

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

**PRESENT : Sri Chatra Bhukhan Gogoi,
Sessions Judge,
Sonitpur, Tezpur.**

CRIMINAL APPEAL NO. 4 (S-1)/ 2022

Smti Jyotsna Debnath

..... **Appellant.**

- Versus -

Sri Debajyoti Nath

Smti Shefali Rani Nath

Sri Dhruvajyoti Nath

Smti Moon Sutradhar Nath

Smti Sapna Sutradhar

..... **Respondents.**

A P P E A R A N C E

For the Appellants : Sri S. K. Singh, Advocate.

For the Respondents : Sri Kabir Hasan Basai, Advocate.

Date of Argument : 28-09-2022.

Date of Judgment : 09-11-2022.

JUDGMENT

1. This is an appeal under section 29 of the Protection of Women from Domestic Violence Act, 2005 against the impugned interim order dated 15-02-2022 passed by Smti. C. Goswami, learned Judicial Magistrate 1st Class, Tezpur, Sonitpur in connection with C.R. Case No. 277/2020 with a prayer for enhancement/ modification of the interim maintenance order.

2. The brief fact of the prosecution case as enumerated in the appeal memo is that the appellant/ aggrieved person got married with the respondent No. 1 on 30-11-2017 and subsequently, they got their marriage registered on 10-08-2013 before the Marriage Officer, Nagaon. The matrimonial life of the appellant/ aggrieved person was not peaceful as on her first night of marriage, respondent No. 1 disclosed her that he married appellant out of family compulsion. Respondent No. 1 married aggrieved person only to pave way for the marriage of his younger brother. One day appellant had pain in her gum and teeth and unable to bear the pain, she requested her husband respondent No. 1 to take her to a doctor but respondent No. 1 did not listen. On the other hand, the respondent No. 2 the mother-in-law asked her son to bring medicines from any pharmacy instead of wasting money by visiting dentist. She was bearing a lot of pain so, she kept begging her husband to take her to a dentist but the respondent No. 1 did not paid any attention. However, respondent No. 2 told respondent No. 1 to take her to a dentist then, he took the appellant to a doctor.

3. It is also submitted that after the marriage of respondent No. 3 with respondent No. 4 on 26-04-2018, the situation started to change very quickly. The respondent No. 2 became abusive towards the appellant and started comparing the look and shape of appellant/ aggrieved person with that of the respondent No. 4. She always found fault in whatever the aggrieved person did in the household course. The respondent No.2 also kept taunting the appellant/ aggrieved person for bringing few Stridhan articles in her marriage. Both the husband and the in-laws forced appellant/ aggrieved person mentally and physically to bring dowry and cash amount of ₹2,00,000/- (Rupees Two Lakhs) only from her parents house in order to rise in status in comparison to the respondent No. 4.

4. After few days, the respondent No., 1 husband started sleeping separately from the appellant/ aggrieved person and when she objected, respondent No. 1 started sharing the same bed but asked the appellant/ aggrieved person to maintain distance in the bed and not to touch him in

any way. Since, there was no physical relationship between the appellant and respondent No. 1 so, there was no question of getting pregnant. But, the respondent No. 2 mother-in-law and the respondent No. 4 sister-in-law started taunting the appellant for not getting pregnant even after passing of considerable period of time. They terms her as "Bazi" (infertile).

5. It is pleaded that since 30-05-2020 the appellant/ aggrieved person has been living away from matrimonial home after she was thrown away by her husband and in-laws. Then, the appellant/ aggrieved person approached the court below seeking many reliefs under the provisions of Protection of Domestic Violence Act, 2005 and the learned trial court as an interim measure, granted her monthly maintenance of ₹4,000/- (Rupees Four Thousand). The respondent No. 1 husband is a teacher by profession and in the affidavit submitted by him, he disclosed his monthly income as ₹29,000/- (Rupees Twenty Nine Thousand) only. The other interim reliefs such as alternate accommodation or at least to pay rental for the peaceful living of appellant/ aggrieved person near the place of the residence of her husband has been totally ignored by court while passing the impugned order dated 15-02-2022.

