

HEADING OF JUDGMENT IN CRIMINAL REVISION

District :- Dhubri, Sub Division - Bilasipara.

IN THE COURT OF ADDL. SESSIONS JUDGE BILASIPARA.

Present:- ***Smti S. Bhuyan.***

Addl. Sessions Judge, Bilasipara.

(Criminal Revision Case No. 08/17)

**Revision against the order dated 09-01-2017 passed by learned
SDJM,(M)Bilasipara in Misc case No-224/15**

Kuran Mondal

S/O- Bahar Ali Mondal

R/O- Nayeralga Pt-III

P.S- Bilasipara.

Dist- Dhubri, Assam. Petitioner

-versus-

Mofida Begum,

D/o. Noskar Ali,

R/O- Kathaldi Pt-II,

P.S- Bilasipara,

Dist- Dhubri ,Assam. Opp. Party.

Advocates appeared:-

For the Petitioner: - Aminul Haque, advocate.

For the Opp.Party: - Altaf Hussain, advocate.

Date of argument: - 25-08-2017

Date of judgment: - 08-09-2017

JUDGMENT

1. This petition has been filed by Kuran Mondal, S/O Bahar Ali Mondal R/o Nayeralga Pt-III, P.O. Nayeralga Under Bilasipara P.S District- Dhubri u/s 397/399 of Cr.P.C for revision, assailing impugned order dated 09-01-2017 passed by Smt.

P. Shyam, Ld. SDJM(M) Bilasipara in Misc Case No- 224/15 u/s 125 Cr.P.C directing revisionist petitioner (2nd party of Misc case no 224/15) to pay Rs. 3,001/-per month as maintenance allowance in favour of the opposite party Mofida Begum (1st party of Misc. Case no. 224/15) and Rs. 3,001/- per month to three minor children of the opposite party Mofida Begum (1st party of Misc Case no. 224/15).

2. According to the petitioner Learned Trial Magistrate committed error in passing impugned order dated 09-01-17 granting maintenance allowance in favour of the 1st party of Misc case no- 224/15 u/s125 Cr.P.C and her three children without giving any weight and value of the evidence of the witness adduced by this revisionist petitioner, not apply judicial mind about the quantum of the income of the revisionist petitioner and did not consider that revisionist petitioner is poor man, earns Rs. 3000/- 4000/- per month by the way of doing daily labour and revisionist petitioner has to maintain his ailing parents, his second wife and one minor daughter from his income. The petitioner being highly aggrieved and dissatisfied with the impugned order dated 09-01-17 passed by the Ld. Trial court in Misc Case No- 224/15 move this court by filing this Revision Petition U/s 397/399 of the Cr.P.C. challenging impugned order of maintenance allowance passed by the Ld. Trial court dated 09-01-17.

3. In course of hearing, the record of trial court pertaining to Misc Case No- 224/15 u/s 125 Cr.P.C is called for. I have gone through the record of the trial court along with present Revision Petition and impugned Judgment & order dated 09-01-2017 passed by Smt. P. Shyam, Ld. SDJM(M) Bilasipara and record of trial court.

4. The fact leading to the filing of this Revision Petition is enumerated below :-

5. The Opp party as 1st party petitioner filed the petition U/s 125 Cr.P.C before the court of Ld. SDJM(M) Bilasipara, claiming maintenance allowance of Rs. 4,000/- per month for herself and Rs. 6,000/- for her three children from the 2nd party of Misc case no. 224/15 (the revisionist petitioner).

6. On receipt of the case notices issued to the revisionist petitioner (2nd party of Misc case No. 224/15) and he contested the proceeding by submitting written statement and denied the plea of the 1st party, the opposite party of the present revision petition.

7. Opp party (1st party in Misc case no. 224/15) case is that 11 years back she got married with the revisionist petitioner according to Muslim Shariyat Law. After

marriage she resided at revisionist petitioner's (2nd party in Misc case No. 224/15) house as wife and due to their wedlock she gave birth to three children. She alleged that after one year of marriage revisionist petitioner (2nd party in Misc case No. 224/15) started torture on her physically and mentally in demand of dowry. She paid Rs. 15,000/- to the revisionist petitioner but again revisionist petitioner (2nd party in Misc case No. 224/15) started torture on her demanding Rs. 50,000/- from her but she could not fulfill the said demand due to the poor condition of her father. She alleged that 6 years ago revisionist petitioner (2nd party in Misc case No. 224/15) entered into second marriage and with his second wife, revisionist petitioner (2nd party in Misc case No. 224/15) inflicted further cruelty on her and about 6 months ago revisionist petitioner (2nd party in Misc case No. 224/15) drove her out along with her three children. Since then she has been residing in her parent's house along with her children and revisionist petitioner (2nd party in Misc case No. 224/15) did not provide any maintenance to her and her children and therefore filed the case. Opp party (1st party in Misc case no. 224/15) also lodged an ejahar in Bilasipara PS alleging cruelty against the revisionist petitioner (2nd party in Misc case No. 224/15). She stated she has no source of income and dependent on her parents. Revisionist petitioner (2nd party in Misc case No. 224/15) is a truck driver and has landed properties and earns Rs. 20,000/- per month.

8. Revisionist Petitioner as 2nd party in Misc Case No. 224/15 submitted his written statement before the Ld. Trial court on receipt of notice. In his written statement he admitted the marriage but denied all the allegations including allegation of physical torture meted upon the petitioner and allegation of demand of money. He stated that his wife fell ill after the birth of their second child and he was compelled to marry another lady to look after his house. He stated that he entered into second marriage after consultation with the opp party (1st party in Misc case no. 224/15) and with her consent. He stated after few months of his second marriage, opp party (1st party in Misc case no. 224/15) left his house without any reasons and even though petitioner brought opp party (1st party in Misc case no. 224/15) she went away to her house and finally left his house forever and did not returned back instead of several attempt made by revisionist petitioner(2nd party in Misc case no. 224/15) to bring her back. He stated he had paid Rs. 15,000/- to the opp party (1st party in Misc case no. 224/15) for her children. He stated he is daily

wage earner and earn Rs. 5,000/- per month and he is willing to lead conjugal life with his life.

