

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

CRIMINAL REVISION NO. 14 (S-2)/2022

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

Md. Roshan Ali
Musstt. Siddika Prabin (Nimi)
Md. Rafat Alom
Musstt. Ansari Begam @ Baby

..... **Petitioners.**

- Versus -

Musstt. Sehnaz Khatun

..... **Opposite Party.**

APPEARANCE

For the Petitioners : Smti Mouchumi Bhagwati, Advocate.

For the Opposite party : Smti Rose Bharali, Advocate.

Date of Hearing : **14-11-2022.**

Date of Judgment : **14-11-2022.**

JUDGMENT

1. This is an application u/s 397/399 of Cr.P.C. against the impugned orders dated 19-01-2022 & 28-04-2022 passed by Sri V. Bhuyan learned Judicial Magistrate 1st Class, Sonitpur, Tezpur in C.R. Case No. 544/2019.

2. It is pleaded in the petition that on 16-08-2019 the present OP filed an application u/s 12 of Protection of Women from Domestic Violence Act, 2005 for grant of relief/s u/s 18/19/20/22/23 of the Act before the learned CJM, Sonitpur,

Tezpur against the revision petitioners and 2 deceased OP (main case). Then, CJM, Sonitpur, Tezpur transferred the case to the court of Sri V. Bhuyan, JMFC, Sonitpur, Tezpur for disposal.

3. Upon receiving notices, the revision petitioners appeared before learned trial court on 21-09-2019 and on 28-04-2022 the learned Magistrate precluded the respondents side from filing written statement and issued distress warrant fixing 06-06-2022 for payment and after passing of the order on 19-01-2022 for payment of interim maintenance from the date of filing of application till its disposal by the learned trial court on 28-04-2022.

4. The notice upon the respondent of the main case was served through registered Post with A/D on 29-03-2022 and on 30-03-2022. But, the respondent No. 2 Haitun Nessa @ Haiti @ Archana Khatun of the main case died of cancer and other ailments. As such, they could not appear before the learned trial court due to observation of Chalisa (forty days ritual).

5. Being highly aggrieved and dissatisfied by the orders dated 19-01-2022 & 28-04-2022 passed by the learned trial court, petitioners preferred the revision petition on the following grounds:

i) The learned Magistrate has erred in law as well as in fact while passing the impugned orders dated 19-01-2022 & 28-04-2022.

ii) That the learned Magistrate did not apply his judicial mind while passing the impugned order/ orders and as such, the impugned order/orders are liable to be set aside.

iii) That the learned court below did not provide sufficient opportunity to defend the present revision petitioners in the main case, thereby causing serious miscarriage of justice.

iv) That the erstwhile respondent No. 2 i.e. the mother of the petitioner No. 1 was a cancer patient and the petitioner No. 1 had to look after her. The OP never liked to take care of the mother of the petitioner No.1. This is one of the many reasons why the OP left the matrimonial home. There was no care taker to look after the mother of the petitioner.

v) That the petitioner NO. 1 is now a jobless person. Due to Covid-19 Pandemic in the year 2020, he was terminated from his job by his employer Tech Web Computer Accessories Store and thereafter he tried to get job in Shillong but could not get it because maximum of his time was passed in looking after and taking care of his ailing mother.

vi) That in any view of the matter, the impugned orders are liable to be set aside and allow the present petitioner to contest the case.

6. Point for determination:

Whether the impugned orders dated 19-01-2022 & 28-04-2022 passed by learned JMFC, Sonitpur, Tezpur in C.R. Case No. 544/2019 are incorrect, illegal, improper and without jurisdiction making it liable to be revised or set aside?

DISCUSSION, DECISION AND REASONS THEREOF.

7. I have heard the arduous contention of the learned lawyers appearing for both sides and carefully scanned the impugned orders dated 19-01-2022 & 28-04-2022 passed by learned JMFC, Tezpur, Sonitpur in C.R. Case No. 544/2019 as well as the other materials available in the case record.

8. The basic contention of the learned counsel appearing for the revision petitioners is that order dated 28-04-2022 whereby the learned trial court issued distress warrant against the revision petitioner for his refusal to pay interim maintenance to his wife in terms of the order of the court and also precluding the respondents/ revision petitioners for filing written statement cannot be allowed to stand in law as the same were inflicted with complete non-application of judicial mind by the learned court below because the respondents/ revision petitioners in fact did not get reasonable opportunity to file written statement due to causes beyond control and also did not pay the interim maintenance in terms of the order of the court as it was not within the knowledge of the respondents/ revision petitioners. Therefore, according to the learned counsel appearing for the revision petitioners the issuance of distress warrant against the

respondent husband and precluding the respondents from filing the written statement is out and out whimsical and illegal order which directly affects the rights of the revision petitioners cannot be allowed to stand in law.

