

GAHC010275052024



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

Case No. : Crl.Rev.P./519/2024

DHANJIT SARMA
S/O LATE HEMEN SARMA, R/O MANIKPUR, KAHILIPARA, P.O.-
KAHILIPARA, P.S.-DISPUR, DIST-KAMRUP (M), PIN-781019, GUWAHATI,
ASSAM

VERSUS

NABAMI SHARMA
D/O SRI ANANTA NATH SAHRAM, W/O SRI DHANJIT SHARMA, R/O
JAPORIGOG, BIKRAMPUR, HOUSE NO.55, P.S.-DISPUR, DIST- KAMRUP (M),
GUWAHATI, PIN-781005, ASSAM

Advocate for the Petitioner : MR H BETALA, SHAKEEL RAHMAN, RIYAZ KHAN

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

03.01.2025

Heard Shri H Betala, learned counsel for the petitioner, who has filed this petition under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 19(4) of the Family Courts Act, 19894 against the judgment and order dated 23.10.2024 passed by the learned Principal Judge, Family Court No. III, Kamrup (M),

Guwahati in FC (Crl.) Case No. 76/2020 directing the petitioner to pay an amount of Rs. 10,000/- per month to the respondent and her children w.e.f. 18.02.2020.

It is the case of the petitioner that prior to the institution of the aforesaid petition by the respondent-wife, the petitioner had instituted FC(Civil) Case No. 154/2019 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The aforesaid petition was allowed vide judgment dated 12.04.2023 decreeing for restitution of conjugal rights.

Shri Betala, learned counsel for the petitioner has also drawn the attention of this Court to the part of the judgment wherein it was observed that the respondent has withdrawn from the petitioner without any valid reasons. He has also contended that the aforesaid judgment dated 12.04.2023 has attained finality as the same was not put to any challenge.

By drawing the attention of this Court to Section 125(4) of the Cr.PC, it is submitted that the claim for maintenance would be restricted if, without any sufficient reasons, the wife refuses to live with her husband. He has submitted that there are materials on record apart from the judgment dated 12.04.2023 which would go to show that the wife her own volition is living separately.

Let notice be issued, returnable by 6 weeks.

Steps for service of notice upon sole respondent be taken by registered post with A/D.

Steps within 2 working days.

The learned counsel for the petitioner prays for an interim order.

It is seen that the amount of maintenance which is for total amount of Rs. 10,000/- per month also includes an amount of Rs. 4,000/- for the daughter which is not the subject matter of challenge. It is also seen that there are arrears of Rs. 5.80 lakhs which are to be paid by the petitioner.

Considering the above, this Court directs that the operation of the impugned judgment and order dated 23.10.2024 passed by the learned Principal Judge, Family Court No. III, Kamrup (M), Guwahati in FC (Crl.) Case No. 76/2020 shall remain suspended subject to the condition of payment of Rs. 10,000/- per month for the time being and also another amount of Rs. 1 lakh which is to be deposited within a period of 2 months from today.

The aforesaid interim order would be re-considered on the next date upon placing proof of the deposit directed to be made by this order.

JUDGE

Comparing Assistant