

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE
SONITPUR :: TEZPUR.**

Criminal Revision No. 40(S-3) 2011.

Sri Dipankar Debnath Revision Petitioner

- Versus -

Smti Nandita Debnath Opposite Party
(OP).

**Present : Mrs. M. Nandi,AJS,
Addl. Sessions Judge,
Sonitpur, Tezpur.**

Appearance :

For the Revision Petitioner : Sri B.Kr. Basumatary,
Advocate.

For the Opp. Party. : Sri Ajoy Paul, Advocate.

Date of argument : 30-01-2012.

Date of judgment : 08-02-2012.

J U D G M E N T.

1. This revision is preferred against the order of learned Judicial Magistrate, Ist class, Tezpur dated 01-06-2011 by its considered order granted maintenance of Rs. 1000/- per month to the wife and Rs. 1500/- each to two children (i.e. Rs. 4000/- per month) and it is against that decision, the husband has come up in revision.

2. Being highly aggrieved and dissatisfied with the order dated 01-06-2011 of learned Judicial Magistrate,Ist class, Tezpur, the petitioner prefers this petition on the following grounds :

i) for that the learned Judicial Magistrate, Ist class, Tezpur erred in law and committed grave mistake in passing the said order of maintenance;

ii) for that the learned Judicial Magistrate has not applied judicial mind and passed the order on assumption;

iii) for that the order passed by the learned Judicial Magistrate is one sided and he has not discussed broadly the evidence adduced by the petitioner and has not considered the points which are very vital in determination of the case.

iv) for that the learned Judicial Magistrate has not looked upon the income of the petitioner simply on assumption and assuming Higher income group the said illegal order has been passed against the petitioner though he is dependent on the shop of his father wherein he is assisting his father in the Tailoring shop and in return he does not receive any salary from his father;

v) for that the learned Judicial Magistrate has passed the order purely on suspicion and assuming that being a hindu and only son of his father, the petitioner is the share holder of the business and enjoying the profits from the business are not in the record nor can be considered.

vi) for that the learned Judicial Magistrate failed to bring the business break down of the father of the petitioner and thereafter compelled to sell the ground floor of the RCC building . However, the Tailoring shop is the only earning source of his father by which he has to run his family, Therefore, assuming of earning of Rs. 6000/- to Rs. 7000/- by the petitioner only because of the shop is situated in a commercial place is imprudent and improper and basing upon said assumption and passing the order against the petitioner is against the natural justice and illegal;

vi) for that the order of maintenance for Rs. 4000/- is too exorbitant because nothing has been looked and considered by the learned Judicial Magistrate,Ist class in passing the impugned order ;

vii) for that the respondent voluntarily left the house of the petitioner along with two children after obtaining of loan of Rs. 1,50,000/- and living in a rented house and leading a free and independent and luxury life, perhaps the respondent is quite capable of maintaining herself.

3. I have perused the revision petition, judgment and order of the learned Judicial Magistrate,Ist class, Tezpur as well as the lower court record.

4. Now, this Court being the Revisional Court is to see whether the learned Magistrate committed any

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irregularity or illegality in passing the impugned order dt. 01-06-2011.

5. On perusal of the order it reveals that the ground for living separately does not loom large in this case for the reason that every petition is filed for enhancement in the form of maintenance case. It is also seen that the husband himself has made an application for divorce against the wife and that is pending for consideration. So the husband never wants the wife to be with him.

6. So far as the quantum is concerned, it appears that the revision petitioner is not a salaried person. His father has a business under the name and style of "Prince Garments". Though it is stated that the said "Prince Garments" shop is now closed but the petitioner has failed to prove the fact of winding up of business of his father. It is further stated by the petitioner that his father is now running a tailoring shop "Prince tailor" and he is now working in the said tailoring shop. Though the respondent stated in her petition as well as her deposition that petitioner earned Rs. 15,000/- per month but no any document is produced relating to income of the petitioner. It appears from the evidence on record that the father-in-law of the respondent is the owner of the "Prince Garments". He is the licence holder of the shop. Apparently, it is clear that the petitioner has no any independent business or source of income. He is totally dependent on his father. May be his father has handsome earning in a month.

7. It appears that the petitioner is regularly paying 50% of the monthly maintenance allowance to the respondent as directed. It also reveals from the evidence of

the respondent that her father-in-law paid Rs. 4000/- for tuition fees for her children. It is also noticed that the respondent admitted the fact that she took the entire loan amount of Rs. 1,50,000/- which was earlier applied in her name for the expansion of business of her father-in-law's "Prince Garments". Mother of the respondent was the guarantor. The respondent also admitted that he used the said money for the welfare of her children but it can not be ascertained from the evidence of the witnesses who pays the loan amount to the bank. Though the maintenance allowance was awarded in favour of the respondent and directed the petitioner to pay the same in a month but in fact the father-in-law of the respondent usually paid the maintenance allowance to the respondent as reported by the learned counsel for the petitioner. But it has to be remembered that U/s. 125 Cr.P.C the law mandates maintenance has to be given to the wife and child and at the same time also cautions the Court the capacity of the husband also has to be taken into consideration. Merely awarding unreasonable amount beyond the capacity of the husband would result only in sending the person to Jail which is not the contemplation that is made U/s. 125 Cr.P. C. But at the same time, the wife and child also has to be looked after and therefore, I feel in the fitness of things there can be a little modification by reducing the quantum of maintenance in favour of the wife from Rs. 1000/- to Rs. 900/- and that of the son and daughter from Rs. 1500/- to Rs. 800/- each total Rs. 2500/-.

8. In the result, the revision petition is disposed of by modifying the order of maintenance in favour of the wife from Rs. 1000/- to Rs. 900/- and that of the son and daughter from Rs. 1500/- to Rs. 800/- each total Rs. 2500/-.

9. Given under my hand and seal of this Court on this 8th day of February, 2012.

(M. Nandi)
Addl. Sessions Judge ,
Sonitpur ,Tezpur.

Dictated and
corrected by me.

(M. Nandi)
Addl. Sessions Judge ,
Sonitpur ,Tezpur.

Typed by me.

(R. Hazarika)
Steno.