

GAHC030001012024



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

Case No. : Crl.Pet./1/2024

Abul Hussain Borbhuiya
Tuikhuahtlang, Aizawl

VERSUS

Ajmeri Sultana Barbhuiya
Sonai, Cachar, Assam

Advocate for the Petitioner : A H Borbhuiya

Advocate for the Respondent : none

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
O R D E R

21.02.2024

Heard Mr. A.H. Borbhuiya, learned Advocate, who is appearing as his own counsel since the impugned order is made against him.

2. The Criminal petition No.1/2024 is an application made under Section 482 Cr.P.C. for the cancellation of warrant of arrest and set aside the order dated 24.01.2024

passed by the Principal Judge, Family Court, Silchar in F.C.(Crl.) No.29 of 2008 for violating of the principle of natural justice.

3. Mr. A.H. Borbhuiya, the petitioner submits that he has been paying maintenance under section 125 Cr.P.C. to the respondent regularly except for the one instant and the learned Family Court had erred and passing the impugned order on the oral submission made by the respondent, without giving notice to him and without giving him an opportunity to be heard. He submits that he was supposed to deposit the monthly maintenance of Rs.16,000/- to the respondent, however due to his financial difficulties he has failed to deposit the said amount for the month of January, 2024. He submits that the learned Family Court had however, issued the impugned order dated 24.01.2024 along with the warrant of arrest for his appearance before the Court on 27.02.2024 without hearing the reasons as to why he had not deposited the said amount and that the lone failure to deposit the amount was not intentional. He submits that he will be depositing the required amount for the month of January and February, 2024 on the next date when he is to appear before the Court *i.e.* on 27.02.2024.

4. The learned counsel has therefore prayed that this Court may invoke its inherent power under Section 482 Cr.P.C and set aside the warrant of arrest issued against him to prevent the miscarriage of justice against him. The learned counsel/petitioner has relied on the Judgment of the **Kerala High Court in K. Nithiyanandan V.B. Radhamani** reported in **1980 Crl. L.J. 1191** wherein the Court was of the view that

natural justice was denied to the petitioner by not issuing notice before issuing the warrant of Arrest.

5. Having heard the submission made by Mr. A.H. Borbhuiya, the petitioner.

I have also perused the impugned order dated 24.01.2024. It is seen that the learned Principal Judge, Family Court, Cachar, Silchar in F.C. (CrI.)29/2008 had noted that the instant petitioner was absent and no payment was received. That the instant petitioner had paid the maintenance amount and the arrear maintenance amount as per his commitment made on 20.12.2021, only once on dated 21.01.2022. That the instant petitioner had full knowledge regarding the arrear. Thus considering the huge arrear amount of maintenance due as well as his previous negligence in making the arrear payment the learned Principal Judge, Family Court, had passed the impugned order for issuance of warrant of arrest against the instant petitioner fixing on 22.02.2024 for report/payment/hearing.

6. This court however finds it fit to consider the fact that the petitioner has made a submission that he will be able to pay the maintenance amount along with the arrear due for the months of January, 2024 and also for the month of February, 2024 on the date fixed for his appearance before the learned Principal Judge, Family Court, Cachar, Silchar. This Court has also considered the fact that the impugned Order dated 24.01.2024 was issued without any notice being served to the petitioner and therefore, find it fit that the impugned order dated 21.04.2024 may be interfered with to the extent that the warrant of arrest issued be stayed till the next date fixed by the

learned Family Court, Cachar *i.e* dated 27.02.2024 by invoking its inherent power under Section 482 Cr.P.C. so that there is no miscarriage of the principal of natural justice and the petitioner is given the opportunity of being heard.

7. Accordingly, Criminal petition No.1/2024 stands disposed as above.

JUDGE

Comparing Assistant