

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. No.46 of 2024

1. Smt. Bina Sutradhar (Sarkar), W/O- Sri Swapan Sarkar, D/O- Sri Sunil Sutradhar

2. Sri Biraj Sarkar (Minor), S/O- Sri Swapan Sarkar,

Both are residents of Village- Durjapur, P.S- Gandachara, District- Dhalai Tripura.

Present Address: Rajdharnagar, Jamjuri, P.O- Jamjuri, P.S- Kakraban, Udaipur, Dist-Gomati Tripura.

(The petitioner No.2 being minor, represented by his mother i.e the petitioner No.1)

.....Petitioner(s);

Versus

1. Sri Swapan Sarkar, S/O- Late Subhash Sarkar, resident of- Durjapur, P.S- Gandachara, District- Dhalai Tripura.

2. The State of Tripura represented by Secretary-cum-Commissioner of the State of Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. A. Acharjee, Advocate.

For Respondent(s) : Mr. Rajib Saha, Addl. P.P.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

10/01/2025

Heard Mr. A. Acharjee, learned counsel for the petitioners who are the wife and a minor son of respondent No.1 and Mr. Rajib Saha, learned Additional Public Prosecutor for the respondent-State.

2. Notice has been served upon respondent No.1 through DASTI as per affidavit dated 04.10.2024. However, he has not chosen to appear till date and contest the case. Petitioners are aggrieved by the quantum of maintenance i.e. Rs.2,000/- each per month awarded in their favour by the impugned order dated 21.05.2024 passed in Crl. Misc. 93 of 2021 under Section 125 of the Code of Criminal Procedure, 1973.

3. Mr. A. Acharjee, learned counsel for the petitioners, submits that respondent No.1 is a government employee having a minimum salary of Rs.19,140/- as reflected in Exbt.1. Petitioner No.1 who was married to the respondent No.1 on 11.03.2020 is not engaged in any work or employment. Due to marital discord, she had to institute a criminal case against the respondent No.1, her mother-in-law and sister-in-law under Section 498A/34 IPC. A son was born out of the wedlock on 22.02.2021 who is residing with the petitioner No.1. He is studying in nursery. Learned counsel for the petitioners further submits that the learned Family Court has awarded a meager sum of Rs.2,000/- each per month in their favour which is not only inadequate for proper sustenance and meeting their daily expenses and nutritional needs, but is also against the accepted position in law that the destitute wife and minor children are at least entitled to $\frac{1}{3}^{\text{rd}}$ of the net income of the husband in order to maintain a decent standard of living with which the wife was used to while living in the matrimonial home. He also submits that there was reasonable cause for the petitioner No.1 to leave the matrimonial home because of mental and physical torture which led to the institution of a case under Section 498A/34 IPC. Petitioner adduced two witnesses including herself and her mother as PW 2. Both adduced the same facts and could not be dislodged in cross-examination by the defense.

4. The learned Family Court has recorded that marriage between the parties is not in dispute and the husband has a minimum income of Rs.19,140/- per month from salary reflected in Exbt.1 adduced by PW 1. However, without appreciating the correct legal position and the needs of the wife and minor son

living in separation and the costs of living in present day, the learned Family Court erroneously awarded a sum of Rs.4,000/- in the ratio of Rs.2,000/- each per month to both the petitioners which is not in consonance with law and to meet the sustenance. Therefore, they have approached this Court in revision under Section 397 read with Section 401 of Cr.P.C. Learned counsel for the petitioners submits that the maintenance amount may be adequately enhanced.

5. Mr. Rajib Saha, learned Additional Public Prosecutor for the respondent-State, submits that the State is only a formal party in such matters as it is an *inter se* dispute between the husband and the wife for maintenance. The records however show that respondent No.1 was having a minimum income of Rs.19,140/- per month as a government employee working in the Tripura State Electricity Corporation Limited, Kamalpur Sub-Division as Helper Gr-II. The salary of any such government or semi-government employee is liable for periodical revision and other allowances as well from time to time. The proceedings were initiated in the year 2021 and four years have elapsed since then. Therefore, this Court may pass appropriate order as may deem fit in the facts and circumstances of the case and as per the principles of law in that regard.

6. I have considered the submission of learned counsel for the petitioners and learned Additional Public Prosecutor for the respondent-State.

Respondent No.1 despite service of notice has not chosen to appear and contest the case. The findings of the learned Family Court on the issue of subsisting marriage between the petitioner No.1 and respondent No.1

and the fact that respondent No.1 is an employee of Tripura State Electricity Corporation Limited having a salary of Rs.19,140/- per month in 2022 are not in dispute nor assailed. However though petitioner No.1 is not earning and without any other sources of income and petitioner No.2 is a minor son aged four years by now, born in February, 2021 whose nutritional and other needs require enough financial support, the learned Family Court has chosen to award a sum of Rs.2,000/- per month each to both the petitioners though as per the settled principles of law, in such matters the destitute wife should be granted 25% of the net income of the husband and in cases where minor children are to be maintained at least one-third of the net income of the husband should be granted as maintenance. This would enable to meet their needs and maintain a standard of living which the wife was accustomed to while living in the matrimonial home.

7. In such circumstances, this Court is of the opinion that the amount of maintenance should be enhanced to the tune of Rs.3,000/- each per month in favour of both the petitioner No.1 and petitioner No.2; however effective from the date of the present judgment. The impugned judgment is modified to that extent. The instant petition is disposed of.

(APARESH KUMAR SINGH), CJ

Pijush/

DIPESH DEB

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