

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

CRIMINAL REVISION NO. 10 (S-2)/2022

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

Md. Safikul Haque @ Sabikul Haque
..... **Petitioner.**

- Versus -

State of Assam
Musstt. Rahila Khatun
..... **Respondents.**

A P P E A R A N C E

For the Petitioners : Md. Nizam Uddin, Advocate.

For the Respondent : Sri M. Kalita, Advocate.

Date of Hearing : 29-11-2022.

Date of Judgment : 29-11-2022.

J U D G M E N T

1. This is an application u/s 397/399 of Cr.P.C. against the impugned judgment & order dated 08-02-2022 passed by Sri V. Bhuyan, learned JMFC, Sonitpur, Tezpur in M.R. Case No. 08/2019 u/s 125 Cr.P.C.

2. The case of the revision petitioner is that he married with the OP No. 2 Musstt. Rahila Khatun as per Islamic Rites and Customs on 14-05-2013 by executing a deed fixing Moharana of ₹51,000/- and since then they started to

live together as husband and wife. Out of their wedlock, two sons were born to them.

3. It is alleged by the wife that after the birth of 2nd son, the revision petitioner started an extra marital affair with another woman and finally brought that woman permanently at the house of the petitioner and started to torture the respondent by both the petitioner and the 2nd wife. She also stated that after beating the 1st wife, petitioner and his relatives kicked her out from her matrimonial house along with her two minor children. Thereafter, on 08-11-2018 the wife took shelter at the house of her parents and then lodged the ejahar against the revision petitioner before the Chariduar PS. The wife alleged that the revision petitioner has earnings from his rental house as well as cyber cafe and other sources.

4. On receipt of the notice, the present revision petitioner appeared in the court and contested the case by filing his written objection denying all the allegations made by wife stating inter alia that the revision petitioner has no such definite source of income. He somehow eke out his livelihood by running a small cyber café (computer downloading) and he has no such rented house from where he earns money. The revision petitioner also submitted that since the marriage the respondent was not interested with him and always suspected him without any rhyme or reason and the wife also frequently used to visit her parental house and used to stay at her parental house for 3/4 months together though the petitioner tried to make her understand but failed.

5. Hearing the both parties and after going through all the evidence and documents available in the case record, the learned Magistrate passed the judgment & order dated 08-02-2022 granting monthly maintenance of ₹4,000/- to the aggrieved person and ₹2,000/- per month to each of the sons of the aggrieved person with effect from 08-02-2022 in total ₹8,000/- (Rupees Eight Thousand) per month.

6. Being highly aggrieved and dissatisfied by the said judgment & order dated 08-02-2022 passed by learned trial court, the petitioner preferred the present revision petition on the following grounds:

i) That the learned trial court erred in law as well as in fact in passing the impugned order which occasioned failure of justice.

ii) That the learned trial court committed grave error in considering the relevant evidences on record as well as provisions of law as well as facts of the case

iii) That the learned trial court acted with material illegality and irregularity in the exercise of his jurisdiction which has resulted in gross miscarriage of justice and as such the same is liable to be set aside.

iv) That the learned trial court without appreciation of evidence from either side, passed the maintenance order and came to conclusion that the respondent No.1 is liable to get maintenance from the present revision petitioner.

v) That the learned trial court did not consider the fact that the petitioner has 2nd wife and two minor child from the 2nd wife and petitioner is the sole earning member in the family. So he is not in a position to maintain the 1st party. Moreover, the OP has failed to show with any documentary or other evidence about the income of the revision petitioner. He hardly earn ₹4,000/- to ₹8,000/- per month from his computer shop. Therefore, he cannot afford to pay ₹8,000/- as maintenance to the respondent as granted by the learned trial court which is beyond his capability. Hence, the present revision petition praying to set aside the judgment & order of the learned Magistrate dated 08-02-2022 passed in M.R. No. 08/2019.

