROFESSOR
ENGLISH DEPARTMENT
KARMASHREE HITESWAR SAIKIA COLLEGE
SIX MILE
GUWAHATI-781022
DIST. KAMRUP
ASSA

Advocate for the Petitioner : MR D K BORDOLOI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI
J U D G M E N T & O R D E R (CAV)

Date : 26-06-2024

Heard Mr. D.K. Bordoloi, learned counsel for the petitioner. Also heard Mr. A. Barkataki and Mr. P. Bharadwaj, learned counsels, appearing for the respondent No. 2.

2. The petitioner filed an application under Sections 397/401 r/w Section 482 of the Code of Criminal Procedure 1973 r/w Article 227 of the Constitution of India challenging the impugned Order dated 23.09.2022 passed by the learned Principal Judge, Family Court No. 1, Kamrup(Metro), Assam in Misc Case No. 135/2020.

3. The background of the case is that the petitioner, being the wife of respondent No. 2, filed a maintenance case before the Principal Judge, Family Court (Metro) u/s 125 CrPC praying for maintenance allowance for her minor son vide FC(Crl.) Case No. 664/2014. The petitioner also filed a divorce suit, being FC (Civil) Suit No. 975/14 against the respondent No. 2 praying for decree of divorce.

4. During the pendency of the aforesaid cases, both the parties have mutually settled their disputes outside the Court and on 17.03.2016, they filed a joint compromise petition before the Trial Court praying for a decree of divorce. Thereupon, vide Order dated 17.03.2016, the marriage between the petitioner and the respondent No. 2 was dissolved. As per the said Mutual Agreement, the respondent no. 2 agreed with a sum of Rs. 10,000/- per month to his minor son for his maintenance, education etc. At the time of mutual settlement, the salary of respondent No. 2 was Rs. 40,000/- per month as such, he agreed to pay Rs. 10,000/- per month towards his son. The petitioner has been working as Contractual employee at NEDFI since 2010 and at present, she is drawing Rs. 34,800/- per month as her salary.

5. It is also the case of the petitioner that meanwhile, the son of the petitioner has grown up and his educational and other necessary expenses also increased in comparison to the year 2016. On several occasions, the petitioner asked the respondent No. 2 to provide sufficient maintenance for educational expenses of his son. But he refused to pay excess amount of maintenance towards his son. Thereafter, the petitioner filed an application under Section 127 CrPC praying for enhancement of monthly maintenance allowance from existing Rs. 10,000/- to Rs. 40,000/- and the case was registered vide Misc Case No. 135/2020.

6. In the said petition, the petitioner has categorically stated that her minor son is a student of Class XI (commerce) of Maria's Public School at Guwahati and she is spending about Rs. 15,000/- to Rs. 17,000/- per month for his educational expenses including tuition fees, books, uniforms, medicine, clothing etc. The respondent No. 2 is presently working as Assistant Professor, English Department at Karmashree Hiteswar Saikia College, Guwahati and he is drawing about Rs. 1,20,000/- per month as his salary besides other incentives. Further, the respondent No. 2 is earning handsome money by doing tuition classes, scrutiny of the answer scripts of Higher Secondary and Degree examinations and doing Invigilator duty of the exams etc. The total income of the respondent No. 2 is Rs. 1,60,000/- per month besides having landed properties.

7. The respondent No. 2 has submitted his written objection in Misc Case No. 135/2020 before the Trial Court and denied the statements made by the petitioner in her petition. He stated that he got married again after his divorce with the present petitioner and out of the second marriage, one child was born to them. Further, he has to maintain his mother also.

8. Both parties led written evidence on affidavit in support of their case and after hearing both sides, the Trial Court vide its Order dated 23.09.2022 enhanced the monthly maintenance from Rs. 10,000/- to Rs. 16,000/- with

effect from the date of the order.

9. Being highly aggrieved and dissatisfied with the aforesaid order in Misc Case No. 135/2020, the petitioner has preferred this criminal revision petition.