6. Being highly aggrieved and dissatisfied with the impugned judgment and order, the present appeal has been preferred on the following grounds amongst others:

i) That the learned trial Magistrate has erred in law as well as in fact while passing the impugned interim order dated 15-02-2022 in assessing the quantum of reliefs granted to the respondent/ aggrieved person.

ii) That the learned trial court neither considered the assets and liabilities of the respondent No. 1 husband nor of the appellant/ aggrieved person. Such non-consideration led to allowing a meagre amount of ₹4,000/- as monthly maintenance.

iii) That the learned trial court did not make it clear as to from which date the maintenance is allowed. This ought to have been clear since

appellant/ aggrieved person is entitled to maintenance from the date of filing of the complaint.

iv) That the respondents other than husband did not submit the assets and liabilities. In the absence of their assets and liabilities, learned trial court ought to have directed them to disclose their assets and liabilities as it is necessary in view of the fact that the mother-in-law is a pensioner and is not financially dependent on the respondent husband and for which the interim amount of maintenance need to be revised.

v) That the impugned interim order suffers from many vices of unreasonableness and therefore, it is liable to be enhanced/ modified.

7. Point for determination:

“Whether the impugned interim order dated 15-02-2022 passed by learned trial court inflicted with material illegality and irregularity and failed to exercise jurisdiction vested on it in right perspective requiring interference by this court in this appeal ?”

Discussion, Decision and Reasons thereof :

8. I have heard the learned lawyers appearing for both sides.

9. Learned Senior counsel Sri Sudesh Singh appearing for the appellant assiduously assailed the impugned interim order of the learned trial court contending inter alia that the order of the learned Magistrate is inflicted with many vices including non-application of mind and casual approach into the matter of granting interim maintenance which has far reaching impact not only on the monetary front but also affects the mental state of the appellant which has negative impacts on her life.

10. The learned trial court while awarding interim maintenance did not judiciously assess the actual source of income of respondent No. 1 and consequential liability and whimsically awarded interim maintenance of ₹4,000/- per month without considering the ground realities of actual need

and hardship faced by the appellant/ aggrieved person that too without specifying in the order from which date the maintenance order will be effective either from the date of filing the petition or from the date of passing the interim order. So, order reflects clear non-application of mind.

11. It is further contended that ₹4,000/- awarded by learned court is grossly inadequate in view of the fact that husband draws monthly salary of ₹29,000/- being a teacher by profession and court also did not consider the aspect of alternative accommodation for peaceful living of the aggrieved person near the place of residence of respondent No. 1 husband.

12. It is also contended that the respondent No.1 husband did not submit his assets & liabilities therefore a direction is sought to respondent No. 1 husband for submitting assets & liabilities. Moreover, court ignored the fact that the mother of the respondent No. 1 husband being the government pensioner, he does not need to bear any burden for maintenance of his mother from his salary.

13. Therefore, it is argued with force that the interim order of maintenance awarded by learned trial court needs to be modified by enhancement of maintenance at reasonable rate commensurate with the source of income of husband and keeping in mind the legal and moral liability of the respondent and also keeping in mind the dignity of the appellant to live a life which she enjoyed in her marital house.

14. On the other hand, learned counsel appearing for respondents vociferously contended that the appeal preferred by the appellant is not maintainable in law and fact as the appeal has been preferred against an interim order of the learned trial court which has awarded a very reasonable amount of maintenance to the appellant keeping in mind the source of income of the respondent No. 1 husband and his consequential liabilities towards his family members particularly his old mother.

15. Therefore, it is contended that the interim maintenance awarded by trial court is just and reasonable which do not require any interference by this court in this appeal.

16. Moreover, it is an interim order only and parties have to establish their case in the trial court by adducing evidence and documents to that effect and until then, that fact has been established by the parties, no interference of the interim order is call for by this court. Therefore, it is argued that appeal may be dismissed.

17. Having heard the rival contention of the learned counsels appearing for both sides and on careful perusal of the pleadings of both sides as well as impugned interim order dated 15-02-2022 the undisputed fact that has emerged before this court is that admittedly, respondent No.1 husband is a teacher by profession and by his own admission in his affidavits of assets & liabilities (enclosure I) it is apparent on record that he has been serving as Assistant Teacher and showing his monthly income as ₹29,000/- (Rupees Twenty Nine Thousand). In his affidavit, however, it has not been specified whether it is his gross salary income or net income.

18. From the affidavit submitted by respondent No.1 husband, it is also transpires that his only dependant is his mother Mrs. Shefali Rani Nath and she also receive monthly family pension of ₹12,000/- and the dependency expenditure incurred by the revision petitioner is ₹5,000/- per month. Nevertheless, from the affidavit of the respondent the true source of income has not been clearly divulged. So, the actual income of the respondent/ husband is in the realm of doubt which will come out only at the stage of trial.

