



GAHC010037372022

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

Case No. : CrI.Rev.P./84/2022

MD. ABDUL MATLEB
S/O AKBAR ALI
R/O VILL- MOKHONIA
P.O. TARANI, P.S. RANGIA
DIST. KAMRUP, ASSAM

VERSUS

MUSSTT ABIDA ASGORI AND ANR
W/O MD. ABDUL MATLEB
D/O LATE MOULANA MAFIZUDDIN AHMED,
R/O VILL- MOKHANIA
P.O. BOROMBOI, P.S. HAJO
DIST. KAMRUP, ASSAM

2:ABDUL HOQUE @ ABIDUR RAHMAN
S/O MD. ABDUL MATLEB
R/O VILL- MOKHANIA
P.O. BOROMBOI
P.S. HAJO
DIST. KAMRUP
ASSA

Advocate for the Petitioner : Mr. D. Baruah.

Advocate for the Respondent : Mr. R. Ali.

Date of judgment: 29.11.2023



**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT & ORDER

(Mridul Kumar Kalita, J)

- 1.** Heard Mr. D. Baruah, learned counsel for the petitioner. Also heard Mr. R. Ali, learned counsel for the respondents.
- 2.** This Criminal Revision Petition has been preferred by the petitioner, Md. Abdul Matleb under section 397/401, read with section 482 of the Code of Criminal Procedure, 1973 impugning the Order dated 22.12.2021, passed by learned Principal Judge, Family Court No. 1. Kamrup (M), Guwahati in Misc. Case No. 201/2019 in F.C (CrI) Case No. 213/2007, whereby the maintenance allowance awarded to the respondent Nos. 1 and 2 was increased from Rs. 2,000/- to Rs. 8,000/- per month (Rs. 4,000/- to each of the respondents w.e.f. from the date of the order i.e. 22.12.2021).
- 3.** The facts relevant for adjudication of the instant revision petition, in brief, are as follows:-
 - i.** That the present petitioner and respondent No. 1 were married on 20.02.2002 according to Islamic Shariat and their marriage was also registered in the Kazi Office, Nalbari and a male child, i.e. respondent No. 2 was born out of their wedlock on 09.06.2003.
 - ii.** That some matrimonial dispute broke out between petitioner and respondent No. 1 and thereafter they started living separately. The respondent No. 1 started living in her parental house. During such separation, the respondent No. 1 had filed a petition under section 125 of the Code of Criminal Procedure,

1973 claiming maintenance from the present petitioner for herself and her son. The said petition was registered as F.C. (Crl.) Case No. 213/2007. In the said proceeding, by order dated 06.11.2009, the Family Court, Kamrup (M), Guwahati directed the present petitioner to pay a maintenance amount of Rs. 2,000/- per month to the respondents (Rs. 1,000/- each).

iii. It is pertinent to mention herein that in the meanwhile, the petitioner had filed an application before Principal Judge, Family Court for restitution of conjugal rights alleging that the respondent No. 1 has withdrawn herself from his society without any just ground and the said petition was allowed by order dated 04.08.2008 passed in Case No. F.C (C) No. 264/2007.

iv. Being aggrieved by the order dated 06.11.2009 passed in F.C. (Crl.) Case No. 213/2007, the present petitioner preferred a Criminal Revision Petition which was registered as Criminal Revision Petition No. 442/2009 before this Court which was dismissed for default of the present petitioner.

v. The present petitioner had also preferred an application under Section 10/ 25 of the Guardians and Wards Act, 1890 for claiming custody of his minor son. However, the said petition was also rejected by the Principal Judge, Family Court No. 1 Kamrup by its judgment dated 20.07.2016, passed in Misc. (J) Case No. 188/2012.

