

IN THE COURT OF THE SESSIONS JUDGE SONITPUR:: TEZPUR

CRIMINAL REVISION NO. 31 (S-3)/2022

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

Prince Kazi
..... **Petitioner.**

- Versus -

Smti Lipika Kalita
State of Assam
..... **Respondents.**

A P P E A R A N C E

For the Petitioners : Smti Rose Bharali, Advocate.

For the Respondent : Sri R. Goswami, Advocate.

Date of Hearing : **16-11-2022.**

Date of Judgment : **16-11-2022.**

J U D G M E N T

1. This is an application u/s 397/399 of Cr.P.C. against the impugned order dated 13-07-2022 passed by Smti. P. Saikia, learned JMFC, Sonitpur, Tezpur in M.R. Case No. 60/2021 u/s 125 Cr.P.C.

2. It is pleaded in the petition that respondent No. 1 wife Smti Lipika Kalita filed an application u/s 125 Cr.P.C. seeking maintenance which was registered as M.R. Case No. 60/2021 stating inter alia that she was married to revision petitioner three years ago from the date of filing the complaint petition according to Hindu

Rites and customs and lived together as husband and wife at Udalguri in a rented house. Then, on the month of June, 2021 the revision petitioner kept the respondent No. 1 in her parental house and went to Bihar but did not return. Then, the respondent No. 1 came to know that revision petitioner was transferred to Gossaigaon and she also came to know that revision petitioner married another woman i.e. Smti Manisha Devi and kept her in his residence at Bihar. When respondent No. 1 went to Gossaigaon, revision petitioner assaulted her and kept her mobile with himself. Thus, finding no other alternative, she filed the case against her husband.

3. On receipt of the summon, 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 petitioner/ respondent No. 1 filed a false and frivolous case with the intention of harassing the revision petitioner/ respondent. The respondent/ revision petitioner also denied the fact of his marriage with the petitioner/ respondent No. 1 and he also denied the fact that he was not willing to consummate the marital relationship with the petitioner/ respondent No. 1 as it is the petitioner/ respondent No.1 who on some pretext or other refused to consummate the marriage with the respondent/ revision petitioner. It is also submitted by the respondent/ revision petitioner that aggrieved person married to one Niranjan Bhadra of Nalbari and had a son of 10 years. Respondent/ revision petitioner also admitted that he is a salaried person. He also submitted that aggrieved person forced him to marry her and when he refused to do so, she demanded ₹3 Lakhs from him. When the revision petitioner refused to give the money she compelled him to enter her name in his service book and falsely lodged an ejahar u/s 498(A)/464 IPC.

4. After the pleadings, the respondent wife adduced her assets & liabilities on affidavit. During the proceeding of the case, the aggrieved person vide petition No. 652/2022 dated 02-05-2022 prayed for granting monthly interim maintenance amounting to ₹15,000/- (Rupees Fifteen Thousand) only per month till the disposal of the case and on 13-07-2022 the learned Magistrate passed an order dated 13-07-2022 granting monthly interim maintenance of ₹5,000/- in favour of the aggrieved person from the date of passing the order.

5. Being highly aggrieved and dissatisfied by the said order dated 13-07-2022 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 aggrieved person Smti Lipika Kalita is not the wife of the present petitioner Prince Kazi as to come under the purview of Section 125 Cr.P.C. and even the present petitioner Prince Kazi and respondent No. 1 Lipika Kalita never cohabit together.

iii) That the present petitioner Prince Kazi and the respondent No. 1 Lipika Kalita came to know each other through Facebook, a social network site and hardly both of them meet each other 4/5 times for a very short period of time. The respondent No. 1 Lipika Kalita is a married woman and she has a 10 year minor child as stated above and when she was not satisfied with her husband Niranjan Talukdar the respondent No. 1 put tremendous pressure upon the present petitioner to marry her and when the present revision petitioner refused to solemnized his marriage with the respondent No. 1, out of grudge and with an intent to harass the revision petitioner she filed the case u/s 125 Cr.P.C. as well as lodged complaint by preparing some concocted documents and photographs before the concerning official authority SSB where the revision petitioner is serving. But, the learned trial court without considering all these facts and circumstances available on the records passed the impugned order dated 13-07-2022.

