

(2023) 04 GAU CK 0046

In the Gauhati High Court

Case No : Criminal Revision Petition No. 17 Of 2023

Robijul Alom Laskar

APPELLANT

Vs

Arifa Ferdousi Laskar

RESPONDENT

Date of Decision : 28-04-2023

Acts Referred:

Protection of Women from Domestic Violence Act, 2005 — Section 25(2)
Code Of Criminal Procedure, 1973 — Section 397, 401, 482

Citation : (2023) 04 GAU CK 0046

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : A M Barbhuiya, F A Laskar

Final Decision : Dismissed

Judgement

1. Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner. Also heard Mr. F.A. Laskar, learned counsel for the respondent.

2. This petition, under Sections 397/401, read with Section 482 of the Cr.P.C. has been filed by the petitioner, namely, Robijul Alom Laskar, challenging the legality, propriety and correctness of the judgment and order, dated 10.11.2022, passed by the learned Sessions Judge, Hailakandi in Criminal Appeal No.08/2022. It is to be noted here that vide the impugned judgment and order dated 10.11.2022, the learned Sessions Judge, Hailakandi dismissed the appeal preferred by the petitioner, and upheld the judgment and order, dated 25.11.2021, passed by the learned Chief Judicial Magistrate, Hailakandi in Misc. Case No. 13/2018, in M.R. (D/V) Case No.69/2011. It is also to be mentioned here that vide the impugned judgment and order dated 25.11.2021, the learned Chief Judicial Magistrate, Hailakandi directed the petitioner to pay enhanced maintenance, under section 25(2) of the Protection of Women from Domestic Violence Act, 2005 (here-in-after referred to as 'the D.V. Act') to the respondent and her daughter @ Rs.9,000/, per month.

3. The factual background, leading to filing of the present petition, is briefly stated as under:-

"The petitioner, Robijul Alom Laskar got married the respondent, Musstt. Arifa Ferdousi Laskar, on 06.03.2006, and lived together as husband and wife till 21.05.2010, in his house. They were blessed with a girl child also. After one year of the marriage, marital discord surfaced between them and the respondent, since 21.05.2010, started living in her parental abode. Thereafter, the respondent had filed a case, being MR (D/V) Case No.69/2011, under the D.V. Act, before the Court of learned Chief Judicial Magistrate, Hailakandi against the petitioner claiming certain relief(s) under the said Act. In the aforesaid case, the learned Trial Court, after hearing bothsides, vide the judgment and order, dated 08.03.2013, directed the petitioner to pay maintenance @ Rs.1,500/- per month and to their minor daughter @ Rs.1,000/- per month, Rs.1,000/- per month towards the house rent and Rs.60,000/- as Mohorana amount to the respondent, besides Rs.5,000/- as compensation. The petitioner was further directed to return the educational certificate of the respondent to her".

4. Being aggrieved by the order of the learned Chief Judicial Magistrate, Hailakandi, the petitioner had filed the Criminal Appeal No.21/2013, against the impugned judgment and order dated 08.03.2013. However, the learned Sessions Judge, Hailakadi had partly allowed the appeal by setting aside the order of payment of Moharana to the respondent by the petitioner. However, so far as the payment of monthly maintenance, house rent and compensation, as directed by the learned Trial court to the respondent by the petitioner, was upheld.

5. Thereafter, the respondent had filed one Misc. Case being Misc. Case No.13/2018, in connection with the earlier MR(D/V) case No.69/2011, under Section 25(2) of the D.V. Act, for enhancement of her maintenance from Rs.1,500/- to Rs.15,000/- and maintenance to her daughter from Rs.1,000/- to Rs.10,000/-, on the ground of alleged price hike of essential commodities as well as expenditure of education of her. Thereafter, hearing both the parties, the learned Chief Judicial Magistrate, Hailakandi, vide judgment and order dated 25.11.2021, has enhanced the earlier monthly maintenance from Rs.2,500/- to Rs.9,000/-, to be paid to the respondent and her daughter without, however, specifying their share.

6. Being highly aggrieved with the aforesaid order, dated 25.11.2021, the petitioner had preferred the Criminal Appeal No.08/2022, before the court of learned Session Judge, Hailakandi. However, the same was dismissed vide the judgment and order dated 10.11.2022.

7. Left with no other alternative, the petitioner has approached this Court, by filing the present Revision Petition challenging the impugned judgment and order dated 10.11.2022, passed by the learned Sessions Judge, Hailakandi on the grounds, inter alia, that:-

(i) The impugned judgment and order dated 10.11.2022, passed by the learned

Sessions Judge, Hailakandi in Criminal Appeal No.08/2022 is illegal, perverse and not sustainable in law and the same is liable to be set aside and quashed in the interest of justice.

(ii) The court below has failed to appreciate the relevant facts and evidence of the case and disproportionately enhanced the monthly maintenance from Rs.2,500/- to Rs.9,000/-, without valid ground.

(iii) The court below has failed to take into account his net monthly salary, which is of Rs.27,000/-, and also failed to take into account his burden of maintaining his family consisting of his second wife with two daughters, his six sisters and old mother and also his liability of payment of monthly installment of his housing loan @ Rs.15,000/-per month.

(iv) The learned trial court ignored the documents i.e. salary certificate and bank statement, exhibited as Exhibits- 'A' and 'B', while enhancing the amount of monthly maintenance towards the respondent and her daughter. Moreover, it was proved that the respondent with her daughter is staying at her parental home.

