

DISTRICT : SONITPUR,
BEFORE THE COURT OF THE ADDL. DISTRICT & SESSIONS JUDGE,
BISWANATH CHARIALI.

(CRIMINAL REVISION JURISDICTION)

Present :- Sri S. Khound.
Additional District & Sessions Judge,
Biswanath Chariali.

(Criminal Revision No.46(S-3)/2012

Against the Order dated 19-07-12 passed in connection with
Misc. Case No.49/11, U/S-125 of the Cr. P.C. by learned Judicial Magistrate,
First Class, Biswanath Chariali, directing the present petitioner to pay Rs.5,000/-
as monthly maintenance to his wife and children.

1. Sri Jitu Saikia : Petitioner

- Vs -

1. Smti Pinki Saikia and
2. The State of Assam : Opp. Party

This Revision petition having been finally heard on 13.05.14 in the
presence of -

Advocate for the petitioner : Sri D. Das, Advocate.
Biswanath Chariali.

Advocate for the Opp. Party : Sri G. Borah, Advocate, and
Shri H. Hazarika, Addl. P.P. ,
B/ Chariali.

And having stood for consideration to this day i.e. on 31st day of
May,2014, the court delivered the following order :-

ORDER

1. The instant Revision petition has been filed by the petitioner
namely ; Sri Jitu Saikia U/S-397/399 of the Cr. P.C. against the ex-parte Order
dated 19.07.12 passed in Misc. Case No.49/11, U/S-125 of the Cr. P.C.
awarding monthly maintenance of Rs.5,000/- only for the Opposite Party Smti
Pinki Saikia and for her three children by the learned Judicial Magistrate, First
Class, Biswanath Chariali, Sonitpur.

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2. Being highly aggrieved and dissatisfied with the impugned Judgment and Order, the petitioner among other things has drawn the attention of the court that the learned Judicial Magistrate, First Class ; has committed great error in law as well as in facts in passing the aforesaid order ex-parte. The learned court below has also failed to adhere to the norms and procedure of law. Impugned ex-parte order is perverse and without jurisdiction. It is submitted that the petitioner after receiving notice from the court below in Misc Case No.49/11 appeared through his Counsel before the court of J.M.F.C., and prayed for time to file Written Statement on two dates i.e. on 18-06-2012 and 07-07-2012 and the learned Court below fixed the next date on 16-12-2012 for filing W.S. But unfortunately the present petitioner became sick and was admitted in the hospital and his learned Counsel took step on that day and surprisingly on 19-07-2012 the learned court below passed impugned ex-parte order. Though on 16-07-12 step was taken for absence of the petitioner but it was not reflected by the learned court below in the order dated 16-07-2012 and whimsically fixed the next date on 19-07-2012 and passed the ex-parte order which needs to be set aside. Moreover, petitioner is a poor man and he did not get opportunity to substantiate his defence regarding his monthly income by filing W.S. and adducing relevant evidence on that point, as such impugned judgment and order is incorrect, improper and illegal which is liable to be set aside.

3. The court has heard the argument advanced by the parties on the revision petition and also scrutinised the materials on record, especially Misc. Case No.49/11 for an appropriate outcome of the instant matter.

4. The Opposite Party Smti Pinki Saikia in the Misc. Case No.49/11 has drawn the attention of the court in her maintenance petition that she was married by the petitioner Sri Jitu Saikia in the year,1997 socially. After marriage she went to the house of the petitioner and started conjugal life with him for 10 (ten) years peacefully and out of their wedlock two female child was born but thereafter, petitioner Jitu Saikia developed illicit relationship with another girl and when objected by the Opposite Party, then the petitioner started physical and mental torture on her. Thereafter, the petitioner married said girl and used to stay with her in Lakhra of Guwahati and sometimes the petitioner came to the house of the opposite party and tortured her with a view to insist the opposite party to leave the

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house of the petitioner for which the opposite party filed one Misc. Case bearing No.37/06 against the petitioner but due to amicable settlement said case was disposed of and the Opposite Party again started conjugal life with the petitioner and gave birth another female issue in the month of April,2009. Later on in the year,2011 the petitioner again tortured the Opposite Party as a result of which she had to leave the house of the opposite party and took shelter in her parental house along with three minor daughters. Thereafter, petitioner Jitu Saikia again married another girl and used to stay in his house along with newly married wife.

