

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

CRIMINAL REVISION NO. 26 (S-3)/2022

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

Md. Saidul Islam **Petitioner.**
- Versus -
Jubeda Khatun **Respondent.**

A P P E A R A N C E

For the Petitioner : Sri K. Kalita & N. Upadhyay, Advocates.

For the Respondent : None Appeared.

Date of Hearing : **16-12-2022.**

Date of Judgment : **16-12-2022.**

J U D G M E N T

1. This is an application u/s 397 of Cr.P.C. against the impugned order dated 12-07-2022 passed by learned JMFC, Sonitpur Tezpur in M.R. Case No. 39/2022 u/s 125 Cr.P.C.

2. In the petition, it is pleaded that the wife of the petitioner opposite party filed a case against him in the court of JMFC, Sonitpur, Tezpur u/s 125 Cr.P.C. seeking maintenance and upon receipt of summons the petitioner entered appearance in court through learned counsel and on 08-06-2022 sought time for filing written objection. Subsequently, on 12-07-2022 revision petitioner filed another adjournment assigning reason but the court rejected his prayer and without giving him opportunity to file written objection fixed the case for ex-parte evidence.

3. Being highly aggrieved and dissatisfied by the said order dated 12-07-2022 the revision petitioner preferred this petition on the ground that the learned trial court whimsically and illegally deprived the petitioner from filing the written objection without just and reasonable cause. As a result of the said order prejudiced has been caused to the revision petitioner as he did not get opportunity to present his case. Therefore, the impugned order is not sustainable in law and fact and liable to be set aside

4. Point for determination:

"Whether the impugned order dated 12-07-2022 passed by learned JMFC, Sonitpur, Tezpur in M.R. Case No. 39/2022 is incorrect, illegal and without jurisdiction making it liable to be revised or set aside ?"

Discussion, Decision and Reasons thereof.

5. I have heard the arduous contention of the learned lawyer appearing for revision petitioner and carefully scanned the impugned order dated 12-07-2022 passed by learned JMFC, Sonitpur, Tezpur in M.R. Case No. 39/2022 as well as the stand taken in the revision petition.

6. Having so examined and hearing the learned counsel appearing for the petitioner and on perusal of the order sheet of M.R. Case No. 39/2022, it transpires that the revision petitioner/ OP on receipt of notice appeared in the said court on 08-06-2022 and sought time for filing written statement. On subsequent date i.e. on 12-07-2022 the revision petitioner again sought time for filing written statement but learned trial court rejected the said prayer of filing written statement and passed the impugned order fixing the case for ex-parte evidence liberty to the revision petitioner to cross-examine the witnesses.

7. Now, on bare perusal of the impugned order dated 12-07-2022, it transpires that the learned trial court abruptly stopped the revision petitioner from his right of filing written objection and to present his side of the case in the said court. But, the learned trial court without considering this vital aspect that revision petitioner has a valuable right to present his case as per law within a period of three months from the date of receipt of notice passed the impugned order

depriving the revision petitioner from filing written statement. Though, in 125 Cr.P.C. proceeding there is no time frame prescribed for filing written objection but in proceeding u/s 125 Cr.P.C. the spirit of Civil Procedure Code has been followed.

8. In the instant case, from the date of appearance on 08-06-2022 till the date of impugned order dated 12-07-2022 petitioner has gets only 1 month 4 days time. As such, naturally revision petitioner ought to have been given an opportunity to file his written statement/ objection. The principles of natural justice and fair play demands that revision petitioner ought to have been given opportunity to file his written objection but it is seen that the learned trial court ignored this vital aspects of the case and revision petitioner has been unfairly deprived from exercising his valuable right of filing written statement. Unless, both parties present their case, court will not be able to appreciate the facts in right perspective and come to a reason order.

9. Therefore, this court found the impugned order dated 12-07-2022 as whimsical, unjust, illegal as the learned trial court failed to properly exercise jurisdiction vested in it and wrongfully deprived the revision petitioner from filing written statement/ objection which cannot be allowed to stand in law and fact. Accordingly, the impugned order dated 12-07-2022 is set aside as of having no effect in law with the direction to the trial court to provide opportunity to the revision petitioner to file his written objection/ statement and proceed with the case in accordance with the law.

10. In the result, the revision petition is allowed.

11. Let the case record of M.R. Case No. 39/2022 be send back to the court of learned Chief Judicial Magistrate along with a copy of this order for information and doing the needful.

12. Judgment is signed, sealed and delivered in the open court on this **16th day of December, 2022.**

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