

Criminal Revision No.5/2017

Mosstt Kanchan Mala Bibi Petitioner
Vs
Md Habibar Rahman Opposite party

Present: Smti M.Thakuria,
Sessions Judge,
Kokrajhar

Ld. advocate for the Petitioner : Mr A.K.Miah

Ld. advocate for the Opp.Party : Mr P. Dutta

Argument heard on : 11.01.2018

Judgment delivered on: 25.01.2018

J U D G M E N T

1. This is an application under section 397 Cr.P.C. filed by the petitioner against the impugned judgment and order dated 11.01.17 passed by the learned Sub-Divisional Judicial Magistrate (M), Gossaigaon in connection with Misc case No.36m/2015 whereby the learned court below granted the monthly maintenance of Rs.3500/- per month towards the maintenance of the petitioner and her minor daughter from the date of the order.

2. The brief fact leading to this revision petition is that the petitioner-Ist party filed a petition under section 125 Cr.P.C. praying the maintenance allowance from the O.P.-2nd party stating that she got married with the O.P.-2nd party on 17.6.2013 executing the Kabin Nama and started living as husband and wife. On 27.8.2014 a female child was born namely Almina Khatun, aged about 02 years 8 months out of their wedlock. But during

their conjugal life the O.P.-2nd party used to torture mentally and physically along with his first wife and finally she was driven out from his house on 23.7.15. Finding no other alternative the petitioner took shelter in her parent's house, the O.P.-2nd party never inquired about her nor her daughter and never provided any maintenance for which she was compelled to file the petition seeking the maintenance.

3. The O.P.-2nd party accordingly appeared on receipt of the notice and contested the case by filing written objection and denied all the allegations made against him. He took plea that his conjugal life with the petitioner was never peaceful due to aggressive mentality and he further alleged that she also tried to kill the O.P.-2nd party on several occasions by administering poison and accordingly he prayed for dismissal of the petition.

4. Both the parties also adduced their evidences in support of their case. The learned court below after hearing argument from both sides and perusing the case record passed the judgment and order dated 11.01.17 granting maintenance allowance to the tune of Rs,3500/- per month from the date of the order.

5. On being aggrieved and dissatisfied with the impugned judgment and order passed by the learned court below the petitioner-Ist party preferred this revision petition on the following grounds amongst the others :-

GROUND S

(i) That the learned court below has passed the judgment and order of the maintenance awarding low amount of money which is most arbitrary and without considering the facts of the case.

(ii) The learned SDJM(M), Gossaigaon has passed the order without applying the judicial mind at the time of preparing the judgment.

(iii) That the learned SDJM(M), Gossaigaon did not consider the status as well as standard of living of the petitioner-Ist party and without considering the income of the O.P.-2nd party passed the judgment and order.

(iv) That the learned SDJM(M), Gossaigaon awarded the monthly maintenance at the rate of Rs.3500/- per month towards the maintenance for the petitioner-Ist party and her minor daughter without any basis and justification.

6. In view of the above facts and the circumstances, the petitioner-Ist party prayed to set aside the impugned judgment and order passed by the learned court below. So only the point to be determined in this case is whether-“the impugned judgment and order passed by the learned court below suffers from any legality, correctness and propriety” ?

7. To arrive at a just decision I thoroughly perused the case record and also heard argument put forwarded by the learned counsels appearing for both sides.

8. The learned counsel appearing for the O.P.-2nd party mainly stress on the point that the petitioner willfully and voluntarily withdrawn herself from the society of the O.P.-2nd party and she left the police quarter of the O.P.-2nd party by herself leaving her minor daughter. It is also stated in the written objection filed by the O.P.-2nd party that he has incurred huge amount of money for treatment and medicine of his Ist wife and also has burden of 16 other family members in his house. Thus he is not in a position to provide the maintenance in the enhance rate to the petitioner-Ist party. In support of his plea the O.P.-2nd party filed the photostat copy of the medical documents to prove illness of his Ist wife. He also took plea that the minor daughter of the petitioner-Ist party is under care and custody of the O.P.-2nd party and the maintenance awarded to the petitioner - first party is sufficient to fulfill her

minimum need. He further submitted that the learned court below passed by the impugned judgment and order considering the evidence on record and after proper assessment of the income and burden of the O.P.-2nd party and hence interference of this court is not necessary.

9. On perusal of the evidences of both the parties and hearing argument from both sides it appears that the petitioner-Ist party is living separately in her parent's house and the O.P.- 2nd party did not provide her maintenance since she left the house. But the petitioner side did not give any stress on the point as to whether her daughter is staying with her or with the O.P.-2nd party even after specific plea taken by the O.P.-2nd party in his written objection. Further it also cannot be denied that the O.P.-2nd party has the burden of all other family members including his Ist wife who is suffering from various ailments. But, at the same time it has also to be considered the income of the O.P.-2nd party and he himself admitted that he is drawing monthly salary of Rs.27,000/- per month and he is a Govt. employee. Thus, it is seen that the O.P.-2nd party is able bodied person and also permanent source of the income and it is duty of the husband to maintain the same status of his wife when she was staying with her husband and being the wife of a Govt. employee she has to maintain minimum standard of living as per the status of her husband.

10. So considering the details above and other aspects of the matter including price hike of all essential commodities, status and the income of the O.P.-2nd party I hereby altered the awarded amount granted to the petitioner-Ist party and I find that Rs.5000/- per month would be reasonable and justified amount towards the maintenance of the petitioner-Ist party.

ORDER

11. In the result the revision petition is allowed on contest. The impugned judgment and order passed by the learned court below is slightly modified in respect of the order of the maintenance allowance. Accordingly, the O.P.-2nd party will pay Rs.5000/- per month towards the maintenance allowance from the date of the impugned judgment and order dated 11.01.2017 passed by the learned SDJM(M), Gossaigaon in Misc case No.36m/2015.

12. Send back the LCR along with the copy of the judgment and order.

13. I dispose of the revision petition in the terms of the above judgment and order.

Given under my hand and seal of this Court on this 25th day of January/2018.

Dictated & corrected by me

Sessions Judge,
Kokrajhar

Sessions Judge,
Kokrajhar