



GAHC010154002022



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

Case No. : Crl.Rev.P./399/2022

ABDUS SOBHAN KHAN
S/O LT. HAZI ABDUL KAMDER ALI KHAN
VILL- KUJARPITH
P.S. HOWLY
P.O. BARBALLA
DIST. BARPETA, ASSAM
PIN-781316

VERSUS

HANUFA KHATUN
D/O ABDUL AZIZ
W/O ABDUS SOBHAN KHAN
VILL- KAUWARPARA
P.O. SUKMANAH
P.S. GOBARDHANA
MOUZA- HOWLY
DIST. BAKSHA (BTAD), ASSAM,
PIN- 781316

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : MR. A HUSSAIN



:::BEFORE:::

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 20.07.2023

Date of judgment & order : 25.08.2023

JUDGMENT & ORDER (CAV)

Heard Mr. R. Ali, learned counsel for the petitioner. Also heard Mr. A. Hussain, learned counsel for the respondent.

2. This is an application under Section 397/401 *read with* Section 482 of the Code of Criminal Procedure, 1973, against the impugned judgment and order dated 01.07.2022, passed by the learned Principal Judge, Family Court, Barpeta, in FC (CrI) Case No. 303/2020, directing the present petitioner to pay an amount of Rs. 5,000/- per month from the date of filing of the petition towards the maintenance allowance of the respondent.

3. The brief facts of the case is that the respondent, as a 1st party, filed an application under Section 125 Cr.P.C. before the Court of learned Principal Judge, Family Court, Barpeta, claiming maintenance alleging *inter alia* that she

entered into a marriage with the petitioner on 21.10.2018 as per Islamic Shariyat and after their marriage, they started living as a husband and wife. But, after few days of their marriage, the 2nd party/the present petitioner and his family members started torturing her mentally and physically demanding Rs. 2,00,000/- from her parental home. As she could not fulfill the demand, the 2nd party/present petitioner started torturing her severely and finally drove her out of her matrimonial home. Having no other alternative, she took shelter in her parental home and since the day she left her matrimonial house, the petitioner never inquired about her nor provided her any maintenance. The 1st party/present respondent has no source of income to maintain herself. On the other hand, the 2nd party/present petitioner is a retired teacher and apart from that, he has 5-6 Bighas of cultivable land along with a fishery and also has the other source of income and thus, he is earning around Rs. 45,000/- per month and accordingly, the respondent filed the petition praying for maintenance @ Rs. 10,000/- per month towards maintenance allowance.

4. The petitioner, as a 2nd party, contested the case and filed his Written Statement denying the case of the respondent. He has stated that after the death of her first wife, he married the respondent to look after him and his children from his first wife. The respondent also earlier got married twice and she has 2 (two) children from her former husband. The respondent was an aggressive and desperate lady and she wanted to bring her 2 (two) children from her former husband to the house of the petitioner and when the petitioner refused to accept her proposal, she started demanding her share in his house

and property. Finally, the respondent left her matrimonial house without intimating the petitioner and took all the ornaments and cloths with her and thereafter she did not return home. She refused to return to her matrimonial house in spite of several request and attempt made by the petitioner. Thereafter, the petitioner also filed a suit for restoration of conjugal rights before the learned Principal Judge, Family Court, as he is still ready to bring back the respondent. The petitioner further stated in his Written Statement that he is a retired teacher and drawing his pension @ Rs. 23,708/- per month and he has the responsibility of 2 (two) college going children and he himself is suffering from heart disease and diabetes. Thus, the petitioner is not in a position to pay maintenance separately to the respondent and accordingly, he prayed for dismissal of the petition. He also gave detailed monthly expenditure which is required for maintaining his children and himself and it is specifically stated that he has to spend a good amount of money towards his treatment.

5. The respondent/1st party adduced her evidence as P.W.-1 and in reply, the present petitioner also adduced his evidence as D.W.-1 and after hearing the arguments put forwarded by both sides and also on perusal of the evidence on record, the learned Principal Judge, Family Court, passed the impugned judgment and order dated 01.07.2022 directing the petitioner to pay monthly maintenance to the respondent @ Rs. 5,000/- per month from the date of filing of the petition.



6. On being highly aggrieved and dissatisfied with the impugned judgment and order passed by the learned Principal Judge, Family Court, Barpeta, in FC (CrI) Case No. 303/2020, the petitioner preferred the present revision petition.

7. It is submitted by the learned counsel for the petitioner, Mr. Ali, that the learned Principal Judge, Family Court, has committed grave error and mistake while passing the impugned judgment and order and did not consider the entire facts and circumstances of the case and hence, the same is liable to be set aside and quashed. The learned Principal Judge also failed to appreciate the evidence on record in its true perspective and failed to consider the evidence of D.W.-1, wherein he specifically stated that the respondent expressed her unwillingness to live a conjugal life with the petitioner as she was not allowed to have share in his house and property. Further the respondent voluntarily left the matrimonial house, but without considering this fact, the learned Court below passed the impugned judgment and order directing the present petitioner to provide Rs. 5,000/- per month as monthly maintenance to the respondent from the date of filing of the petition.