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

v) That the impugned order dated 13-07-2022 has been passed without giving any opportunity to the revision petitioner to place his defence before the learned trial court and also did not consider the written statement/ affidavit on assets & liabilities filed by revision petitioner.

vi) That the impugned orders suffers from impropriety or error calling for interference by this court as the impugned order has been passed by the learned trial court without applying judicial mind and without considering the facts of the case which is bad and illegal in the eyes of law. As such, the impugned order of interim maintenance is liable to be set aside.

6. Point for determination:

Whether the impugned order dated 13-07-2022 passed by learned JMFC, Sonitpur, Tezpur in M.R. Case No. 60/2021 is incorrect, illegal, improper and without jurisdiction making it liable to be revised or set aside?

DISCUSSION, DECISION AND REASONS THEREOF.

7. 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 13-07-2022.

8. The primary ground taken by the revision petitioner is that he never married the respondent as per Hindu Rites and Customs and did not live with her as husband and wife. There was no marital relationship of the revision petitioner with the respondent. The fact is that the respondent is married with one Niranjana Bhadra from whom she had a son of 10 years old. The respondent filed a false case against the accused u/s 125 Cr.P.C. before Magistrate under some false premises and concocted grounds. The respondent is not entitled to claim maintenance from the revision petitioner not being the wife in the eye of the law. Therefore, granting of interim maintenance of ₹5,000/- to respondent/ wife by the learned trial court ex-facie unjust and without the sanction of law therefore cannot be allowed to stand. As such, it is submitted by the learned counsel appearing for the revision petitioner that the impugned order dated 13-07-2022 passed by learned Magistrate in M.R. Case No. 60/2021 be dismissed.

9. Contrary to the argument advanced by the learned counsel for revision petitioner, counsel appearing for the respondent/ wife assiduously contended that respondent married with the revision petitioner about 3 years back as per

Hindu Rites and Customs at Kamaykha Temple, Guwahati and lived together with the revision petitioner at Udalguri in a rented premises as husband and wife for six months and thereafter, revision petitioner left to his residence at Bihar leaving the respondent in the house of her parents. In the meantime, revision petitioner married another girl namely Manisha Devi and kept her at his residence at Bihar and then stayed with her at Gossaigaon. When the respondent questioned the revision petitioner about his conduct, he assaulted her causing injuries which led to filing of criminal case at Gossaigaon PS u/s 498(A)/494 IPC. Counsel for respondent submits that revision petitioner lived with respondent for several years at different places as husband and wife and to this effect, there is overwhelming evidence which has been produced by him in court on the basis of which learned court passed the impugned order granting interim maintenance in favour of the respondent wife.

10. Having heard the rival contention of the learned counsels appearing for both sides and on careful perusal of the documents available on record, it transpires that there is a prima facie fact of accused marrying the respondent in Kamaykha Temple staying with her as husband and wife at different places like Udalguri and other places. Now, revision petitioner left her in wilderness and married another woman and marry making with her giving a complete go by to the needs of the respondent by merely denying the fact that she is not his legally married wife. As rightly observed by the learned trial court the respondent only took the plea that the respondent is not his legally wedded wife but he nowhere denied that he was not in live-in relationship with the respondent for a long span of time.

11. Now, it is the settled position of law that if there is evidence of woman living with a man for longer period and people see and recognizes them as living together for long like husband and wife even if they do not perform any marriage ceremony either social or by performing rituals at the temple, it acquired the marital status between the male and female and Hon'ble Apex Court also recognize such relationship as marriage between a man and woman.