vi. Thereafter, the respondent No. 1 filed an application under section 127 of the Code of Criminal Procedure, 1973 for

enhancement of monthly maintenance allowance which was initially awarded to the respondents. The said petition was registered as Misc. Case No. 201/2019 in F.C. (Crl.) Case No. 213/2007. Thereafter, by order dated 22.12.2021, the learned Principal Judge, Family Court No. 1, Kamrup (M) Guwahati allowed the prayer of the respondents and enhanced the maintenance allowance to be paid to the respondents by the present petitioner to Rs. 8,000/- per month (Rs. 4,000/-to each of the respondents) from the date of the order.

vii. It is also pertinent to mention herein that in the meanwhile the petitioner married for the second time and have two sons from his second marriage which was studying in Class-IV and Class-VI respectively.

4. Being aggrieved by the aforesaid order dated 22.12.2021, the instant revision petition has been preferred by the present petitioner.

5. Mr. D. Baruah, learned counsel for the petitioner, has submitted that the learned Principal Judge, Family Court No. 1, Kamrup, Guwahati has erred in passing the impugned order by overlooking the fact that the respondent No. 1 had voluntarily withdrawn herself from the society of the present petitioner without having any just ground and this fact was ignored by the learned Principal Judge, Family Court No. 1, while allowing the prayer for enhancement of the maintenance allowance by the respondent No. 1.

6. Learned counsel for the petitioner has also submitted that while passing the impugned order, the learned Principal Judge, Family Court No. 1 has also overlooked the fact that the respondent No. 2 was born on 09.06.2003, and has already attained the age of majority and therefore, the petitioner is not liable to

maintain his son, who has attained the age of majority.

7. Learned counsel for the petitioner has also submitted that by increasing the maintenance allowance to be paid to the respondents by four times from what it was originally directed the learned Principal Judge, Family Court No.1 has ignored the paying capacity of the petitioner. It is also submitted that the learned Principal Judge, Family Court, has also ignored the fact that the petitioner is having another family with two minor children to look after and if he is compelled to pay the enhanced maintenance to the respondents, he may not be able to look after his second wife and their two children properly.

8. On the other hand, learned counsel for the respondents has submitted that the learned Trial Court has committed no error in enhancing the maintenance allowance to the respondent and her disabled son which was awarded to the respondents way back in the year 2009 and it was a meager amount of Rs. 1,000/- each per month in the year 2009 and thereafter, 12 years have passed by since the maintenance was originally awarded to the respondent No. 1 and her minor son.

9. It is also submitted by the learned counsel for the respondents that the plea of minority was never raised by the present petitioner before the learned Trial Court in the proceeding under Section 127 of the Code of Criminal Procedure, 1973. It is further submitted by learned counsel for the respondents that in the petition filed under Section 127 of the Code of Criminal Procedure, 1973 by the respondent No. 1, she had specifically mentioned in paragraph No. 6 of the said petition about the fact of abnormality of the minor son of the respondent No. 1 and the present petitioner had nowhere denied the said averment in the objection filed by him before the learned Trial Court in the proceeding under Section 127 of the Code of Criminal Procedure, 1973.

10. Further it is also submitted by learned counsel for the respondents that the petitioner has defaulted in payment of the maintenance allowance which was awarded against the present petitioner and the huge outstanding arrears have been accumulated against the present petitioner which has caused severe hardship to the petitioner and her disabled child.

11. I have considered the submissions made by learned counsel for both the sides and have gone through the materials available on record including the scanned copy of the LCR which was called for in connection with this case.

12. It appears from record that way back in the year 2009 on a petition filed by the respondent No. 1 under Section 125 of the Code of Criminal Procedure, 1973, learned Family Court, by order dated, 06.11.2009 passed in F.C.(CrI.) Case No. 213/2007 granted the maintenance allowance of Rs. 2,000 per month to the petitioners, that is Rs. 1,000/- per month to each of the present respondents. It also appears that by the impugned order dated 22.12.2021, learned Principal Magistrate, Family Court No. 1, Kamrup(M) has enhanced the maintenance allowance from Rs. 2,000/- to Rs. 8,000/- per month, that is Rs. 4,000/- to each of the respondents, namely, the respondent No. 1 and her son.

