

IN THE COURT OF SESSIONS JUDGE : : TINSUKIA

District: Tinsukia

Present: **Shri C. Das,**

Sessions Judge,

Tinsukia

(Criminal revision is filed against the order dated 02/03/2022 and 07/03/2022 passed in Misc. Case No.01/2020 by learned Sub-Divisional Judicial Magistrate(M), Chapakhowa, Sadiya)

Criminal Revision Case No.10 (1) of 2022

Sri Pranab Jyoti Hazarika,

S/o Late Dipen Hazarika,

R/o Miri Pathar, Dholla,

P.O. Saikhowaghat, P.S. Dholla,

Dist. Tinsukia, Assam Petitioner

- Versus -

Smt. Lakhimai Gogoi,

W/o Sri Pranab Jyoti Hazarika,

D/o Bhageswar Gogoi,

R/o Na-Maithong, P.S. Kakopathar,

Dist. Tinsukia, Assam Respondent

Appearance:

Mr. G. Alley, Advocate For the Petitioner

None appeared For the Respondent

Date of Argument: 05.05.2022

Date of Judgment: 19.05.2022

J U D G M E N T

1. This criminal revision u/s. 397/399/401 of Code of Criminal Procedure, is directed against the order dated 02/03/2022 and 07/03/2022, passed by learned Sub-Divisional Judicial Magistrate (M), Sadiya in Misc. Case No.01/2020, whereby learned trial court closed the evidence and fixed the case for argument. Considering the nature of matter, it is proposed to dispose of the case without summoning the respondent to avoid delay in disposal.

FACTS OF THE CASE

2. The facts necessary for disposal of this revision petition is like this:- That the petitioner is the husband of the respondent and their marriage was solemnized on 13th July, 2016. Out of their wedlock, a male child was born in the year 2017. The petitioner is a cultivator of vegetables on the land of other persons, taking on rent for his livelihood. After one year of marriage, the respondent started to force the petitioner to live in a separate home. As the petitioner is a vegetable cultivator, has not enough money to keep and maintain the respondent in a separate home and on this matter, the respondent started to enter into regular quarrel with the petitioner and his family members. Thereafter, the petitioner finding no other way, has made a separate house near his old house and started to live there with the respondent and their child. But the respondent was not satisfied there as it was a bamboo-house as she wanted to live in Tinsukia Town in a rented house. But it was quite impossible for the petitioner to live in Tinsukia Town by taking a rented house. So the respondent often quarreled with the petitioner and used to run away her parental home at Kakopathar and spent much time in her parents' home.

3. The petitioner stated that on 08/01/2019 when he was at his house, the respondent called her brothers at Dholla and went with them. On the next day, she filed a false ejahar against the petitioner and his family members, which was based on fully false and baseless story only to harass the petitioner and his family members, whereas, she herself left the company of the petitioner. On 13/02/2020, the respondent filed a maintenance case being Misc. Case No.01/2020. Thereafter, due to COVID 19 pandemic protocols, the parties were not properly attended in the Court. After receiving summons on 01/11/2021, the petitioner appeared before the Court through his counsel. On 01/12/2021, the petitioner filed a petition vide No.767 dated 01/12/2021 before the learned trial Court, stating that the present respondent i.e the petitioner of the maintenance case, has not filed the copy of disclosure affidavit in respect of her assets and liability as per direction given by the Hon'ble **Supreme Court in Crl. Appl. No.730/2020 in case of Rajnesh Vs. Neha and others**. On the aforesaid matter, the learned SDJM(M), Sadiya fixed the case on 28/12/2021 for hearing on the aforesaid petition. However, on the direction of the Court, the petitioner has filed his written objection in this case. On 28/12/2021 the counsel for the respondent by filing a petition, stated that they have not

got the copy of petition, as such, they could not prepare for hearing. But the copy of the petition was in the case record and the fact was mentioned in order dated 28/12/2021.

