

GAHC010055182024



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

Case No. : I.A.(CrI.)/272/2024

DR. BISWAJIT SURAJ MALAKAR
S/O SRI PRABHAT MALAKAR
ADDRESS- FOREST GATE
P.O. SACHIVALAYA
P.S. DISPUR
DIST. KAMRUP (M), ASSAM

VERSUS

SMRITILEKHA KAKOTY,
D/O SRI TIKENDRAJIT KAKOTY R/O JANAKUR PATH, H/NO. 10
KAHILIPARA, GUWAHATI, P.S. DISPUR, DIST. KAMRUP (METRO), ASSAM

Advocate for the Petitioner : MR. J C CHAUDHURY

Advocate for the Respondent : MS. R CHOUDHURY

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 01.04.2024

- 1.** Heard Mr. J. C. Chaudhury, learned counsel for the petitioner. Also heard Ms. R. S. Choudhury, learned counsel for the respondent.
- 2.** This interlocutory application has been filed by the applicant, Dr. Biswajit Suraj Malakar praying for stay of execution of the order dated

29.09.2023 passed by the learned Principal Judge No. III, Family Court, Kamrup(M) in FC (Crl.) Case No. 280/2016 whereby the applicant was directed to pay monthly maintenance allowance of Rs.10,000/- per month to the opposite Party. The aforementioned order has been impugned by the applicant by filing a connected Criminal Revision Petition No. 35/2024.

3. The facts, relevant for consideration of the instant interlocutory application, in brief, are that the petitioner and the respondent were married on 03.02.2006 as per Hindu rites and after marriage, both the parties used to live together in the first floor at the parental house of the petitioner. However, various misunderstanding and disputes appeared in their matrimonial life and ultimately the applicant filed an application under Section 13(1)(1a) of the Hindu Marriage Act, 1955 praying for dissolution of marriage by the decree of divorce and the said case was registered as FC(Civil) Case No. 264/2015 in the Court of the learned Principal Judge, Family Court, Kamrup(M).

4. On the other hand, the respondent filed an application under Section 125 of the Code of Criminal Procedure, 1973 against the petitioner seeking monthly maintenance allowance of Rs. 20,000/- from the petitioner. The said case has been registered as FC(Crl.) Case No. 280/2016.

5. The divorce case filed by the present applicant was disposed of and same was decreed while granting the relief of dissolution of marriage to the applicant. He was also directed to pay a permanent alimony of Rs. 20 Lakhs to the respondent. At the same time, the FC (Crl.) Case No. 280/2015 was also disposed of by the order dated 29.09.2023 which has been impugned in the connected criminal revision petition. By the said order the petitioner was directed to pay a monthly maintenance amount of Rs.10,000/- per month to the respondent till he pays the amount of permanent alimony of Rs. 20 Lakhs to the

respondent which was directed to be paid in FC (Civil) Case No. 264/2015. It was also clarified in the impugned order that the liability to pay monthly maintenance amount of Rs.10,000/- shall be automatically stopped from the date of payment of entire amount of permanent alimony by the present petitioner to the respondent.

6. Mr. J. C. Chaudhury, learned counsel for the petitioner, has submitted that the respondent has now filed an execution case for execution of the impugned order and the same has been registered as Criminal (Execution) Case No. 3/2024 wherein Family Court has issued notice to the present petitioner to deposit an amount of Rs.9,20,000/- which has been calculated as arrear maintenance allowance as per the order which has been impugned in the connected Criminal Revision Petition.

7. Learned counsel for the petitioner has submitted that the Family Court has poorly reasoned the impugned order and has erred in directing the present petitioner to pay the monthly maintenance allowance from the date of filing of the petition under Section 125 of the Code of Criminal Procedure, 1973 by the respondent as in doing so, it had ignored the fact that the respondent took as many as 30 dates for conciliation and resorted to dilatory tactics and the benefit of which should not be given to the respondent.

8. Learned counsel for the petitioner has also submitted that the petitioner has recently paid an amount of Rs. 5 Lakhs to the respondent in pursuant to the order dated 07.02.2024 passed by a Division Bench of this Court in Matrimonial Appeal No. 2/2023 whereby the petitioner was directed to deposit an amount of Rs. 7 Lakhs as an interim payment to the present respondent.

9. It is pertinent to mention herein that in the Matrimonial Appeal No. 2/2023, the present petitioner has questioned the quantum of permanent alimony fixed by the Family Court while granting decree of divorce to the present petitioner.

10. Learned counsel for the petitioner has also submitted that the petitioner has an arguable case in the connected Criminal Revision which has been filed by him i.e., Criminal Revision Petition No. 35/2023 and there is every possibility that his revision petition may be allowed and unless the operation of the impugned order is stayed during the pendency of the said revision petition, in the event of allowing of such revision petition, the petitioner would be highly prejudiced.