7. Point for determination:

Whether the impugned order dated 08-02-2022 passed by learned JMFC, Sonitpur, Tezpur in M.R. Case No. 08/2019 is incorrect, illegal, improper and without jurisdiction making it liable to be revised or set aside?

DISCUSSION, DECISION AND REASONS THEREOF.

8. I have heard assiduous argument of learned lawyers appearing for revision petitioner as well as respondent and also gone through the pleadings of the

parties available on record and also gone through the impugned order of the Magistrate dated 08-02-2022.

9. In the course of the argument, learned counsel for the revision petitioner mainly canvassed the fact that petitioner has a small computer shop from where he hardly earn ₹4,000/- to ₹8,000/- per month and apart from this, he has other responsibility of maintaining his 2nd wife and two minor child. Above all, it is contended by the learned counsel that the revision petitioner does not possess any landed property to earn money from other sources etc. Therefore, the maintenance granted by learned trial court directing the revision petitioner to make payment of ₹4,000/- (Rupees Four Thousand) only to wife and ₹2,000/- (Rupees Two Thousand) each to two minor sons, total ₹8,000/- per month is in the higher side and revision petitioner cannot afford to make such payment. Therefore, the learned counsel appearing for revision petitioner contends that the maintenance granted by the learned trial court may be reduced so that the revision petitioner can afford to maintain his 1st wife/ OP.

10. On the other hand, learned counsel appearing for respondent wife contends that the revision petitioner has sufficient source of income and in spite of having such income, he has thrown out the respondent and her two minor children from her matrimonial house without any just and reasonable cause and in the meantime, he married another woman and produced two children from her side. Thereafter, accused totally neglected the respondent and her two children leaving them in wilderness having no source of income and proper shelter etc. Learned counsel further contends that even if husband has no source of income he is obligated to maintain his wife and children and he cannot escape from this onerous responsibility by pleading his innocence.

11. Having heard the rival contention of both parties and on consideration of the contents of the impugned judgment and the evidence available on record, this court found force in the contention of the learned counsel appearing for the wife that the husband earns more money than he stated in his petition. If husband is unable to maintain his 1st wife and her two children how can he shoulder the responsibility of maintaining his 2nd wife and his two children if he has no such

income. The revision petitioner has taken the shelter of falsehood only to avoid maintaining the OP and her two children.

12. Perusal of the impugned judgment of learned Magistrate, it transpires that the learned trial court has discussed threadbare the evidence adduced by the wife and cross-examination of her witnesses by the other side and held the view that the petitioner side has been able to establish her case and finally passed the order impugned.

13. On close scrutiny of the evidence adduced by the 1st party, it appears that she made specific allegation in her petition u/s 125 Cr.P.C. that she has been subjected both physical and mental torture by her husband and during her subsistence her husband involved in extra marital affairs and brought another woman and on 02-11-2018 assaulted her while she was breastfeeding her younger son and finally thrown her out from his house under threat to kill her and her two children. It is also alleged that accused attacked her on several occasion and assaulted her left & right and pressed her neck with a view to kill her which ultimately forced her to take shelter in the house of her parents with two minor children. It is also alleged that her husband earns ₹40,000/- to ₹50,000/- from his business shop and also earns ₹10 to ₹15 thousand from his domestic front so, she claim ₹5,000/- for her and ₹10,000/- for her two children for maintenance. In her evidence on affidavit she reiterated the same though the husband cross-examined her but failed to discredit her in material particulars. The husband side failed to show by way of cross-examination of PW1 that he has no such income as alleged by wife except a suggestion that he did not earn ₹40 to ₹50 thousand per month. The evidence of wife has been corroborated by evidence of PW2. Contrary to this, the husband has not adduced any evidence in court to discredit the contention of the OP. Considering all, the learned trial court passed the impugned judgment and order.

14. Now, the moot question to be decided by this court is whether the revision petitioner has no such source of income or the impugned order of the learned trial court is inflicted with illegality.

