

GAHC010047432022



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

Case No. : CrI.Rev.P./105/2022

RAHIM ALI PRODHANI
S/O LATE AKBAR ALI PRODHANI
R/O VIL- DHARMASALA
PART-III, P.S. AND DIST. DHUBRI, ASSAM

VERSUS

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

2:MONSUFA BIBI
D/O SAHABUDDIN SARKAR
R/O VILL- MOTIRCHAR PART-I
P.O. HOWRARPAR
P.S. AND DIST. DHUBRI
ASSAM
PIN-78332

Advocate for the Petitioner : MR. A RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER

Date : 09-01-2023

Heard Mr. A. Rahman, learned counsel for the petitioner. Also heard Mr. A.K. Ahmed, learned counsel for the respondent No. 2 as

well as Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State/respondent No.1.

2. The petitioner/husband has preferred an application under Section 397 read with Section 401 Cr.P.C., 1973 against the judgment and order dated 22.11.2021 passed by the learned Principal Judge, Family Court Dhubri in F.C. Crl. Case No. 67/2019, whereby the petitioner was directed to pay Rs.3,000/- to the respondent No. 2 and Rs.2,000/- for her daughter as monthly maintenance.

3. Before the learned trial court the wife/respondent No. 2 gave an application under Section 125 Cr.P.C. stating that she was married with the revisionist according to the Muslim Shariat law. After marriage, she went to the house of her husband and performed her matrimonial obligation. A daughter namely, Rifa Saniya Prodhani was born out of their wedlock. In the year 2019, her husband and his family members demanded Rs. 1,00,000/-(Rupees one lac only) as dowry and on account of non-fulfillment of dowry, she was driven out from her matrimonial home along with her daughter. Finding no alternative, she took shelter in the house of her parents along with her daughter.

4. It is further alleged that since then the petitioner neither visited her nor provided any sort of maintenance towards them. The respondent has no source of income of her own. On the other hand, the petitioner is a businessman by profession having sufficient landed properties and other source of income from which he is earning Rs.30,000/- per month. Hence, the respondent/wife was compelled to file a petition before the learned Principal Judge, Family Court, Dhubri

seeking maintenance allowance of Rs.5,000/- each for herself and her daughter.

5. The husband as opposite party has submitted his written statement before the learned trial court wherein he denied all the allegations made by the respondent/wife. But admitted the factum of marriage between the parties and birth of a female child namely Rifa Saniya Prodhani. According to the present petitioner/husband, he is a daily wage earner with a meager income of Rs.4,000/- per month and he has to maintain his parents, sister and brother, who are depending upon him, as such he is unable to provide separate maintenance towards the respondent No.2 and her daughter.

6. Before the learned trial court the respondent/wife has adduced evidence as PW1 supported by PW2. On the other hand, the petitioner/husband did not turn up to cross examine the witnesses resultantly the evidence in affidavit remain unshattered at vital points that during her conjugal life, she has been physically tortured by the petitioner on demand of Rs. 1,00,000/- (Rupees one lac only) and on her failure to pay the said amount, she has been driven out from her matrimonial home along with her daughter.

7. The learned counsel for the petitioner has argued that the petitioner has challenged the order of the learned trial court, dated 22.11.2021, whereby the petitioner was directed to pay monthly maintenance to his wife and daughter amounting to Rs.5,000/- per month without considering the evidence on record but the petitioner being a day labourer he has no ability to provide maintenance

separately to his wife and daughter as granted by the learned Principal Judge, Family Court, Dhubri and has prayed to reduce the maintenance amount from Rs.5,000/- to Rs.2,500/- per month.

8. On the other hand, learned counsel for the respondent/wife has vehemently objected to the prayer of the petitioner by stating that considering the high price of the essential commodities, Rs.5,000/- is not enough to maintain herself and her daughter. It is also submitted that the daughter of the petitioner is a school going child and money is required for purchasing books and school uniform and other required items.

9. I have gone through the judgment passed by the learned Principal Judge, Family Court, Dhubri and also considered the submissions of the learned counsel for the parties.

10. In every petition, generally, a plea is advanced by the husband that he does not have the means to pay, or he does not have a job or his business is not doing well. In this case also it has been submitted on behalf of the revisionist that he is a day labourer and he has to maintain his parents, sister and brother as such, he is not in a position to pay an amount of Rs.5,000/- per month as maintenance to his wife and daughter.

11. Regarding such pleas, the judicial response has been always very clear that it is the personal liability of the husband to pay maintenance to his wife and daughter. The husband is not discharged from his this liability on such grounds. Thus, in the case of *Chander*

Prakash Bodhraj vs Shila Rani Chander Prakash AIR 1968 Dehli 174, it was held that-

“An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable to give reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.”

12. Further, in the case of *Jabsir Kaur Sehgal vs District Judge, Dehradun* reported in (1997) vol. 7 SCC 7, the Supreme Court laid down the following yardstick for determining the liability as well as the amount of maintenance-

“The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that

she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

13. In the case of *Shamima Farooqui vs Shahid Khan AIR 2015 SC 2025*, the Supreme Court referred to the aforesaid observation on the point and held the reduction of 50% in the amount of maintenance made by the High Court is based on no reasoning and is illegal and not sustainable under law. Upholding and restoring the order passed by the learned Family Court, it was observed by the Supreme Court.

"Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar."

14. Saying such pleas to be only bald excuses and have no acceptability in law, the Court said-

“if the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife’s right to receive maintenance under Section 125 Cr.P.C. unless disqualified, is an absolute right.”

15. In the present case, the admitted fact on behalf of the husband is that he is a able bodied person and according to the respondent/wife, her husband has sufficient landed property from which he earns Rs.30,000/- per month and the fact was not denied by the petitioner either in his written statement or his evidence before the learned trial court. As a result of which, the learned trial court has awarded maintenance in favour of the petitioner and her daughter amounting to Rs.5,000/- per month which is not excessive.

16. Section 125 Cr.P.C. has been enacted to achieve a social object and the object is to prevent vagrancy and destitution and to provide speedy remedy to deserted or divorced wife, minor children and infirm parents in term of food, clothing and shelter and minimum needs of one’s life. The Supreme Court has been always of the view that maintenance to the wife is an issue of gender justice and the obligation of the husband is on a higher pedestal. In the case of *Captain Ramesh Chander Kaushal vs Veena Kaushal, AIR 1978 SC 1807*, the Supreme Court remarked-

“The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance.”

17. In the case of *Chaturbhuj vs Sita Bai* reported in (2008) vol. 2 SCC 316, the Supreme Court expressed the view that *section 125 is a measure of social justice and is specially enacted to protect women and children and it gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The Supreme Court observed-*

“Section 125, CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal vs Veena Kaushal (1978) vol. 4 SCC 70 falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat (2005) vol. 3 SCC 636.”

18. In view of the above discussion, I find that the view and approach of the learned Principal Judge, Family Court, Dhubri is completely justified and legal and there is no material illegality or irregularity in the impugned judgment and order dated 22.11.2021. Hence, the revision has got no force and is liable to be dismissed.

19. In the result, the revision is dismissed. The petitioner/husband is

directed to pay maintenance allowance to the respondent/wife amounting to Rs.3,000/- per month and Rs.2,000/- per month to her daughter respectively along with arrear as per order of the learned Principal Judge, Family Court, Dhubri.

20. With the above direction, the criminal revision petition stands disposed of accordingly.

JUDGE

Comparing Assistant