9. On the other hand, learned counsel appearing for the aggrieved person vociferously contended that the order of the learned Magistrate dated 19-01-2022 & 28-04-2022 were absolutely within the purview of law requiring no interference by this court in revision. More so, the fault is with the respondents who intentionally did not submit written statements thereby causing delay with the intention to cause wrongful loss to the aggrieved person in getting her legitimate dues in terms of law. But, they had the ill intention to deprive her from getting her maintenance. It is submitted that the respondents with oblique motive did not file the written statement even after registering their presence in court and filing petition seeking time for submission of written statement. So, under such a situation the court having been fed up with the conduct of the revision petitioners rightly passed the impugned orders issuing the distress warrant against the revision petitioner No.1 for causing intentional default in making payment of maintenance and precluding the revision petitioners to file their written statements.

10. Having heard the rival contention of learned counsels and on careful consideration of the facts of the case at hand, particularly, the impugned order dated 21-09-2019, it transpires that the respondents had the knowledge about the case and upon summons being served the respondent vide petition No. 3906/2019 prayed time for filing written statement. But, as it seems, over the years, the revision petitioners/ respondents failed to submit their written statements and the grounds taken by the respondents are not at all plausible as the respondents got almost three years time for filing written statement but of no avail. True it is that, in the meantime, the mother of respondent No. 1 died but even then the respondent got sufficient time for filing written statement. The direction to pay interim maintenance of ₹2,500/- to Sehnaz Khatun (the aggrieved person) was passed by court on 19-01-2022 when respondent remain absent in court and failed to file written statement except seeking adjournments. The repeated absence of the respondents/ revision petitioners is the reason

which propels the court to pass the interim order of maintenance in favour of the aggrieved person. Admittedly, the case was filed in the year 2019 and eventually, the interim order of maintenance was passed by court on 19-01-2022 almost after two years from the date of filing the application.

11. In the present case, it is writ large that respondents/ revision petitioners have been duly represented by learned counsel therefore, it cannot be said that they have no knowledge about the present proceedings. The absence of the revision petitioners appears to be intentional sometimes in order to avoid granting maintenance by court.

12. The very object of passing the Domestic Violence Act is to give solace to aggrieved person during her separation or detachment from her marital house, so that she can survive with dignity and honour. The aggrieved woman cannot be pushed to vagrancy or allowed to die without food, shelter etc. In the present case, it is apparent on record that aggrieved person has been living separately from the revision petitioner No.1 and admittedly it is not established that she has any source of income of her own. Situated thus, giving some sort of financial relief by court is the basic requirement for her sustenance pending disposal of the case on merit. Therefore, noting down the consistent conduct of the revision petitioners of not filing written statement in spite of sufficient opportunity, the learned trial court passed the interim maintenance of ₹2,500/- to aggrieved person. At the same time, when the revision petitioner No.1 failed to make the payment of interim maintenance to aggrieved person even after receipt of notice issued by court, distress warrant was issued against him and for non-filing of written statement without just and reasonable cause, respondents have been precluded from filing the written statement. The grounds taken by the revision petitioners therefore appears to be not backed by sufficient reason as it cannot be said that the respondent have no knowledge about passing the impugned order of interim maintenance. As it seems, revision petitioners did not appeared in court on the date fixed in spite of notice having been served only with a view to avoid payment of maintenance which however cannot be avoided under law. It is an interim order. The trial court is yet to decide the rival claims on merit on

the basis of evidence and documents adduced by parties but that stage has not yet come.

13. It is premature to take a definite view by this court at this stage about the financial soundness and capability of the aggrieved person or for that matter the revision petitioner's financial soundness. It will come at a later stage. For the present, this court after due consideration of the attending factors found no such infirmity in the order of the learned Magistrate dated 19-01-2022. Therefore, this court do not find any reason to interfere with the orders of the learned Magistrate dated 19-01-2022 and 28-04-2022.

14. However, for the sake of advancing the cause of justice, the revision petitioners are given an opportunity to submit their written statement/ objection before the learned trial court **within a period of one month from the date of passing this judgment.** But, the revision petitioner No. 1 has to pay interim maintenance to his wife in terms of the order of learned Magistrate.

15. In view of the foregoing discussion and reasons, the revision petition is partly allowed as indicated above.

16. Let the case record of C.R. Case No. 544/2019 be sent back along with a copy of this Judgment to the Court of learned Chief Judicial Magistrate, Tezpur, Sonitpur for information and doing the needful.

17. Judgment is signed, sealed and delivered in the open court on this **14th day of November, 2022.**

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

Dictated and corrected by me.

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