8. Mr. A.M. Barbhuiya, learned counsel for the petitioner submits that the petitioner has been working as an Assistant Teacher at Nityanandapur High School at Hailakandi District and his gross salary is Rs.54,329/- and after deduction, he used to draw a sum of Rs.34,921/- as net salary. Mr. Barbhuiya further submits that the petitioner has the burden of looking after his parents, brothers, sisters and second wife and also two children, and he has also the burden of paying housing loan installment @ Rs. 15,000/-per month, and without considering these aspects, the learned court below has enhanced the monthly allowance of the respondent from Rs.2500/- to Rs.9000/- per month and the petitioner is not in a position to provide maintenance to the respondent and her daughter at the aforementioned rate and the respondent may, in future, again approach the learned court below for further enhancement and therefore, Mr. Barbhuiya submits that the impugned order suffers from manifest illegality and infirmity requiring interference of this Court and therefore, it is contended to allow this petition.

9. On the other hand, Mr. F.A. Laskar, learned counsel for the respondent submits that the respondent is living in a rented house and her daughter is studying in Class-VI and now a days, when the price of all essential commodities are sky rocketing, it is very difficult to manage even two square meal a day not to speak of leading a decent life, with an amount of Rs.2,500/- per month and as such, the impugned order dated 25.11.2021, passed by the learned Courts below suffers from no illegality or infirmity, requiring any interference of this Court, and therefore, it is contended to dismiss the petition.

10. Having heard the submissions advanced by the learned Advocates of both the sides, I have carefully gone through the petition and the documents placed on record and also perused the latest salary certificate of the petitioner which is produced before this Court by Mr. A.M. Barbhuiya, learned counsel for the

petitioner, as per direction of this Court, dated 21.04.2023. Also I have gone through the impugned judgments and orders passed by the learned courts below.

11. It appears from the record of the learned courts below that the judgment and order of granting maintenance to the respondent was passed on 08.03.2013, @ Rs.1000/- per month to her daughter and @ Rs.1,500/- per month to the respondent. At the relevant point of time, the daughter of the respondent was studying in Nursery. The respondent filed the petition under section 25(2) of the D.V. Act, on 14th day of August, 2018. In the meantime five years have elapsed and now her daughter is studying in Class VI, in a private School and at the time of granting maintenance on 08.03.2013, she was studying in Nursery.

12. Now, it is also an admitted position that since the date of granting maintenance i.e. 08.03.2013, the price of all essential commodities has increased in manifold. The daughter of the respondent is also growing and studying in a private school in class VI. Indisputably, the respondent is residing in a rented house. It is quite impossible to manage all the expenses with a sum of Rs.2,500/-, even, it is insufficient to manage two square meal a day, not to speak of leading a decent life. It is not in dispute that these are change of circumstances in favour of the respondent. And section 25(2) of the D.V. Act, authorizes the Magistrate to pass such order, as he may deem appropriate, if he is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, on receipt of an application from the aggrieved person or the respondent. However, he has to record the reasons in writing for the same.

13. It also appears from the latest salary certificate of the petitioner, which is produced before the court by Mr. A.M. Barbhuiya, learned counsel for the petitioner, as per direction of this court, that the petitioner has been working as an Assistant Teacher of Nityanandapur High School and his gross salary is Rs.54,329/- and after deduction, his take home salary is Rs.34,921/-. It also appears from the submission of Mr. Barbhuiya, learned counsel for the petitioner that the petitioner has the burden of looking after his parents, brothers, sisters and second wife and also his two children and he also has the burden to pay installment of housing loan @ Rs. 15,000/- per month.

14. There is no doubt that it is the duty of the court to maintain a balance between the income of the petitioner, his liabilities, with that of the requirement of the respondent and her daughter. At the same time, it also should not lose sight of the fact that being the wife of a school teacher; the respondent is entitled to live in the same standard in which she resided in her matrimonial home with that of the petitioner.

15. The learned Sessions Judge, while dismissing the appeal, had taken into account all these aspects and held that it is the general proposition of law that a husband should provide the maintenance to his wife and children for their livelihood up to that standard as he lead his life, and thereafter, refused to

interfere with the order of the learned Chief Judicial Magistrate, and arrived at the conclusion that Rs.9,000/- per month is a reasonable and just amount of maintenance.

16. Having considered all the facts and circumstances in the light of the submissions advanced by learned Advocates of both sides, specially, the latest salary slip, produced before the learned Court below, this Court is unable to record concurrence with the submission of Mr. A.M. Barbhuiya, learned counsel for the petitioner, that the impugned judgment and order passed by the learned Sessions Judge, Hailakandi suffers from any infirmity or illegality, requiring any interference of this Court. The learned Chief Judicial Magistrate also, while fixing the quantum of maintenance, had taken into account the financial condition of the parties and the factum of the salary of Govt. servant being increased from time to time and also the growing age of the daughter of the respondent and corresponding increase of expenditure, had fixed the quantum at Rs.9,000/ per month. The amount, so awarded by the learned Court below, cannot be said to be exorbitant amount, in view of the facts and circumstance available on the record. It is worth mentioning in this context that while exercising the revisional jurisdiction, the High Court cannot substitute its own view for that of the trial court if two views are possible. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of *Helper Girdharbhai vs. Saiyed Mohmad Mirsaheb Kadri and Ors.*, reported in AIR 1987 SC 1782.

17. In the result, I find no merit in this revision petition and accordingly, the same is dismissed. The petitioner is directed to clear the arrear amount of maintenance within a period of 3(three) months from today, failing which, the learned court below shall take necessary step to recover the same from the salary of the petitioner in accordance with law.

18. Send down the record of learned court below forthwith. The parties have to bear their own cost.