

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

CRIMINAL REVISION NO. 19 (S-2)/2022

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

Sri Pradip Bhuyan

..... **Petitioner.**

- Versus -

Smti Minakshi Koch

State of Assam

..... **Respondents.**

A P P E A R A N C E

For the Petitioners : Smti Monalisa Devi, Advocate.

For the Respondent : Sri H. P. Sedaj, Advocate.

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

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

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 25-05-2022 passed by Smti. T.P.M. Baruah, learned JMFC, Tezpur in M.R. Case No. 171/2017 u/s 125 Cr.P.C.

2. It is pleaded in the petition that wife Smti Minakshi Koch filed a petition u/s 125 Cr.P.C. seeking maintenance which was registered as M.R. Case No. 171/2017 stating inter alia that she was married to revision petitioner on 27-01-2008 according to Hindu Rites and customs and lived together as husband and

wife and as a result of their union a female child was also born to them on 06-12-2008 christened as Sangita Bhuyan but as alleged, after the marriage, husband has been subjecting her torture both physical and mental demanding dowry and after the birth of the female child the torture on her increased on every passing day and accused used to misbehave her on every occasion with slang language and treated her like a beast. Her husband even failed to provide her basic minimum needs of food and shelter instead asked her to bring the daily needs such as oil, soap, clothes etc from the house of her parents. Even though she has been tolerating everything in the hope of mending the conduct of her husband but no such change occurred and on 02-10-2012 husband demanded ₹1 Lakh from her parents in the name of doing business. When the matter was informed to her father, he expressed his inability to provide the money following which her husband tried to kill her by pouring kerosene oil but she somehow escaped and taking shelter in her parent's house with her minor child. Thus, finding no other alternative, she filed the case against her husband.

3. On receipt of the summons, 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 allegations of subjecting torture and demanding dowry and other valuable things from his wife are all baseless allegations. The fact is that the petitioner want her husband to stay in the house of her parents as "Ghorjamai" but revision petitioner did not accept the said proposal following which her family members instigated her to make allegations of demand of dowry in the form of TV, fridge and other valuables and also subjecting her physical and mental torture. It is false to say that revision petitioner forced his wife to bring daily needs from the residence of her parents and also for her inability to make the payment, respondent husband tried to kill her by setting her on fire by pouring kerosene oil. It is denied that the respondent has handsome income but the fact is that he is a salesman in a cloths shop earning ₹6,000/- only. It is denied that he earns ₹35,000/- per month. Moreover, he do not have any other landed property or source of income so, he is ready to take back his wife and daughter.

4. After the pleadings, both sides have been asked to adduce evidence to substantiate their stand and accordingly, the respondent wife adduced her evidence as PW1. On the other hand, her husband/ revision petitioner examined two witnesses to substantiate his stand.

5. Finally, the learned Magistrate after hearing both sides and on consideration of pleadings, evidence and documents available on record, passed the impugned judgment on 25-05-2022 granting maintenance of ₹4,000/- each to mother and daughter from the date of passing the judgment & order.

6. Being highly aggrieved and dissatisfied by the said order dated 25-05-2022 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 has failed to take into account the ground fact that the revision petitioner has no permanent source of income and he is unable to maintain his wife. He has been earning ₹6,000/- only per month by working in a cloth shop and he has no other landed properties or other source of income.

iii) That the revision petitioner denied that he subjected his wife any sort of torture both physical and mental demanding dowry in the form of cash and kind but his wife voluntarily left his house without any rhyme or reason. He is ready and willing to take back his wife.

iv) That the learned Magistrate did not evaluate the pleadings, evidence & documents of the parties in right perspective for which, the impugned order is not maintainable and liable to be set aside.

7. Point for determination:

Whether the impugned order dated 25-05-2022 passed by learned JMFC, Sonitpur, Tezpur in M.R. Case No. 171/2017 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 the arguments of the learned lawyers appearing for both sides and decided to dispose the case by today itself in open court.

9. Now, the moot question to be decided by this court is whether the impugned order dated 25-05-2022 passed by learned JMFC in M.R. Case No. 171/2017 was illegal, incorrect or improper requiring any interference by this court. In order to decide the points, this court carefully scanned the contents of the impugned judgment & order and also examined the pleadings and accompanying documents.

10. In the course of the argument, learned counsel for the revision petitioner mainly canvassed the fact that petitioner is a temporary worker. Now, working casually in a bank earning ₹6,000/- per month apart from this, he has other responsibility of maintaining his old aged mother and unmarried sister. Above all, it is contended by the learned counsel that the revision petitioner do 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 each to mother and daughter total ₹8,000/- per month is in the higher side and revision petitioner cannot afford to make such payment.

11. On the other hand, learned counsel appearing for respondent wife Sri H.P Sedai contends that the argument advanced by learned counsel appearing for the revision petitioner bears no force in view of the fact that during the course of the proceeding before the learned Munsiff, the husband/ revision petitioner did not prove the actual source of income by way of adducing credible evidence in court by proving the pay slip etc. He has also not adduced any evidence to show that in fact; he has no such landed property from where he can earn handsome amount. Learned counsel Sri H.P. Sedai further contends that even if husband has no source of income he is obliged to maintain his wife and children and he cannot escape from this onerous responsibility by pleading his innocence.

12. 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 did not prove by adducing credible and trustworthy evidence before the trial court about his actual income. So, mere saying that he is earning only ₹6,000/- being a temporary worker bears little significance. He also did not prove the fact that he had no such landed property. 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.

13. 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. 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 because the wife cannot be pushed to vagrancy by refusing to grant a minimum maintenance sufficient for her sustenance. For the growing daughter maintenance is minimal for her all-round development including the expenses of her education.

14. 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 daughter who needed minimum money for their sustenance. Since the trial court awarded the maintenance of ₹4,000/- each to mother and daughter duo after appreciation of evidence of both sides 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.

15. 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.

16. 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 with the direction to the revision petitioner to pay the maintenance in terms of order of the learned Magistrate dated 25-05-2022 passed in M.R. Case No. 171/2017.

17. Consequently, revision petition stands dismissed.

18. Let a copy of the Judgment along with the case record of M.R. Case No. 171/2017 be sent back to the concerned Magistrate for information and doing the needful.

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

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