12. In the present case, irrespective of denial of the revision petitioner that he never married the revision petitioner but the fact remains that there is pleadings from the side of the respondent to show that revision petitioner married her and

lived together as husband and wife at different places even the name of the respondent has been entered in the service book of the revision petitioner. So, in such a situation, there is a prima facie presumption that revision petitioner stayed with the respondent as husband and wife. Learned counsel also contends that there were enough documentary evidence to that effect including number of photographs taken by revision petitioner with respondent as husband and wife. Though, photographs are not to be considered as evidence at this stage unless proved by the respondent in accordance with law. Nevertheless, prima facie it shows the relationship of the revision petitioner with the respondent and the learned trial court after assessing all the attending factors and also considering the basic necessity of the respondent to survive during pendency of the maintenance petition granting interim maintenance of ₹5,000/- per month in her favour which in the considered estimation of this court cannot be said to be whimsical, illegal or for that matter without sanction of law.

13. In this regard, this court may gainfully refer to a judgment of Division Bench of Hon'ble Apex Court passed in CRIMINAL APPEAL NO. 2009 OF 2013 (Indra Sarma ... Appellant Versus V.K.V. Sarma ... Respondent) wherein the Hon'ble Apex Court laid down the broad guidelines for testing under what circumstances a live-in relationship will fall within the expression "relationship in the nature of marriage":

55. We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression "relationship in the nature of marriage" under [Section 2\(f\)](#) of the DV Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships.

1) Duration of period of relationship [Section 2\(f\)](#) of the DV Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

(2) Shared household The expression has been defined under [Section 2\(s\)](#) of the DV Act and, hence, need no further elaboration.

(3) Pooling of Resources and Financial Arrangements Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business,

shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

(4) Domestic Arrangements Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

(5) Sexual Relationship Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc. (6) Children Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

(7) Socialization in Public Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

(8) Intention and conduct of the parties Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

14. In the present case, as pleaded by the respondent the fact of respondent living together with the revision petitioner as husband and wife at different places is prima facie apparent on record and the relationship developed by revision petitioner with the respondent in the span of 6 (six) months together shows that revision petitioner has a relationship in the form of husband and wife. Moreover, the plea of the revision petitioner that respondent was earlier married with another person bears no significance in view of the fact that she had already obtained decree of divorce from her earlier husband and there is no legal impediment of her marrying with revision petitioner within the meaning of Section 125 Clause (b) of Cr.P.C. There is no plea of revision petitioner in his written statement that the respondent remarried with some other.

15. Even without going through elaborate discussion of the rulings of the superior court on the subject, prima facie, this court is convinced that there is no infirmity in the order of the learned Magistrate in granting interim maintenance in favour of the respondent.

16. In the face of the claims of the revision petitioner and also taking into consideration the impugned 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 interim maintenance of ₹5,000/- (Rupees Five Thousand) only per month granted by learned trial court cannot be said to be unjust, illegal or said to be in the higher side as contended by the learned counsel appearing for the revision petitioner. The interim 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 interim maintenance, in the considered estimation of this court is appears to be just and reasonable because the wife cannot be pushed to vagrancy by refusing to grant a minimum maintenance sufficient for her sustenance or to live her in wilderness so as to die without food and shelter. It appears that husband can well spare a share of his income towards maintenance of his wife being a Government Servant (SSB Constable) drawing regular salary of ₹45,000/- (Rupees Forty Five Thousand) only per month.

17. Since the trial of the case is going on and both parties will get adequate opportunity to prove their stands during the course of the proceeding and in the meantime, the interim maintenance awarded by the learned trial court is found to be justified requiring no interference by this court in revision. The allegation of revision petitioner that respondent is not his wife can be proved by him in the course of trial before the learned trial court but the ground circumstances prima facie made out the fact that respondent appears to be his wife.

18. 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 interim maintenance in terms of order of the learned Magistrate dated 13-07-2022 passed in M.R. Case No. 60/2021.

19. Consequently, revision petition stands dismissed.

20. Let a copy of the Judgment along with the case record of M.R. Case No. 60/2021 be sent back to the court of Chief Judicial Magistrate, Sonitpur, Tezpur for information and doing the needful.

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

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

Dictated and corrected by me.

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