10. It was urged by learned counsel for the petitioner that the learned Trial Court misread the evidence on record and came into a wrong finding and enhanced the monthly maintenance allowance to Rs. 16,000 per month from existing Rs. 10,000 per month after a gap of long six years and as such, interference of this Court is required.

11. It is also the submission of learned counsel for the petitioner that the respondent No. 2 has been working as HoD, English Department at Karmashree Hiteswar Saikia College, Guwahati and he is drawing about Rs. 1,20,000/- per month as his salary besides other source of income. The respondent No. 2 has also bought one three BHK flat at Chachal, Dispur and one new Hyundai i10 car but the Trial Court did not consider the income and status of the parties and enhanced the maintenance allowance to only Rs. 16,000/- from existing Rs.10,000/- per month and as such, for ends of justice, the monthly maintenance allowance shall be enhanced to Rs.40,000/- per month.

12. It is further submitted that the Trial Court has not considered the

guidelines given by the Hon'ble Apex Court in ***Rajnish Vs. Neha & Another***, reported in **(2021) 2 SCC 324** in passing the maintenance allowance from the date of application and as such, the Order dated 23.09.2022 is liable to be modified.

13. In response, learned counsel for the respondent No. 2 has submitted that after the dissolution of marriage between the petitioner and the respondent No. 2, he got married in the year 2016 and out of their wedlock, a girl child was born in the year 2018. Therefore, the respondent No. 2 has to maintain two other members of his family i.e. his present wife and his minor daughter in addition to his minor son i.e. the son of the petitioner and his old aged mother. The respondent No. 2, being the sole bread earner of his family, used to maintain his family with best efforts including regular payment of monthly maintenance towards his son.

14. It is further submitted that the respondent No. 2 has also been paying an amount of Rs. 25,000/- per month as installment from his monthly salary for taking a home loan of Rs. 28,00,000/- for purchasing a two BHK flat for his living along with his family members in Guwahati. Accordingly, the respondent No. 2 is not in a position to bear all such expenses as demanded by the petitioner @ Rs. 40,000/- per month. According to learned counsel for the

respondent No. 2, it is absolutely a baseless statement that the respondent No. 2 has ignored and bypassed his responsibility towards his son.

15. It is further submitted that the petitioner is also a working lady having monthly salary of around Rs 40,000/- and now it is a settled position of law that working mother is also responsible to bear the proportionate part of her income for maintaining her minor son/ daughter along with the father. It is further added that the respondent No. 2 is now ready to pay the enhanced amount of Rs. 16,000/- per month to his son as per order of the Trial Court dated 23.09.2022. Accordingly, the learned counsel for the respondent No. 2 prays for dismissal of the present criminal petition.

16. I have considered the submissions of learned counsels for the parties. I have also perused the Trial Court record including the Order dated 23.09.2022.

17. I am conscious about the legal position. Bearing in mind legal position culled out from the order of the Trial Court, it would be necessary to see whether any patent illegality has been committed by the learned Principal Judge, Family Court while enhancing the monthly maintenance from Rs. 10000/- to Rs. 16000/- in favour of the son of the petitioner. The Trial Court, as can be seen from the impugned order has categorically held that there was change in circumstances on two counts. The first change is that by the earlier judgment,

the maintenance was granted @ Rs. 10,000/- per month to the son of the petitioner on compromise between the parties. Thereafter, six years have been elapsed. Considering the rising prices of essential commodities and increasing of the salary of the respondent No. 2, the maintenance was enhanced from Rs. 10,000/- to Rs. 16,000/-.

18. The second change in circumstances which the learned Principal Judge, Family Court has taken into consideration is the present position of the son of the petitioner. Admittedly, on the date of application, the son of the petitioner was studying in Class III. The petitioner was not granted maintenance in earlier proceeding u/s 125 CrPC on the ground of compromise of the matter. It is also not in dispute that the petitioner is a working lady having monthly salary of Rs. 35,000/- to Rs. 40,000/-. As it appears by that time after passing of earlier maintenance order, six years have been elapsed. The salary of the respondent No. 2 was increased from Rs. 40,000/- to Rs.1,20,000/-, as such, the maintenance was enhanced from Rs. 10,000/- to Rs.16,000/-. The petitioner is not satisfied with the enhanced amount of Rs. 16,000/- in a month passed by the learned Trial Court.