13. It also appears that, by order dated 10.05.2022, this Court had directed the petitioner to pay Rs. 4,000/- per month to the respondents till the disposal of the instant Criminal Revision Petition, which means that an interim relief was granted on 10.05.2022, making the liability of the petitioner to pay half of the maintenance allowance to the respondents till the pendency of this Criminal Revision Petition.

14. Though the present petitioner has taken a ground in the instant Criminal Revision Petition that the respondent No. 1 is not entitled to maintenance as the respondent No. 1 had voluntarily left the petitioner,

however, the said plea was considered while disposing of the petition filed by the respondent No. 1 by the learned Trial Court under Section 125 of the Code of Criminal Procedure, 1973 and the said order passed by learned Trial Court under Section 125 of the Code of Criminal Procedure, 1973 has not been set aside by any higher Court, in any proceeding. Hence, same plea cannot be taken again for assailing the impugned order which only relates to enhancement of the maintenance allowance which was ordered originally under Section 125 of the Code of Criminal Procedure, 1973.

15. Similarly, though in this Revision Petition, the petitioner has taken the plea that the respondent No. 2 has in the meanwhile attained the age of majority, however, this plea was also not taken before the learned Principal Judge, Family Court No. 1, in the proceeding under Section 127 of the Code of Criminal Procedure, 1973. Hence, same may not be raised before this Court in this Revision Petition where the order which has been passed under Section 127 of the Code of Criminal Procedure, 1973 is put to challenge.

16. The submissions made by learned counsel for the respondents that the respondent No. 2 is a disabled person and suffering from abnormality is relevant and as under Section 125(c) of the Code of Criminal Procedure, 1973, any person having sufficient means, is also liable to maintain his legitimate or illegitimate child who has attained majority where such child by reason of any physical or mental abnormality or injury is unable to maintain itself. Though the petitioner is always at liberty to raise the plea of majority of the respondent No. 2 before the learned Principal Judge, Family Court No. 1 where the original case was pending. However, without raising such a plea before the learned Trial Court, the order of enhancement of the maintenance allowance cannot be assailed by taking the plea of majority for the first time before a Revisional

Court. Once such plea is taken before the learned Trial Court, it would be bound to consider the other aspect as to the inability of the respondent No.2 to maintain himself due to physical or mental abnormality.

17. It is also pertinent to note that in the proceeding under Section 127 of the Code of Criminal Procedure, 1973, before the learned Principal Judge, Family Court No. 1, though the respondent No. 1 had adduced evidence as PW-1, the present petitioner failed to cross-examine the PW-1 and hence, her testimony remained uncontroverted and on the basis of the uncontroverted testimony of the PW-1, the learned Principal Judge, Family Court, had passed the impugned order which in itself does not appear to be erroneous.

18. The learned Trial Court has taken into consideration the fact that the original order of granting maintenance allowance of Rs. 1,000/- each to the present respondents was passed in the year 2009 and the prayer for enhancement came up for consideration before the learned Court in the year 2021 and much time has lapsed in between and it is reasonable to anticipate that with lapse of such a long period of time, cost of living has increased as well as the fact that the petitioner is a salaried person his salary would have also increased with the lapse of such a long period of time.

19. The learned Trial Court also took into consideration that though the petitioner remarried again, however, he had not obtained any decree of divorce from the respondent No. 1 and that he is a salaried person having a regular source of income.

20. Under such circumstances, this Court does not find any ground to interfere in the order dated 22.12.2021, passed in Misc. Case No. 201/2019 by learned Principal Judge, Family Court No. 1, Kamrup (M), Guwahati, which has been impugned in this instant Criminal Revision Petition.



21. With the above observation, this Criminal Revision Petition is hereby dismissed.

JUDGE

Comparing Assistant