

GAHC010284472023



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

Case No. : Crl.Rev.P./125/2024

SRI BIKASH RANJAN DAS
S/O DR. MANORANJAN DAS, R/O VILL.-KAHARPARA, SARUPETA, P.O.-
SARUPETA, P.S.-PATACHARKUCHI, DIST.-BARPETA, ASSAM, PIN-781318.

VERSUS

SMTI. BHANITA KALITA
W/O SRI BIKASH RANJAN DAS, R/O HOUSE NO. 18, LALMATI, NEAR IIE,
BYE LANE-GANESHPUR, P.O. AND P.S.-BASISTHA, DIST.-KAMRUP (M),
ASSAM, PIN-781029.

Advocate for the Petitioner : MR. P P MEDHI

Advocate for the Respondent : MS. A TALUKDAR

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 05.04.2024

Heard Mr. B.M. Choudhury, learned counsel for the petitioner.
Also heard Ms. A. Talukdar, learned counsel for the petitioner.

2. The petitioner has preferred an application u/s 401 r/w Section 397 Cr.P.C. against the impugned order dated 14.08.2023 passed by the learned Principal Judge, Family Court No.2, Guwahati in connection with F.C.(CrI.)/589/2022.

3. The respondent/wife had filed an application u/s 125 Cr.P.C. before the court of learned Principal Judge, Family Court No.2, Guwahati, claiming maintenance from her husband i.e., the present petitioner. On receipt of the notice, the petitioner appeared before the Family court. According to learned counsel for the petitioner, on 14.08.2023, the learned trial court has passed the impugned order directing the petitioner/husband to pay interim maintenance allowance of Rs.60,000/- per month to the respondent/wife and Rs.30,000/- as cost of litigation.

4. It is also the submission of learned counsel for the petitioner that the learned trial court has failed to appreciate the judgment of the Hon'ble Supreme Court in Rajnesh vs. Neha reported in (2021) 2 SCC 324, makes it mandatory to file an affidavit for disclosure of assets and liabilities of the parties in order to arrive at a calculation for determining the quantum of maintenance.

5. Learned counsel for the petitioner further submits that as the order dated 14.08.2023 passed by the trial court is a clear violation of the guidelines referred in the case of Rajnesh (Supra), the order is liable to be set aside with a direction to decide the matter afresh.

6. The learned counsel for the respondent has made no objection if the matter be remitted to the learned trial court to decide the matter

afresh.

7. I have considered the submissions of the learned counsel for the parties. I have also perused the order of the trial court dated 14.08.2023.

8. As per the direction of the Hon'ble Supreme Court in the case of Rajnesh vs. Neha (Supra) parties were directed to give their declaration regarding their income, assets and liabilities. From the order of the Trial court dated 14.08.2023, it reveals that this exercise was not undertaken by the learned trial court in spite of the binding direction issued by the Hon'ble Supreme Court.

9. The paragraphs of the judgment of Rajnesh (supra) are reproduced as follows -

“64. In the first instance, the Family Court in compliance with the mandate of Section 9 of the Family Courts Act 1984, must make an endeavour for settlement of the disputes. For this, Section 6 provides that the State Government shall, in consultation with the High Court, make provision for counsellors to assist a Family Court in the discharge of its functions. Given the large and growing percentage of matrimonial litigation, it has become necessary that the provisions of Section 5 and 6 of the Family Courts Act are given effect to, by providing for the appointment of marriage counsellors in every Family Court, which would help in the process of settlement. If the proceedings for settlement are unsuccessful, the Family Court would proceed with the matter

on merits.

65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, alongwith an Affidavit of Disclosure of Assets and Liabilities before the concerned court, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the Court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage."

10. In view of the aforesaid legal proposition, it reveals that the maintenance is dependent upon factual situations. The court should mould the claim for maintenance brought before it. It is to be noted down that the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration to arrive at the appropriate quantum of maintenance to be paid.

11. In the case in hand, after going through the order of the trial court dated 14.08.2023, it can be said that the trial court passed an order of interim maintenance without affording any opportunity to the petitioner to disclose his assets and liabilities which is a gross violation of the guidelines laid down by the Hon'ble Supreme Court in Rajnesh (Supra).

12. Hence, the order dated 14.08.2023 is set aside with a direction to the trial court to give opportunity to both the parties to submit their respective affidavits disclosing their assets and liabilities and thereafter, to hear the matter afresh and to deliver necessary order in accordance with law.

13. If any payment is made earlier by the petitioner in view of the order dated 14.08.2023, the same shall be adjusted accordingly.

14 . In view of the above observation, the criminal revision petition is disposed of at the motion stage.

JUDGE

Comparing Assistant