

GAHC010099882023



2024:GAU-AS:8541

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

Case No. : Crl.Rev.P./186/2023

BIREN SUTRADHAR
S/O LATE KHUSIMOHAN SUTRADHAR
VILL AND P.O. JANIA
DIST. BARPETA, ASSAM
PIN-781314

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SMTI. ANJANA SUTRADHAR
D/O BHIM RAJBANGSHI
VILL AND P.O. JANIA
DIST. BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MR K BHUYAN, MR. M U E BHUYAN,MR N ISLAM

Advocate for the Respondent : PP, ASSAM, D HUSSAIN (R-2),MR. M M ZAMAN (R-2),MR. N AHMED (R-2)

Linked Case : I.A.(Crl.)/147/2024

SMTI. ANJANA SUTRADHAR
D/O BHIM RAJBANGSHI
VILL AND P.O. JANIA

DIST. BARPETA
ASSAM
PIN-781314

VERSUS

BIREN SUTRADHAR AND ANR
S/O LATE KHUSIMOHAN SUTRADHAR
R/O VILL AND P.O. JANIA DIST. BARPETA
ASSAM
PIN-781314.

2:THE STATE OF ASSAM

REP. BY THE PP
ASSAM

Advocate for : MR N AHMED
Advocate for : PP
ASSAM appearing for BIREN SUTRADHAR AND ANR

Linked Case : I.A.(Crl.)/189/2024

BIREN SUTRADHAR
S/O LATE KHUSIMOHAN SUTRADHAR
VILL AND P.O. JANIA
DIST. BARPETA
ASSAM
PIN-781314

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP
ASSAM

2:SMTI. ANJANA SUTRADHAR
D/O BHIM RAJBANGSHI
VILL AND P.O. JANIA
DIST. BARPETA
ASSAM
PIN-781314

Advocate for : MR K BHUYAN

Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

:: PRESENT ::

HON'BLEMR. JUSTICE PARTHIVJYOTISAIKIA

For the Petitioner	:	Mr. K. Bhuyan, Advocate.
For the Respondent Nos.1	:	Mr. B. Sarma, Addl. P.P., Assam.
For the Respondent No. 2	:	Mr. N. Ahmed, Advocate.
Date of Hearing	:	27.08.2024.
Date of Judgment	:	30.08.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. K. Bhuyan, learned counsel appearing for the petitioner. Also heard Mr. B. Sarma, the learned Addl. Public Prosecutor, Assam representing Respondent No.1 and Mr. N. Ahmed, the learned counsel for the Respondent No.2.

2. This is an application under Section 397 read with Section 401 of the Criminal Procedure Code whereby the impugned order dated 24.02.2023 passed by the learned Sub-Divisional Judicial Magistrate (S), Barpeta in C.R. Case No.346/2019 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is put to challenge.

3. The Respondent No.2 filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the court below. The trial court after hearing both sides, directed the present petitioner to do certain things and also directed the petitioner to pay a monthly maintenance of ₹5,000/- to the Respondent No.2. The court below also directed the present petitioner to pay an amount of ₹30,000/- as compensation to the Respondent No.2.

4. Aggrieved by the aforesaid judgment, this criminal revision petition has been preferred.

5. I have considered the submissions made by the learned counsels of both sides. I have also gone through the impugned order passed by the learned SDJM (S), Barpeta.

6. In *Rajnesh v. Neha*, (2021) 2 SCC 324, the Supreme Court has held as under:

“**72.** Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

72.1. (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this 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's Court concerned, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [*Kaushalya v. Mukesh Jain*, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915]. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

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.....”

7. So, the law on the subject is well settled. The learned court below did not comply with the aforesaid law. Therefore, the impugned order is bad in law.

8. Accordingly, the impugned order dated 24.02.2023 passed by the learned Sub-Divisional Judicial Magistrate (S), Barpeta in C.R. Case No.346/2019 under Section 12

of the Protection of Women from Domestic Violence Act, 2005, is set aside.

9. The case is remanded to the court below for passing a fresh judgment/order in compliance of the settled law. Before passing the judgment/order, the trial court shall give liberty to both sides to submit oral arguments only.

10. With the aforesaid direction, the criminal revision petition as well as the connected Interlocutory Applications are disposed of accordingly.

Send back the LCR.

JUDGE

Comparing Assistant