
(2019) 06 GAU CK 0057

In the Gauhati High Court

Case No : Criminal Revision Petition No. 11 Of 2016

Abdul Halem Choudhury

APPELLANT

Vs

Musstt. Habiba Begum Choudhury

RESPONDENT

Date of Decision : 21-06-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125

Citation : (2019) 06 GAU CK 0057

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : M.H. Rajbarbhuiyan, P. Hatigayari, R. Chetri, A.M. Barbhuiya

Final Decision : Disposed Off

Judgement

1. Heard Mr. M.H. Rajbarbhuiyan, learned counsel appearing for and on behalf of the petitioner as well as Mr. A.M. Barbhuiya, learned counsel for the respondent.
2. The petitioner herein has been directed by the learned Court of Principal Judge, Family Court, Cachar at Silchar, in a proceeding u/s.125 CrPC, in F.C. (Crl.) Case No.60/2013, to pay maintenance of Rs.8,000/- per month i.e. Rs.5,000/- to the respondent wife and Rs.3,000/- to the minor daughter of the respondent from the date of order i.e. 06.10.2015.
3. Assailing the aforesaid order, the present revision petition has been preferred on the ground that the amount of maintenance is on higher side and the respondent wife left his company without any just reason.
4. I have heard the submission of learned counsel for both the parties and perused the documents annexed including the impugned judgment and order.
5. Necessary brief of the case is that both the parties entered into the marriage in the year 2001 and thereafter two children were born out of the wedlock between the parties but the allegation of the respondent wife is that she was subjected to physical and mental torture by her husband demanding dowry

article and although she tolerated such torture to maintain the marital relation but in the meantime the husband/petitioner brought another woman against her will and resided as husband and wife and increased his torture upon her on one pretext or another. Ultimately on 07.01.2013, the petitioner and his second wife ousted her from their house by keeping her son, for which she is now residing with her parents with great constraints and prayed for maintenance from her husband, who is stated to be a rich man having landed property and shop etc.

6. The petitioner contested the case by filing written statement denying the allegations and submitted that it was the respondent/wife who has no intention to continue the marital life and remain absent minded in the house and ultimately she was taken by her parents to their house and there was no neglect on his part. Regarding the income he has stated that he has a pan-shop and also deals with bamboo and earns only rupees three to four thousands per month.

7. The learned trial Court, after examining the evidence from both sides, come to a finding that in fact the petitioner herein used to torture his wife on different pretext by demanding dowry etc. and he also maintained illicit relating with his cousin sister and thereafter the said girl was also brought to his home and resided as husband and wife.

8. The learned trial Court was of view that it is a good ground on the part respondent wife to live separately and to pray for maintenance, in view of the second marriage conducted by the petitioner husband. Having regard to the capacity to earn on the part of the petitioner, the learned trial Court has directed to pay the maintenance @ Rs.5,000/- per month to the respondent wife and @ Rs.3,000/- per month to the minor daughter, who is residing with the respondent.

9. Now without assailing the other findings of the learned trial Court, the learned counsel for the petitioner has merely submitted that the income of the present petitioner is not sufficient to provide maintenance, as directed by the trial Court which should be reduced to an appropriate amount.

10. On the other hand, the learned counsel for the respondent has submitted that the petitioner is a rich man having landed properties, inherited from his father apart from having a shop and other business. It is submitted that the pretext of the petitioner of having no such income is totally false and fabricated in order to avoid payment of maintenance.

11. As the whole objection pertains to the income of the petitioner, let us discuss the issue raised before this Court.

12. Obviously the matter of income of a person is difficult to assess while he did not disclose the source of income in proper manner. The same is more difficult on the part of the wife to prove the actual income of her husband while the person is not a salaried one. The petitioner herein is a businessman having a pan-shop and deals with the bamboo as stated by him. So it can be safely inferred that he might have sufficient income to maintain his wife and children and one cannot

refuse to maintain his legally married wife and children on the pretext of such petty ground.

13. It is to be noted that the respondent is also having a minor daughter, may be school going one who require certain amount of expenses for fooding, lodging and education purpose etc. That being so, the amount granted by the learned trial Court is not appears to be in a higher side. But however the facts remained that the exact income of the petitioner is not brought on record, which is a difficult task on the part of the wife to prove the same.

14. I have also gone through the pleadings between the parties in respect of income and found that no definite proof is there regarding the income of the petitioner. Considering the entirety of the matter, while maintaining the impugned order of maintenance, the amount of maintenance is however reduced to Rs.7,000/-, to be paid by the petitioner to the respondent wife and her daughter.

15. The petitioner will deposit the maintenance before the learned trial Court along with the arrear maintenance and in case of any hardship regarding the payment of arrear maintenance, the petitioner will make appropriate prayer before the learned trial Court and the learned trial Court will consider and dispose of the same.

16. The petition stands disposed of accordingly.

17. Return back the LCR along with a copy of judgment.