

GAHC010053042023



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

Case No. : Crl.Pet./240/2023

MADHABI DAS
W/O JITEN DAS
R/O VILL- HATIGARH, P.O. AND P.S. NAGAON SADAR,
DIST. NAGAON, ASSAM, PIN-782001

VERSUS

JITEN DAS
S/O BHUBAN CHANDRA DAS
R/O VILL- DEBNARIKOLI P.O. AND P.S. KAMPUR
DIST. NAGAON, ASSAM, PIN-782426

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent :

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

01.03.2024

Heard Mr. A.I. Uddin, learned counsel for the petitioner. None appears for the sole respondent, though notice issued to the respondent has been delivered as per postal track (consignment) report.

2. The background facts leading to filing of this petition under Section 482 read with Section 397/401 of the Code of Criminal Procedure, 1973, is adumbrated herein below:-

"The petitioner Madhabi Das got married with the respondent Jiten Das on 02.05.2013 and thereafter lived together as husband and wife in the matrimonial home. Thereafter, marital discord surfaced between them and on 15.08.2014, the petitioner was driven out from the matrimonial home and since then she has been taking shelter in her parental abode. At the time of leaving the matrimonial home, she was pregnant and on 22.04.2015 she had given birth of a female child. As she has no source of income, she had filed a petition, under Section 125 Cr.P.C. before the Court of learned Judicial Magistrate First Class, Nagaon, seeking maintenance from the respondent, who is serving in Indian Army and upon the said petition, vide order dated 07.02.2019, the learned Magistrate had directed the respondent to pay maintenance @ ₹ 6,000/- per month to the petitioner. Thereafter, the respondent had challenged the order of the learned Magistrate, dated 07.02.2019, before the learned Additional Sessions Judge No.2, Nagaon, by filing Criminal Revision Petition No.27(N)/2019 and thereafter, hearing both the parties, the learned Additional Sessions Judge No.2, Nagaon, vide impugned order dated 31.08.2022, has partly allowed the revision petition and reduced the maintenance amount from ₹ 6,000/- to ₹ 4,000/- per month."

3. Being aggrieved, the petitioner approached this Court by filing the present petition on the ground that before pronouncement of the judgment by the learned Additional Sessions Judge No.2, Nagaon, in Criminal Revision Petition No.27(N)/2019, the Hon'ble Supreme Court has passed a judgment in the case of **Rajnish vs. Neha & Anr.** reported in **(2021)2 SCC 324**, and in paragraph 17, Hon'ble Supreme Court has mandated that affidavit of disclosure of assets and liabilities, as annexed as enclosure Nos.1, 2 and 3 of the judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate Court, as the case may be, through out the country and as the parties have not filed their affidavit disclosing the assets and liabilities before the Court of learned Additional Sessions Judge No.2, Nagaon, the mandate in the case of **Rajnish** (supra) has been violated here in this case and therefore, Mr. Uddin, learned counsel for the

petitioner contended to interfere with the impugned judgment and order dated 31.08.2022 passed by the learned Additional Sessions Judge No.2, Nagaon and to remand the matter back to the learned Court below to decide the same afresh after affording opportunities to the parties to file their affidavit disclosing their assets and liabilities.

4. Having heard the submission of the learned counsel for the petitioner and also having gone through the documents placed on record and also having perused the decision of the Hon'ble Supreme Court in the case of **Rajnesh** (supra), this Court finds substance in the submission of Mr. Uddin, learned counsel for the petitioner.

5. It is to be noted here that in the aforementioned case, the Hon'ble Supreme Court has directed to file affidavit of disclosure of assets and liabilities annexed as the enclosure Nos.1, 2 and 3 of the judgment, as may be applicable, in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate Court, as the case may be, through out the country. As the said mandate has not been followed by the learned Court below, it cannot be said that the impugned judgment and order withstand the legal scrutiny. In the result, I find merit in this criminal petition and accordingly, the same stands allowed. The impugned judgment and order dated 31.08.2022, passed by the learned Additional Sessions Judge No.2, Nagaon, stands set aside and quashed.

6. The matter is remanded back to the Court of learned Additional Sessions Judge No.2, Nagaon, with a direction to afford opportunities to both the parties to file their affidavit disclosing assets and liabilities and thereafter, to hear the matter afresh and to pass necessary order.

7. In terms of above, this criminal petition stands disposed of, at the motion stage.

Sd/- Robin Phukan
JUDGE

Comparing Assistant