11. On the other hand, Ms. R. S. Choudhury, learned counsel for the respondent has vehemently opposed the application for stay of execution of the order dated 29.09.2023 pass by the learned Principal Judge No. III, Family Court in FC(Crl.) Case No. 280/2016.

12. The learned counsel for the respondent has submitted that the respondent is an unemployed lady and unable to maintain herself and the Family Court, after considering all the aspects, and after full trial had passed the order of maintenance of Rs.10,000/- per month in favor of the present petitioner. Learned counsel for the respondent has also submitted that the conduct of the petitioner during the pendency of litigation between both the parties is not good even in paying the interim maintenance which was directed to be paid by the Court. In this regard learned counsel for the respondent has submitted that during the pendency of the divorce case, the petitioner was directed to pay maintenance *pendent lite* of Rs. 2000/- per month by order dated 30.03.2016 passed in Misc. (J) Case No. 34/2016. However, the petitioner

did not pay the said amount regularly and the respondent had to approach this court and even contempt case had to be filed to compel the petitioner to pay even the interim maintenance allowance of Rs. 2000/- per month.

13. Learned counsel for the respondent has also submitted that the amount of more than Rs. 9 Lakh has been accumulated only due to non-compliance with the order of the Family Court by the petitioner as he had failed to pay the monthly maintenance regularly to the respondent in spite of the direction of the court to pay the same.

14. By referring to the affidavit of assets and liabilities filed by the present petitioner in FC(Crl.) Case No. 280/2016, the learned counsel for the respondent has submitted that the petitioner is used to live a lavish lifestyle and is capable of paying monthly maintenance allowance granted by the Family Court in FC(Crl.) Case No. 280/2016. However, in spite of knowing the fact that the respondent is unable to maintain herself, the petitioner has willfully disobeyed the order of the Family Court and has not paid the maintenance allowance to the present respondent.

15. It is also submitted by the learned counsel for the respondent that the present petitioner, has with a view only to harass the respondent has filed several cases against the respondent including Money Suit No. 362/2015, CR Case Number 1755/2015 and Money Suit No. 59/2021.

16. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record.

17. The contentions raised by the learned counsel for the petitioner that the impugned order is an erroneous order and that it is poorly reasoned and has to be examined only during the hearing of the connected Criminal Revision

Petition number 35/2024. However, on a *prima facie* perusal of the impugned judgment, it appears that learned Principal Judge No. III, Family Court, has given sufficient reasons for directing the present petitioner to pay a maintenance allowance of Rs.10,000/- to the respondent until he pays the total amount of permanent alimony which has been directed to be paid in the divorce case.

18. Regarding the submissions of the learned counsel for the applicant that the learned Principal Judge, Family Court has committed error in directing the payment of maintenance allowance to the respondent from the date of filing of the application under Section 125, the same contention needs to be examined during the hearing of the connected Criminal Revision Petition No. 35/2024, however, *prima facie*, it appears that in the case of "**Rajnish Vs. Neha**" reported in "**(2021) 2 SCC 324**", the Apex Court has clarified that "*it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 CrPC.*" It also appears that the arrear amount of Rs.9,00,000/- has been accumulated only because of the fact that the present applicant has not paid regular maintenance allowance as directed by the court to the respondent and, therefore, now when a considerable amount of unpaid maintenance has been accumulated as arrear, the petitioner cannot get advantage on that count citing that it would be difficult for him to pay such an amount.

19. It also appears that though the present petitioner was directed by the Division Bench of this Court in Matrimonial Appeal No. 2/2023 to pay an interim amount of Rs.7,00,000/- however, admittedly the petitioner has paid only Rs.5,00,000/- out of the said amount.

20. The monthly maintenance allowance of Rs.10,000/- has been granted

in favour of the respondent only due to the fact that the Court has come to the conclusion that the respondent is unable to maintain herself and the said amount was found to be reasonable for her subsistence even though an amount of Rs.20,000/- was claimed by the respondent. The objective of granting maintenance allowance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage.

21. Under such circumstances, when the maintenance allowance was granted to the petitioner only for her subsistence, and when from the affidavit on assets and liabilities filed by the petitioner, it appears that he has the means to pay the said maintenance allowance, this Court is, therefore, of the considered opinion that the balance of convenience is not in favour of staying the execution of the impugned order and thus this court is not inclined to suspend the execution of order dated 29.09.2023 passed by the learned Principal Judge No-III, Family Court, Kamrup(M) in FC (Crl.) Case No. 280/2016 during the pendency of the connected Criminal Revision Petition No. 35/2024, which is ready for hearing and shall be taken up for hearing after four weeks.

22. For the above stated reasons, this interlocutory application is hereby dismissed.

JUDGE

Comparing Assistant