

GAHC010036172019



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

Case No. : Crl.Pet./185/2019

HITENDRA SAUD

S/O- SRI PARESH SAUD, VILL- NATHPARA, P.O- CHAMPAK NAGAR, P.S-
CHHAYGAON, DIST- KAMRUP, ASSAM, PIN- 786001

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:RUPA SAIKIA
D/O- LATE BABUL SAIKIA
R/O- DIBRUGARH
EAST GOBHARU PATHAR (NALIAPUR)
BHADRESWAR PATH
NEAR KANAI COLLEGE
P.S- GOBHARU PATHAR
DIST- DIBRUGARH
ASSAM
PIN- 78600

Advocate for the Petitioner : MR. B K DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MIR ALFAZ ALI

ORDER

Date : 29-01-2021

Heard Heard the learned counsel for both the parties.

The challenge made in this criminal petition is to the order dated 11.5.2017 passed by the learned Judicial Magistrate, First Class, Dibrugarh in Misc. Case No. 18 of 2016, whereby maintenance was granted at the rate of Rs. 2,500/- in favour of the respondent.

The aforesaid order was passed ex parte. The learned counsel for the petitioner submits that the notice upon the petitioner was never served and as such he was not aware of the proceeding pending before the Judicial Magistrate, First Class, Dibrugarh.

As agreed by the learned counsel for both the parties and on perusal of the record, it is deemed fit to remand the case to the learned trial court for deciding the matter after giving the opportunity of hearing to the revision petitioner. It is further provided that the maintenance of Rs. 2,500/- per month, granted by the impugned order shall be treated as interim maintenance and the petitioner/ husband shall continue to pay the same till the matter is decided finally after hearing both sides by the learned Magistrate.

It is also submitted that the petitioner/ husband has not been paying any maintenance despite the order passed by the learned trial court. The petitioner/ husband shall pay at least 20% of the arrears towards the interim maintenance, and the written objection of the revision petitioner shall be accepted subject to payment of 20% of the maintenance as aforesaid. Accordingly, the impugned order shall be deemed as order of interim maintenance. Send back the record to the learned trial court.

In order to avoid further delay it is provided that the parties shall appear before the learned Judicial Magistrate, First Class, Dibrugarh on or before 10th of March, 2021 to receive further instruction. No further notice is required to be issued to the parties by the learned learned Magistrate.

The petition is accordingly disposed of.

JUDGE

Comparing Assistant