15. Having so scanned and examined from close range all the attending factors, it is crystal clear before this court that the revision petitioner did not prove by adducing credible and trustworthy evidence before the trial court about his actual income. So, mere saying that he has no income as claimed by his wife is nothing but the cleaver subterfuge. In the absence of producing any proof in court that he has no such permanent source of income and he has no earning of ₹40 to ₹50 thousand from his shop bears little significance. He also did not prove the fact that he had no such landed property or any other source of income. As rightly contended by the learned counsel appearing for the wife that, even if, the husband has no permanent source of income then also he is bound to maintain his wife and children by doing manual work.

16. In the face of the claims of the revision petitioner and also taking into consideration the impugned judgment & order of the learned Magistrate and also taking a holistic view in the matter from all angles, this court is of the considered view that the maintenance granted by learned trial court cannot be said to be in the higher side. When the revision petitioner undertake the responsibility of maintaining another woman and two children he cannot absolve himself from maintaining his 1st wife and children who have legitimate right to claim maintenance from the revision petitioner and he cannot escape from this liability by merely refusing it or taking the plea of no source of income.

17. The maintenance amount awarded by the learned trial court appears to be minimal to maintain a dignified life by the wife commensurate with the standard of living to which she was accustomed in her matrimonial home and in the absence of any independent source of income of the wife, the amount of maintenance, in the considered estimation of this court appears just and reasonable as the wife and her two minor children cannot be pushed to vagrancy by refusing to grant a minimum maintenance sufficient for their sustenance. In the present day context of high raising price of everyday commodities, an amount of ₹8,000/- cannot be said to be higher for maintenance of two growing children and maintenance of wife. For proper development of the children and for education the maintenance amount awarded by learned trial court appears minimal and reducing the maintenance amount as contended by learned counsel

for the revision petitioner could virtually frustrate the object of granting maintenance.

18. It appears that even if it is assumed that husband has no income, even then, he cannot escape from his onerous obligation to maintain his wife and two children who needed minimum money for their sustenance. Since the trial court awarded total maintenance of ₹8,000/- (₹4,000/- to wife and ₹2,000/- each to two children) after appreciation of evidence in right perspective and also taking into consideration the fact that in the present day context of high rise of every commodities, it is increasingly difficult for the wife to maintain her with the little amount of maintenance, more particularly, the cost of education of the child has increased manifold. So, the maintenance awarded by learned trial court is found to be justified requiring no interference by this court in revision. There is no infirmity in the impugned judgment of the trial court as the same has been passed by the learned trial court after due consideration of all the attending factors.

19. It is now settled position of law as enunciated in number of judgments by the Hon'ble Supreme Court as well as our Hon'ble High Court that it is the moral and legal obligation of the husband to maintain his wife and children. Even if it is established that husband has no permanent source of income, he is bound to maintain his wife and children by doing manual work and there is no escape route from this onerous and legal obligation.

20. It is pointed out that since the date of passing the impugned judgment and order dated 08-02-2022 by learned Magistrate, not a single penny has been paid till date pushing the wife and two children in great difficulties and they are in the verge of vagrancy. Therefore, it is submitted that the revision petitioner may be directed to make the payment forthwith in terms of judgment of learned trial court which is not denied by the learned counsel appearing for the revision petitioner.

21. The submission made by learned counsel for the wife appears justified and therefore, considering all the factors, the revision petitioner is directed to make

the arrear maintenance to his wife and children in terms of the judgment & order dated 08-02-2022 passed by the learned trial court.

22. In view of the foregoing discussion and reasons, this court do not find any merit in the revision petition and the same is disposed of.

23. Consequently, revision petition stands dismissed.

24. Let a copy of the Judgment along with the case record of M.R. Case No. 08/2019 be sent back to the concerned Magistrate for information and doing the needful.

25. Judgment is signed, sealed and delivered in the open court on this **29th day of November, 2022.**

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

Dictated and corrected by me.

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