19. In a recently delivered Division Bench judgment of the Hon'ble Apex Court passed in Criminal Appeal No 1865 of 2022 (Kiran Tomar & Ors ... Appellant Vs. State of Uttar Pradesh & Anr ... Respondents) the Hon'ble Apex Court held in para 10 as under:

"10. On the first aspect, it is well-settled that income tax returns do not necessarily furnish an accurate guide of the real income. Particularly, when parties are engaged in a matrimonial conflict, there is a tendency to underestimate income. Hence, it is for the Family Court to determine on a holistic assessment of the evidence what would be the real income of the second respondent so as to enable the appellants to live in a condition commensurate with the status to which they

were accustomed during the time when they were staying together. The two children are aged 17 and 15 years, respectively, and their needs have to be duly met.”

20. Though, in the present case, the question of submission of income tax return by either side is not the question to be decided by this court, nevertheless, the observation made by Hon'ble Apex Court in the aforesaid judgment relates to award of adequate maintenance wherein the Hon'ble Apex Court stressed the need to determine on a holistic assessment of the evidence as to what would be the real income of the respondent husband so as to enable the wife to live in a condition commensurate with the status to which she was accustomed during the time when she was staying with her husband.

21. In the present case, it is also admitted fact that the case has not yet been decided finally on the basis of evidences adduced by either side. Nonetheless, given the source of income of the respondent husband as it transpires before this court, and as rightly pointed out by the learned counsel appearing for the appellant, the interim maintenance awarded by the learned trial court appears to be somewhat inadequate when wife/appellant has been admittedly living separately from her husband and she admittedly having monthly income of ₹2,000/- to ₹2,500/- by doing private tuition. So, even if it is assumed that, the wife earns ₹2,000/- to ₹2,500/- per month, she has shown required monthly expenditure of ₹26,000/- per month including house rent of ₹5,000/-.

22. Now, irrespective of the monthly expenditure shown by wife/appellant, the fact is that the interim maintenance awarded by learned trial court certainly appears to be in the lower side with which she could not afford to live a modest life. It has now been well settled by the pronouncement of the Hon'ble Apex Court and by our Hon'ble High Court that the object of granting maintenance is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of failure of the marriage and not as a punishment to the other spouse. There is no straight jacket formula for fixing quantum of maintenance. What needs to be weigh with the court is the status of the parties, reasonable needs of the wife,

independent source of income for sufficiency to maintain the standard of living which she was accustomed in her matrimonial house so on and so forth.

23. Therefore, in the present case, taking a holistic view in the matter from all angles, this court is of the considered view that the interim maintenance granted by learned trial court is grossly inadequate to maintain a dignified life by the appellant commensurate with the standard of living to which she was accustomed in her matrimonial home and her independent source of income as disclosed appears to be inadequate. On the other hand, husband's admitted source of income and his liabilities, if taken into consideration, it appears that he can well spare a share of his income towards maintenance of his wife. Moreover, as rightly contended by the learned counsel appearing for the appellant, the impugned order of the learned trial court is not clear as to from which date the order of interim maintenance will come into effect.

24. Considering all the aspects of the matter, this court deem it appropriate to enhance the interim maintenance from ₹4,000/- (Rupees Four Thousand) to ₹8,000/- (Rupees Eight Thousand) so that appellant wife can afford to maintain a minimal standard of life pending final decision in the case. The enhanced maintenance is directed to be paid from the date of passing the interim order by learned trial court i.e. on 15-02-2022 which in the opinion of this court will serve the ends of justice.

25. In view of the foregoing discussion and reasons, the impugned order dated 15-02-2022 of the learned trial court is hereby modified as indicated above.

26. Consequently, the appeal is allowed.

27. Let a copy of this judgment along with the case record of C.R. case No. 277/2020 be send back to the Court of learned Chief Judicial Magistrate, Sonitpur, Tezpur for information and intimation to concerned court for doing the needful.

28. The judgment is signed, sealed and delivered on this the **09th day of November, 2022.**

(C.B. Gogoi)
Sessions Judge,
Sonitpur: Tezpur.

Dictated and corrected by me.

(C.B. Gogoi)
Sessions Judge,
Sonitpur, Tezpur.