4. Thereafter, the date was fixed on 18/01/2022 for hearing. On 18/01/2022, hearing could not be done as the learned Counsel for the petitioner was suffering from cough and cold and the next date was fixed on 04/02/2022. The petitioner stated that in the meantime, due to COVID-19 virus outbreak again, on 20/01/2022, this Court in pursuant to the notification No.3 dated 06/01/2022 and notification No.8 dated 19/01/2022, had issued some guidelines, whereby it was clearly stated in para No.5 of the guidelines that "no adverse order shall be passed in absence of any step in any particular case". In the meantime, on 04/02/2022, the opposite party was absent without any step as he was suffering from cold and fever and on that ground the learned SDJM(M) Sadiya, passed the order that the case will proceed *ex-parte* and 24/02/2022 is fixed for *ex-parte* evidence of the petitioner side. Thereafter, on 24/02/2022 the petitioner filed a petition for vacating the *ex-parte* order dated 04/02/2022, which was kept for hearing on 02/03/2022. On 02/03/2022, when the petitioner appeared for hearing on the petition filed against the

order dated 04/02/2022, the learned SDJM(M), Sadiya insisted the learned Counsel for the petitioner to cross-examine the respondent. However, the counsel for the revision petitioner raised objection, as he was not prepared to cross-examine the respondent and upon being insisted, the counsel for the petitioner cross-examined the respondent under objection and in a hurry, the learned SDJM(M) passed the impugned order and closed the evidence and the next date was fixed for argument by the learned SDJM(M), Sadiya on 07/03/2022. Again, on 07/03/2022, when the petitioner filed a petition vide No.200 for giving a chance to cross-examine the witnesses of the opposite party, the same has not been allowed by learned trial Court. On being aggrieved with the above facts, the instant revision petition has been filed on the following grounds:-

i. That the impugned order dated 02/03/2022 and 07/03/2022 is not maintainable in law and in fact and as such, is liable to be set aside;

ii. That no hearing was taken on petition No.767 dated 01/12/2021 and hearing should be taken up on the said petition;

iii. That on 04/02/2022, learned SDJM(M), Sadiya, passed the order that the case will proceed *ex-*

parte in absence of the petitioner, without considering the guidelines of District & Sessions Judge, Tinsukia;

iv. That the impugned order dated 02/03/2022 and 07/03/2022 are illegal, unjustified and improper;

v. That on perusal of all the orders, recorded in order-sheets, passed by learned Court below, it appears that no proper opportunity has been given to the petitioner for being heard and learned SDJM(M), Sadiya, was in hurry to dispose the case without following the procedure in proper way and as such, impugned order dated 02/03/2022 is liable to be set aside.

5. I have heard learned counsel for the petitioner and perused the record with impugned orders, passed by learned trial court.

POINT FOR DETERMINATION

6. The only point for determination in this revision petition, is as to whether the trial Court had erred while passing the impugned orders?

DECISION AND REASONS THEREOF

7. It appears from the record that the revision petitioner filed a petition No.152 on 24.02.22 praying for vacating *ex-parte* order dated 04.02.22 and the case fixed

for hearing on the said petition on 02.03.22. On that day, since the respondent side did not raise any objection, the petition No.152 was allowed. Then, the evidence of the respondent was recorded and crossed and discharged by learned trial court. And the case was fixed for argument on 07.03.2022.

8. Since the date 04.02.22 was within the lock-down period, learned trial court ought not have passed *ex-parte* order against the revision petitioner due to his failure to attend the court. Similarly, it seems that learned trial court hurriedly recorded the evidence of the respondent on same day after vacating the *ex-parte* order dated 04.02.22. Then, the revision petitioner on 07.03.2022 filed the petition No.200 praying to allow to cross-examine the witness of the respondent, since learned counsel for the revision petitioner could not cross-examine the witness properly and also willing to adduce DW. The impugned order dated 07.03.2022 itself shows that it was passed during restriction of court functioning for covid-19 virus. A fair opportunity or chance ought to have given to the revision petitioner during such situation by learned trial court. No fault can be attributed to any party nor default of the counsel should be allowed to cause suffering of the party at the time of covid-19 restriction period. Hence, in that case, the revision petitioner ought to have given fair opportunity to cross-

examine the respondent. Therefore, the impugned order dated 07.03.2022 is not sustainable in the eye of law.

9. In the result, the revision petition is allowed. The impugned order dated 07.03.2022 passed in Misc. case No.01/2020 by learned trial court, is hereby set aside. The revision petitioner is directed to appear before learned trial court and accordingly, learned trial court shall allow the revision petitioner an opportunity to further cross-examine the witness of the respondent properly before adducing his evidence. Send a copy of order to learned trial court immediately.

10. Given under my hand and seal of this Court on this the 19th day of May, 2022.

Dictated and corrected by :

Sessions Judge
Tinsukia

(C. Das)
Sessions Judge
Tinsukia