19. The question is whether the evidence on record adduced by the parties is sufficient to establish the change in the circumstances. The order of

maintenance was passed in the year 2016. The petitioner applied for enhancement of the maintenance in the year 2022. Her application for enhancement was decided on 23.09.2016. It is their contention that from 2016, there has been manifold increased in a salary of the respondent No. 2. Considering the rise in the inflation, the salary of the Government servant was increased. According to the petitioner, with the rise of the inflation, the price of the essential commodities have skyrocketed.

20. In order to prove the fact with regard to the rise in the inflation and resultantly, the rise in the prices of the essential commodities, no evidence is required. It has to be held in the facts and circumstances that from 2016 to 2022, there was manifold rise in the essential commodities. The amount of maintenance was quantified keeping in mind the price index in the year 2016. The maintenance award remained static. It is to be noted that with the rise in inflation, the value of money gets decreased. The rise in inflation causes manifold increase in the prices of the essential commodities. The cost of living, therefore, naturally increases. In this case, as far as the respondent No. 2 is concerned, with the rise in inflation, there has been manifold increase in his salary also.

21. The second important ground put-forth to assert the change in the

circumstances is higher education of the son of the petitioner and the amount required to be spent for the education, namely, tuition fee, purchase of books etc. It is seen on perusal of evidence that the petitioner has established that there has been change in circumstances on both the counts.

22. It is an admitted fact that the respondent No. 2 is the Professor in a reputed college. Both the parties are from a well to do family. They are from the higher strata of the society. Both the parties have accustomed to decent standard of living. According to the petitioner, the son of the respondent No. 2 is entitled to live a decent life which they have been accustomed to being the son of a Professor. Her contention is that the son of the petitioner is entitled to live a standard life and that too befitting the status and position of the respondent No. 2, cannot be rejected. The respondent No. 2 being the Professor of the reputed College cannot expect his son to lead an indigent life.

23. The next important aspect is with regard to the other dependents as sought to be contended by the respondent No. 2. It is his case that his mother is dependent on him who is old aged person and for her maintenance, sufficient money is required for her treatment, medicine etc. It is also to be noted that after dissolution of marriage of the petitioner with the respondent No. 2, he got married again and out of their wedlock, one child was born. He is to maintain

them also.

24. After hearing the learned counsels for the parties on the basis of the evidence of the petitioner as well as the respondent No. 2, the Trial Court has enhanced the maintenance allowance from Rs. 10,000/- to Rs. 16,000/-. The respondent No. 2 has not seriously disputed the said enhanced maintenance allowance allowed by the Trial Court in favour of the son. The only challenge is to further enhancement of the awarded maintenance from Rs. 16,000/- to Rs. 40,000/-.

25. In the totality of the facts and the evidence, in my considered view, this enhancement is quite reasonable. It cannot be said to be excessive or exorbitant enhancement or less in amount to maintain the son of the petitioner, who is a working lady. It can be said that the enhancement in the maintenance is proportionate to increase in the salary of the respondent No. 2.

26. In view of the above, this Court is of the view that there is no substance in the present criminal revision petition. The learned Principal Judge, Family Court has properly appreciated the material on record and came to the conclusion vis-à-vis entitlement of the petitioner for enhancement in the maintenance towards her son. As such, no interference is warranted in the well reasoned order passed by the learned Principal Judge, Family Court.

27. Now, coming to the question on the issue in passing the maintenance allowance from the date of application by following the Judgment of Hon'ble Apex Court in ***Rajnesh (Supra)***, the order is modified. Accordingly, the respondent No. 2 is directed to pay the enhanced rate of maintenance allowance @ Rs. 16,000/- per month as per order of the Trial Court from the date of application. The order of the Trial Court dated 23.09.2022 is modified to that extent.

28. In the result, Criminal Revision Petition is partly allowed and modified to the extent as aforesaid.

29. The criminal revision petition is disposed of accordingly.

Send back the Trial Court Record.

JUDGE

Comparing Assistant