

IN THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 71 of 2006

**Shri Nantu Saha,
Son of Late Sudhir Chandra Saha
Poultry Road No.2, Fulkumari,
Udaipur Town, P.S. RA Dhakishorepur,
Udaipur District-South Tripura.**

Petitioner.

- Vs -

- 1. Smti. Ratna Saha,
Wife of Shir Nantu Saha,**
- 2. Sri Gaurab Saha,
Son of Shri Nantu Saha**

**Both C/O, Late Jitendra Saha,
Village-Chandibari, Amarpur,
P.S. Birganj, South Triupra.**

..... Respondents

**(Respondent No. 2 being minor,
represented by his mother, Respondent No. 1)**

**BEFORE
THE HON'BLE MR. JUSTICE U.B. SAHA**

For the petitioner : Mr. B Das, Sr. Advocate.
Mr. D Chakraborty, Advocate

For the respondents : Mr. S Deb, Sr. Advocate.

Date of hearing and
delivery of judgment
& Order : **09.04.2013.**

JUDGMENT & ORDER (ORAL)

The instant petition is filed by the petitioner under Article 226/227 of the Constitution of India challenging the order dated 13.12.2005 passed by the learned Sessions Judge, South Tripura, Udaipur in Criminal Revision No. 1(1) of 2005 whereby and whereunder the learned Sessions Judge maintained the order of the learned Sub-Divisional Judicial Magistrate, South

Tripura, Amarpur dated 24.11.2004 in Misc. Case No. 09 of 2004 directing payment of maintenance @ Rs. 1,500/- only per month to his wife and son respectively, the respondents herein.

2. Heard Mr. B Das, learned senior counsel assisted by Mr. D Chakraborty, learned counsel appearing for the petitioner as well as Mr. S Deb, learned senior counsel for the respondents.

3. Brief facts of the case are as follows:-

That the respondent No. 1 is the legally married wife of the petitioner and out of their wedlock the respondent No. 2 was born on 10.05.1999. It is alleged by the respondent No. 1 that owing to the occasion of "Annaprasan" of the respondent No. 2, (the Hindu rite of allowing a child to taste rice for the first time) the petitioner asked for a sum of Rs. 10,000/- from the respondent No. 1 to meet the expenses of the "Annaprasan" but the respondent No. 1 having failed to fulfill the demand of the petitioner in full, she was driven out from her matrimonial home along with her son in the month of March, 1999. The aforesaid dispute between the parties was resolved and ultimately respondent No. 1 again returned to her matrimonial home. But the petitioner after her return again started maltreatment on her and finally on 04.11.2003, the respondent No. 1 was again driven out by the petitioner from her matrimonial home. Since, the respondent No. 1 has been living at her parental home with the respondent No. 2 and the petitioner herein refused to pay anything to her towards their maintenance, as she was not in a position to maintain their

livelihood, the respondents filed an application for maintenance which was registered as Misc. Case 09 of 2004. The petitioner, as O.P., denied the allegations made by the respondents and mainly urged that it would not be possible on his part to maintain her separately as his monthly income would be around Rs. 1,000 – 1,200/- and he is willing to maintain both the respondents if they reside with him with strict regard to decency. The aforesaid Misc. Case has been disposed of by the learned Sub-Divisional Magistrate, Amarpur, South Tripura on 24.11.2004 allowing an amount of Rs. 1,000/- for the respondent No. 1 and Rs. 500/- for the respondent No. 2 as maintenance. Being aggrieved by the said order the petitioner filed a revision petition being Criminal Revision Petition No. 1(1) of 2005 before the Court of learned Sessions Judge, South Tripura, Udaipur and the learned Sessions Judge, South Tripura, Udaipur vide his judgment dated 13.12.2005 dismissed the aforesaid revision petition affirming the order of the learned Sub-Divisional Magistrate, Amarpur. Hence, the instant writ petition.

4. Mr. Das submits that the petitioner is a Generator Operator and used to work as an employee of wholesale fish seller and used to earn a sum of Rs. 2,500 – 3,000/- per month and by that income it is not possible to maintain the whole family properly even in the same mess. So, the petitioner is not in a position to make payment of Rs. 1,500/- to the Respondents. Thus, the order of the learned SDJM, Amarpur as well as the order of the Revisional Authority is wrong and perverse.

5. Mr. Deb while countering the submission of Mr. Das submits that the respondent No. 1, wife of the petitioner had to leave the house of the petitioner as she was mercilessly beaten up. Ultimately a case under Section 498A of IPC was filed and in that case, the petitioner was convicted and against the said order of conviction the petitioner also filed an appeal and the appellate court confirmed the judgment of the trial court.

6. It appears from the order of the courts below that the petitioner at no point of time has denied the facts relating to his marriage with the respondent No. 1 and the paternity of the child, i.e. respondent No. 2 and according to him he is not in a position to maintain them due to his lesser earning. From the evidence on record, it further appears that the respondent No. 1 is not in a position to maintain herself and she has also not withdrawn herself from the society of the petitioner. Thus, she has no other alternative except to claim maintenance for herself and their son.

7. Nowadays, Rs. 1,500/- is nothing for two persons like the respondents herein. However, as there is no prayer for enhancement of the maintenance it would not be proper to express any opinion on that aspect.

8. This court has gone through both the order of the trial court as well as the revisional court. According to this Court, there is nothing wrong in the impugned judgment dated 13.12.2005 passed by the learned Sessions Judge, South Tripura,

Udaipur whereby he has affirmed the judgment of the learned trial court and hence no interference with the same is called for.

9. In view of the above, the instant writ petition is dismissed being devoid of merit. No order as to costs.

JUDGE