

GAHC010234492017



2024:GAU-AS:10679

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./114/2017

RUNUMI PHUKAN
W/O. SRI DILIP CHANDRA PHUKAN, R/O. LACHIT NAGAR, P.O. and P.S.
TITABAR, DIST. JORHAT, PIN-785603, ASSAM

VERSUS

THE STATE OF ASSAM and ANR.

2:DILIP CHANDRA PHUKAN
S/O. LT. HEM CHANDRA PHUKAN
R/O. CHOLADHARA
R/O. CHOLADHARA
P.O. and P.S. JORHAT
DIST. JORHAT
PIN-785001
ASSAM
PRESENTLY WORKING AT OFFICE OF THE A and AA BASIN ONGC
CHINAMORA
JORHAT
NAMBOR-3
P.O. CHINAMORA
DIST. JORHAT
PIN-785008
ASSAM

Advocate for the Petitioner : MS.J CHETRY, MS.M BORAH,MR.B B BORAH,MSL
BARUAH,MS. S ROY (Legal Aid Counsel)

Advocate for the Respondent : MS.S KANUNGOER-2, MR.D MOZUMDER(R-2),MR.I H
SAIKIA(R-2),MR.K KALITA(R-2),PP, ASSAM

Linked Case : Crl.Pet./485/2017

DILIP CHANDRA PHUKAN
S/O LT. HEM CHANDRA PHUKAN R/O CHOLADHARA
P.O. and P.S. JORHAT
DIST. JORHAT
ASSAM
PIN - 785001.

VERSUS

RUNUMI PHUKAN and ANR.
W/O SRI DILIP CHANDRA PHUKAN R/O LACHITNAGAR
P.O. and P.S. TITABOR
DIST. JORHAT
ASSAM
PIN - 785630.

2:THE STATE OF ASSAM

Advocate for : MS.S KANUNGOE
Advocate for : MS.M BORAH-1 appearing for RUNUMI PHUKAN and ANR.

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 04.11.2024

1. These two petitions are taken up for final disposal together having common challenge to the judgment and order dated 06.03.2017, passed by the learned Sessions Judge, Jorhat in Criminal Revision No. 14/2015. By the aforesaid judgment, the learned Sessions Judge modified the maintenance award dated 09.03.2015 passed by the Sub Divisional Judicial Magistrate, Titabar Sub Division in Misc. Case No. 110/2012 preferred by the wife under Section 125 of Cr.P.C.

2. The learned Magistrate by its order dated 09.03.2015 awarded maintenance of Rs.15,000/- in favour of the (wife), however, same was modified by the impugned judgment and the maintenance was reduced to Rs.12,000/- on a revision preferred by the husband. Both the husband and wife being aggrieved have preferred Criminal Petition No. 485/2017 and Criminal Revision petition No. 114/2017 respectively.

3. The husband has not challenged the order dated 09.03.2015 and has also not sought for any interim stay of the said order. The petitioner wife, though has challenged order dated 06.03.2017, passed by the revisional court, however, none appears for the wife when the matter was called.

4. Heard Ms. S. Kanungo, learned counsel for the petitioner in Criminal Petition No. 485/2015 preferred by the husband and respondent in Criminal Revision petition No. 114/2017 preferred by the wife.

5. It is on record that both the husband and the petitioner married in the year 21.04.1986 and alleging non maintenance by the husband, the wife had preferred Misc Case no.110/2012 under section 125 Cr.P.C. The husband has also contested the aforesaid proceeding by filing written statement as well as by adducing evidence.

6. After considering the materials available on record, more particularly the deposition of the husband that his wife did not have any service or business and considering the income of the husband i.e., his salary amounting to Rs.41,090/- as Mechanical Worker in ONGC, the learned trial court awarded the monthly maintenance allowance of Rs.15,000/-.

7. Being dissatisfied with such order, the husband preferred the Criminal Revision Petition as recorded hereinabove. The learned revisional court after re-appreciating the evidence available on record and also considering the income and expenditure and also considering that the only source of income of the husband is Rs.40,000/- from his salary, and there is no other income, came to a conclusion that reasonable quantum of maintenance should be Rs.12,000/- for maintenance of the wife.

8. Ms. Kanungo, learned counsel for the petitioner (husband) submits that it is available on record that the wife is staying in the same residential accommodation provided by the petitioner husband and the husband is also maintaining the wife and therefore, separate maintenance order would not have been passed.

9. As recorded hereinabove, both the Court's below after considering the material evidence on record as regards employment and income of the husband and the fact that the wife was unable to maintain herself and that the husband refused to maintain the wife, awarded maintenance.

10. The object of revisional power of this Court under Section 397 Cr.P.C. is to set right a patent defect or an error of jurisdiction or law. Such power can be exercised where the decision under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. It is equally well settled that a revisional jurisdiction of High Court should not be exercised in a routine manner. The Hon'ble Apex Court in ***Chandra Babu vs State***

reported in **2015 (8) SCC 774** held that normally revisional jurisdiction should be exercised in a question of law however, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. The Supreme Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

11. Law is equally well settled that the revisional Court need not re-assess and re-appreciate the material or evidence on record before the trial Court. A revisional Court is to limit its jurisdiction for adjudicating upon the material illegalities and irregularities apparent in the orders impugned. The conclusive and concurrent determination by both the trial courts below on the basis of the material evidence adduced by the parties should not be lightly interfered in exercise of this Court's power either under Section 482 Cr.P.C. or under Section 401 Cr.P.C. until and unless such factual determinations are perverse.

12. In the case in hand, the wife by adducing evidence and exhibiting materials not only established the factum required to prove for grant of maintenance but the husband while examining himself as DW1 also admitted the position that the his wife is having no income. Therefore, staying in the same residence and the statement made before this Court that the husband is maintaining the wife, cannot be the sole ground to allow the present petition. It is also available on record that similar stand was taken by the husband during the trial as well as in the first revisional stage by contending that the husband did not treat the wife with cruelty and he took utmost care of his wife and two children and it was also his contention that he is not able to provide maintenance

to his wife as demanded by her. However, such contention was not accepted by both the Court's below and on the basis of material available on record, concurrently determined against the husband, though the award was reduced by the learned Sessions Judge. Therefore, in the backdrop of the aforesaid finding of fact and evidence, this Court in exercise of powers under section 482 Cr.P.C would not like to interfere with the concurrent finding of fact by the courts below, inasmuch as, the first revisional court only interfered and modified the amount of award and the finding of fact that the husband failed to maintain his wife remained unaltered and the same is even not under challenge.

13. This Court has also not found any material illegality or irregularity which is apparent in the impugned order of the learned Sessions Judge while reducing the maintenance from Rs.15,000/- to Rs. 12,000/-.

14. In view of the aforesaid, both the petitions stand dismissed. However, it is made clear that this order shall not preclude the petitioners from raising claim under section 127 Cr.P.C before the learned Trial Court below.

JUDGE

Comparing Assistant