9. I have heard learned counsel for both sides. Argument of learned counsel for the revisionist petitioner is confined to the quantum of maintenance granted by Ld. Trial court in favour of Opp party. He submitted that revisionist petitioner being a labour amount of Rs 6002/- is too excessive for him because he has also to look after his aged parent and revisionist petitioner is ready to maintain his children.

10. Learned counsel for the Opp party made submission that Ld .trial court has granted Rs. 3001/- in favour of the Opp party and Rs. 3001/- for her three children and revisionist petitioner is able bodied person. He is not labour and he can pay the same without any difficulties.

11. The point for determination in this Revision Petition is: -

- i) Whether Learned. Trial court committed gross illegality in passing the impugned judgment & order dated 09-01-17 granting interim maintenance to opposite party, the 1st party of the maintenance case?
- ii) Whether the amount of maintenance allowance granted by the Learned Trial Court is highly excessive?

12. To arrive at the just Decision for the aforesaid points for determination, I have gone through the impugned Order dated 09-01-17 passed by Ld. SDJM(M) Bilasipara in Misc case No- 224/15; petition filed by the Opp. party U/S 125 Cr.P.C., written statement filed by the Revisionist Petitioner as 2nd party before the trial court and material present in the trial court record and also taken into consideration the argument placed before me by the Ld. Counsel for the parties.

13. It is an admitted fact that Opp party Mofida Begum is a legally married wife of revisionist petitioner Kuran Mondal and revisionist petitioner is the father of her three child namely Mofijul Islam(7 years old), Kohinur Begum (5 years old) and Fatema Khatun(3 years old) who are now living with their mother Mofida Begum in the house of parents of Mofida Begum. It is the argument of Ld. counsel for the revisionist petitioner that revisionist petitioner is ready to pay maintenance to his wife and children and revisionist petitioner only agitated on the quantum of maintenance. Thus shown that petitioner has not challenged granting maintenance in favour of the Opp party and her children. Only point disputed by the revisionist is petitioner is quantum of the maintenance.

14. After careful perusal of the impugned judgment dated 09-01-17 and material available on the trial court record I find that order of granting maintenance in favour of the Opp party(1st party in Misc case no. 224/15) and directing revisionist petitioner to pay maintenance in favour of his legally wedded wife (Opp party) and her children does not required any interference from this court and Ld. Trial court has rightly granted maintenance in favour of the Opp party and her children.

15. Now let me see whether quantum of maintenance is too excessive. Opp party in her petition u/s 125 Cr.P.C in para 8 stated that revisionist petitioner is good healthy person, have landed property and is a truck driver and his monthly income is Rs. 20,000/-. In her evidence also Opp party (1st party in misc case no. 224/15) stated that revisionist petitioner (2nd party in Misc case no. 224/15) is a truck driver. In cross she stated that she do not furnish copy of driving license of her husband, revisionist petitioner. Revisionist petitioner in his written statement and affidavit stated that he is daily labour and not a truck driver as claimed by the opp party (1st party in Misc case no. 224/15).

16. I have scrutinized the evidence. Opp party did not produce any documents to show landed property in the name of the revisionist petitioner. Opp party in her evidence and her petition did not disclose and stated the number of truck which revisionist petitioner drive. It is not coming from her evidence whether her husband revisionist petitioner is permanent driver or temporary driver. No driving license or report from the concern DTO from where revisionist petitioner obtained professional driving license has been submitted by the opp party (1st party of maintenance). The actual income of the revisionist petitioner is not established by any piece of documents. Revisionist petitioner claim himself as labour. Nowadays a daily labour took ₹. 400 to 450 per day as his wages. It is also not a fact that now a days daily wages is ₹. 100/-. If a man daily earn ₹. 350-450 as daily wage labor then his monthly income would be ₹ 10,500 to ₹ 13,500/- for 30 days. His three children are aged about 9 years, 5 year, 3 years. Ld trial court has granted minimum maintenance of ₹. 1000/- each to the children. Therefore, I don't find any justified ground to interfere with the quantum of maintenance granted in favour of the three children of opp party and the same is confirmed. In respect of Opp party, Ld. Trial court has granted ₹ 3001/- in her favour as monthly maintenance allowance and thereby total maintenance comes at ₹ 6002/- which in my opinion is found a little

bit more on the shoulder of Opp party. Accordingly same is interfered and revisionist petitioner is directed to pay ₹. 2000/- as monthly maintenance in favour of the opp party. No revision of quantum of maintenance granted in favour of the children of the opposite party. Revisionist petitioner will pay ₹ 3001 to the three children of the opposite party and ₹ 2000/- in favour of the opposite party total ₹ 5001/- with effect from the date of order passed by the Ld. Trial court.

17. In the light of above modification on the quantum of maintenance, this revision petition is partly allowed.

18. Send down the LCR with a copy of this court judgment to the learned trial court immediately.

19. Judgment delivered under hand and seal of this court on this 08th day of September 2017 at Bilasipara.

(Smti S. Bhuyan)

Addl. Session Judge Bilasipara

Dictated & corrected by me.

(S.Bhuyan)

Addl. Session Judge, Bilasipara,

Typed by

Swmkhwr Brahma, Stenographer Gr. III.