5. Opposite Party Pinki Saikia in her petition filed U/S-125 Cr. P.C. further stated that she is unable to maintain herself and her three daughters since she has no source of income of her own as such, she is facing immense hardship in maintaining herself as well as her children. On the contrary, the petitioner is an able-bodied person having business of furniture and earns Rs.20,000/- per month. Apart from that the petitioner has his own landed property. It is further stated that petitioner is quite capable of giving maintenance allowances to her as well as her children.

6. From the case-record of Misc. Case No.49/11 it reveals that vide impugned order dated 16-07-12 the learned court below refixed the next date on 19-07-12 for ex-parte hearing on the ground that on the aforesaid date the opposite party/petitioner i.e. Sri Jitu Saikia remained absent without step on that day. Thereafter, the learned trial court passed impugned ex-parte order on 19-07-12 i.e. after three days from the date on which the opposite party/petitioner remained absent without step. In view of that the present petitioner failed to file W.S. and adduced evidence in support of his plea. Moreover, the present petitioner Jitu Saikia pointed out that on 16-07-2012 he was seriously ill as such, failed to appear. Section 126 Cr.P.C. provides that an ex-parte order may be vacated only when there is good cause for remaining of the other party absent without step. In the present case the petitioner Jitu Saikia submitted one medical certificate issued by Dr. B.N. Sarmah, Deputy Superintendent, S.D.C.H., Biswanath-Chariali, Sonitpur dated 16-08-12 whereby it is certified that Jitu Saikia was under his medical treatment or ailment since 14-07-12 to 20-07-12. on the other hand the present petitioner remained absent in Misc. Case No.49/11 on 16-07-12 and 19-07-12 without step. In my view the cause of absence of the present petitioner on the date of passing impugned order by the learned trial court can be considered as good

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cause and impugned order and judgment suffers from impropriety and illegality which needs interference of this court for ends of justice and to enable the present petitioner to contest the case properly.

7. From the foregoing observations, this court is of the view that impugned order and Judgment needs interference. Accordingly, the impugned order and judgment of the learned trial court is hereby set aside, impugned ex-parte order dated 19-07-2012 is hereby vacated, and revision petition is partly allowed and the case is remanded back to the trial court for retrial from the stage of filing W.S. giving opportunity to the present petitioner to contest the case by filing W.S. and adducing evidence.

8. Regarding monthly maintenance of the Opposite Party Smti Pinki Saikia and her three daughters, this court is of the view that the Opposite Party Pinki Saikia needs interim monthly maintenance for herself and three daughters as such the present petitioner Jitu Saikia is directed to pay monthly interim maintenance of Rs.2,000/- for maintenance of herself and minor daughters with effect from the date impugned order i.e. 19-07-12 till disposal of the Misc. Case No.49/11 by the learned trial court.

ORDER

9. In the result, the revision petition is allowed, impugned ex-parte order is vacated and the case is disposed of on contest with a direction to the learned trial court for retrial of the Misc. Case No.49/11 from the stage of filing W.S. by the petitioner Jitu Saikia and to dispose of the case after giving opportunity to both the sides to adduce evidence in support of their case.

10. Regarding monthly maintenance of the Opposite Party Smti Pinki Saikia and her three daughters, this court is of the view that the Opposite Party Pinki Saikia needs interim monthly maintenance for herself and three daughters as such the present petitioner Jitu Saikia is directed to pay monthly interim maintenance of Rs.2,000/- for maintenance of herself and minor daughters with effect from the date impugned order i.e. 19-07-12 till disposal of the Misc. Case No.49/11 by the learned trial court.

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11. Send down the original case record i.e. Misc. Case No.49/11 along with a copy of the instant order to the court of learned Judicial Magistrate, First Class, Biswanath Chariali, Sonitpur.

12. Given under my hand and seal of the Tribunal on this the 31st day of May,2014 at Biswanath Chariali.

(Sri S. Khound)
Additional. Sessions Judge,
Biswanath Chariali.

Dictated & Corrected by me

(Sri S. Khound)
Additional. Sessions Judge
Biswanath Chariali.

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