8. The learned Court below also failed to consider that the present petitioner has no landed property or any other source of income and being a retired teacher, his only source of earning is his pension. Further, the petitioner is having the responsibility of his 2 (two) college going children and also has to spend good amount of money for his treatment as he is a heart patient as well as suffering from diabetes. Further it is submitted that the petitioner is still

willing to continue his married life with the respondent, but she is not cooperating with him and without any valid reason, she left the house of the petitioner and hence, as per proviso under Section 125 (4) Cr.P.C., she is not entitled to maintenance. Accordingly, the learned counsel for the petitioner has submitted that the interference of this Court is necessary and the impugned judgment and order, passed by the learned Principal Judge, Family Court, Barpeta, is liable to be set aside and quashed.

9. In this context, the learned counsel for the respondent, Mr. Hussain, has submitted that the learned Principal Judge, Family Court, Barpeta, has rightly passed the impugned judgment and order directing the present petitioner to pay maintenance @ Rs. 5,000/- per month to the respondent. It is further submitted that there is no dispute that the respondent got married with the petitioner after the death of his first wife and they started living as husband and wife. But, only due to mental and physical torture on her, she was compelled to leave her matrimonial house and had to live separately. Further, since the day she left her matrimonial house, the petitioner never provided any maintenance to her and hence, she had to file a petition claiming maintenance from the petitioner. The petitioner is a retired teacher and he is getting his pension @ Rs. 35,000/- per month and also has the other landed property. On the other hand, the respondent is a destitute lady and has no source of income of her own to maintain herself and considering all these aspects of the case, the learned Principal Judge, Family Court, Barpeta, rightly passed the order directing the present petitioner to pay maintenance @ Rs. 5,000/- per month from the date

of filing of the petition.

10. The learned counsel for the respondent further relied on a decision of Hon'ble Supreme Court in **Chaturbhuji Vs. Sita Bai**, reported in **(2008) 2 SCC 316**, wherein, in paragraph No. 6 thereof, it has been held that "*the object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. [Section 125 Cr.P.C.](#) 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 v. Mrs. Veena Kaushal and Ors.](#) (AIR 1978 SC 1807) falls within constitutional sweep of [Article 15\(3\)](#) reinforced by [Article 39](#) of the Constitution of India, 1950 (in short the 'Constitution'). 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 and Ors.](#) (2005 (2) Supreme 503)."*

11. The learned counsel for the respondent also placed reliance on another

decision of Hon'ble Supreme Court in **Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal & Ors.**, reported in **(1978) 4 SCC 70**, and further stressed on paragraph No. 9 of the judgment, which reads as under:

“9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of [Article 15\(3\)](#) reinforced by [Article 39](#). We have no doubt that sections of statutes calling for construction by Courts are not petrified print but vibrant words with social functions to fulfil. 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. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause--the cause of the derelicts.”

12. Accordingly, it is submitted by the learned counsel for the respondent that the learned Court below committed no error or mistake while passing the impugned judgment and order and hence, the interference of this Court is not at all necessary.

13. After hearing the submissions made by the learned counsel for both sides, I have perused the case record and the judgment passed by the learned Court below.

14. It is an admitted fact that the petitioner married the respondent after the death of his first wife to look after him and his children. It is also a fact that after the marriage, the respondent came to her matrimonial house and they resided together as husband and wife. In the same time, it also cannot be



denied that the petitioner is a retired teacher and he is getting pension, though the respondent/1st party did not brought any specific evidence on the source of income from other landed property etc. But, it also cannot be denied that the respondent has no source of income to maintain herself. In the same time, it is also a fact that the petitioner is not providing any maintenance to the respondent since she left her matrimonial house.

15. The learned Court below discussed the evidence of the P.Ws. and it is seen that the 2nd party/petitioner contradicted his own statement made in the Written Statement and he took the plea in his evidence that he could not locate the respondent after she left her matrimonial house, though in his Written Statement he stated that the 1st party/respondent left his matrimonial house as he refused to give share of his landed property and also refused to maintain her 2 (two) children from her former husband. The learned Principal Judge also made observation in the judgment that "*a married woman after passing only 4 months of married life would not desert her own happy conjugal life unless there are pressing circumstances for her to take that recourse. There must be some cogent reason which compelled the 1st party to leave the house of the 2nd party and to take shelter in her parental house.*"

16. So, from the discussion made above and also considering the view of the Hon'ble Apex Court, it is seen that the learned Court below committed no error or mistake while passing the judgment and order granting the maintenance to



the respondent/1st party.

17. Coming to the quantum of maintenance, it is seen that the learned Principal Judge, Family Court, Barpeta, granted Rs. 5,000/- per month towards maintenance allowance considering the status of the party, price of the essential commodities viz-a-viz the income of the 2nd party. Accordingly, I find that Rs. 5,000/- per month is quite reasonable amount towards maintenance allowance of the 1st party/respondent and the learned Court below, considering the price of the essential commodities and income of the 2nd party/petitioner, has reasonably passed the judgment and order allowing Rs. 5,000/- per month towards maintenance allowance.

18. In view of above, I do not find any reason to make any interference of this Court in the judgment and order dated 01.07.2022, passed by the learned Principal Judge, Family Court, Barpeta, in FC (Crl) Case No. 303/2020 and therefore, I find no merit in this petition and accordingly the same stands dismissed. No order as to costs.

19. Send back the case record.

JUDGE

Comparing Assistant