

**IN THE COURT OF THE SESSIONS JUDGE: SONITPUR
AT TEZPUR**

PRESENT : Smt. M.R. Sharma
Additional Sessions Judge
Sonitpur, Tezpur

CRIMINAL REVISION NO. 2 (S-1) OF 2012

[Revision under Section 397/399 CrPC against the order dated 21-02-2011 passed by Mrs M. De, learned Sub-Divisional Judicial Magistrate, Tezpur in connection with Misc. Case No. 2 of 2010 under Section 125 CrPC]

Sri Rakhil Chandra Dhar
Son of Sri Sushil Chandra Dhar
Resident of No. 2 Samukia
P.S – Rangapara, Dist - Sonitpur **Petitioner**

-VERSUS-

1. Smt. Alaka Bhakta
Wife of Sri Rakhil Chandra Dhar
Resident of Phuluguri
P.S – Rangapara, Dist - Sonitpur.... **Opp. Party**

A P P E A R A N C E

For the petitioner : Smt. L. Borah,
Advocate

For the Opposite Party : Md. I. Ansari, Advocate

Date of Argument : **01-10-2012**

Date of Judgment : 10-10-2012

J U D G M E N T

This Criminal Revision has been filed Under Section 397 / 399, Cr.P.C. against the order dated 21-02-2011 passed by Mrs M. De, learned Sub-Divisional Judicial Magistrate, Tezpur in connection with Misc. Case No. 2 of 2010 under Section 125 Cr.P.C directing the present petitioner to pay Rs 1500/- p.m. as maintenance allowance to the Opposite party (Petitioner in the Misc. Case).

2. The relevant facts, leading to the case of the revision-petitioner, may be summarized as follows:

That the opposite party had filed a Misc. Case being No. 2 of 2010 in the Court of the learned Sub-Divisional Judicial Magistrate, Tezpur claiming maintenance for herself from the revision petitioner.

That in the said Misc case, the learned Sub-Divisional Judicial Magistrate who upon hearing of the case passed the impugned ex-parte judgment and order dated 21-02-2011 directing and ordering the present petitioner to pay maintenance @ Rs 1500/-, per month, without giving any opportunity to the present petitioner to submit his statements before the learned Court.

That the notice for the appearance of the revision petitioner in the Court was neither shown nor served on him as required u/s 64 of the Cr.P.C. and as such, notice cannot be assumed to be served on the petitioner.

That, in fact, the revision petitioner, upon receiving one notice from the Court appeared on 13-12-2011 and he was surprised to know that an ex-parte order of maintenance was passed against him to pay an amount of Rs. 1,500/-, per month, to the present opposite party.

3. Being highly aggrieved and dissatisfied with the impugned order, dated 21-02-2011, passed by the learned Sub-Divisional Judicial Magistrate, Tezpur, the petitioner has preferred this present revision mainly on the following grounds:

i) That the learned trial Magistrate has erred in law as well as in fact while passing the impugned ex-parte Judgment and Order dated 21-02-2011;

ii) That the learned Magistrate did not apply her judicial mind in passing the ex-parte judgment and order;

iii) That the learned Trial Magistrate did not provide the opportunity to defend the present petitioner in the original case, thereby a serious miscarriage of justice has occurred ;

4. I have heard the argument advanced by the learned counsel of both the parties. I have also carefully gone through the impugned judgment and order of the learned Magistrate and also the evidence on record in Misc Cased No 2 of 2010.

5. The judgment was delivered by the learned Sub-Divisional Judicial Magistrate (S), Tezpur ex-parte stating that the notice was duly served on the second party as the second party refused to accept the same. The learned Sub-Divisional Judicial Magistrate was also of the view that as the second party never appeared before the court and as a husband he is duty bound to pay maintenance to his wife and minor and un married children, maintenance @ Rs. 1,500/- was directed to be paid. The learned counsel for the revision petitioner, in this context, referred to the fact that the notice to the second party, sent by registered post, who was shown to have returned as 'addressee not known'. The address was one of Arunachal Pradesh.

The learned counsel for the opposite party argued that the second party had received the notice and had returned the same without putting his signature. Again, the notice served through the process server shows in the report that the notice was served to one Ganesh Basumatary, the Gaonburah of village No. 2, Samukia under Rangapara Police station. The report also shows that the Gaonburah had received it as the second party-revision petitioner was not present at the address and the family members refused to accept the same. The revision petitioner has taken one of the grounds that the said notice deemed to be served is not proper and the learned trial Court had not applied judicial mind in proceeding ex-parte basing on the above reports causing serious miscarriage of justice. The revision petitioner was, therefore, highly prejudiced on the maintenance granted against him.

6. Considering the facts and circumstances of the case and after going through the lower Court record, I find that already distress warrant as per provision of Section 421 / 431 Cr.P.C has been issued against the revision petitioner. The learned trial Court also before proceeding ex-parte against the revision petitioner had not taken the evidence of the Gaonburah.

7. Under the said circumstances, therefore, I find that that the revision petitioner Sri Rakhal Ch. Dhar must be given an opportunity to prove his case against the O.P. Smt. Alaka Bhakta and depriving him from such opportunity will cause injustice to him. The learned trial Court had passed the order of maintenance against the revision petitioner without going into the merits of the case and since revision petitioner has now come before this court by way of this case being aggrieved against the order of maintenance, his prayer for setting aside the impugned ex-parte order is tenable for the ends of justice.

8. Accordingly, the revision petition is allowed. The case is remanded back to the learned trial Court for retrial by allowing the revision petitioner – O.P. to file written statement substantiating his case and the learned trial Court will thereafter dispose of the case on merits.

9. However, the maintenance granted @ Rs. 1,500/- pr month is reduced to an amount of Rs. 800/-, per month, to be given as interim maintenance to the O.P. Smt. Alaka Bhakta till disposal of the case on merits. Further more, an amount of Rs. 1,000/- will be granted as costs to the O.P. Smt. Alaka Bhakta by the revision petitioner and the same amount will be paid to the

O.P. Smt. Alaka Bhakta as a pre-condition for accepting written statement.

With the above direction, the revision petition is disposed of.

This judgment is given under my hand and the seal of this Court on this 10th day of October, 2012.

(M.R. Sharma)
Additional Sessions Judge
Sonitpur : Tezpur

Dictated and corrected by me
And every page bears my
Signature.

(M.R. Sharma)
Additional Sessions Judge
Sonitpur : Tezpur

Transcribed and typed on dictation by me –

(I. Goswami)
Stenographer