

GAHC010263402022



2025:GAU-AS:1983

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

Case No. : Crl.Rev.P./15/2023

RAJESH KUMAR ROY
S/O SHRI SUSHIL KUMAR ROY
R/O AKASHI NAGAR, P.O. BAMUNIMAIDAM
P.S. CHANDMARI
DIST. KAMRUP (METRO), ASSAM

VERSUS

BIBHA RANI DAS @ ROY
D/O KHUTI RAM DAS
W/O RAJESH KUMAR ROY
R/O HATIGAON, LAKHIMI NAGAR,
NAMGHARPATH
P.O. HATIGAON
P.S. HATIGAON
DIST. KAMRUP (METRO), ASSAM

Advocate for the Petitioner : MR. R M DAS, MS R MAHANTA, MR. K MIRA, MS. B
SAIKIA, MR. R M DAS, MRS. S KHATANIAR, P. NAIDING, P. NAIDING

Advocate for the Respondent : MR H K SARMA,

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGMENT & ORDER (CAV)

Date : 25-02-2025

Heard Mr. K.Mira, learned counsel for the petitioner. Also heard Mr. H.K.Sharma, learned counsel for the respondent.

2. The petitioner being the husband of the respondent, has preferred this petition u/s 397/401 of the Code of Criminal Procedure, 1973 (Cr.PC) against the order dated 30.11.2022 passed by the Principal Judge, Family Court No.1, Kamrup(M) in Criminal Execution Case No.108/2018.

3. The case of the petitioner is that the petitioner is an aircraft maintenance engineer by profession and was the former employee of a Private Airlines namely Indigo. The service of the petitioner was terminated on 16.05.2019 and since then the petitioner has been unemployed. The marriage between the petitioner and the respondent was solemnized on 09.07.2014 as per Hindu Customs and Rites. And subsequently, their marriage was also held under Special Marriage Act. After their marriage, they lived together as husband and wife. But the petitioner alleged that though after their marriage, the respondent used to stay along with the petitioner at the parental house of the petitioner at Bamunimaidan. But from the very first day of their conjugal life, the respondent was insisting the petitioner to live separately from his parents.

4. The further case of the petitioner is that since the petitioner was working in a Private Airlines company namely Indigo Airlines, he did not have any specific duty hours. Although the respondent was well aware of the aforesaid facts of the petitioner, however, by taking advantage of his stay in his office and

also coming late from his office as well as claiming ill treatment received from her in-laws, the respondent had filed a maintenance case before the Principal Judge, Family Court, Kamrup (M) vide F.C (Crl) Case No.252/2016.

5. The learned Family Court after hearing both parties passed a judgment on 26.04.2016 wherein the petitioner was directed to pay maintenance allowance to the respondent amounting to Rs.25,000/- per month.

6. Being aggrieved with the aforesaid judgment of learned Family Court, Kamrup (M), the petitioner had approached this Court vide Criminal Revision Petition No. 169/2018. As an interim measure, this Court in its order dated 06.06.2018, directed the petitioner to pay an amount of Rs.10,000/- per month to the respondent. During the pendency of the maintenance case before the Principal Judge, Family Court, the respondent had filed another case before the Principal Judge, Family Court vide Misc. Case No.636/2017 for enhancement of her interim maintenance amount. The said case was later on withdrawn by the respondent.

7. Learned counsel for the petitioner has submitted that the learned Family Court had committed grave error of law in passing the impugned order dated 30.11.2022 in Criminal Execution Case No.108/2018 by directing the petitioner to pay the maintenance of Rs.30,000/- per month to the respondent, without deciding the merit of Misc. Case.53/2021 which is still pending before the Principal Judge, Family Court. Hence, the impugned order dated 30.11.2022 is liable to be set aside.

8. It is further submitted that the respondent had suppressed the material facts before the Family Court that she is a lawyer by profession and is earning good amount in a month, as such, she is not entitled to any maintenance as she

is competent to maintain herself. Accordingly, the order passed by the Family Court dated 30.11.2022, is perverse. It is also contended that the learned Family Court while passing the order dated 30.11.2022 did not consider the plea of the petitioner that the respondent had left her matrimonial home on her own and not under any compulsion. As per Section 125 (4) of Cr.PC, no wife shall be entitled to receive maintenance allowance from her husband, if without any sufficient reason she refused to live with her husband. Hence, the order dated 30.11.2022 is bad in law and is liable to be set aside.

9. In response, the learned counsel for the respondent has stressed his argument on the point that the petitioner is very much irregular on payment of maintenance to the respondent wife. The respondent has no income of her own. The petitioner is an Aircraft Maintenance Engineer in Indigo Airlines and he used to earn handsome amount in a month. Though the case of the petitioner is that he has been terminated from service but it is a settled position of law that an able bodied husband is bound to pay maintenance to his wife by earning his livelihood by any legitimate means. It is also submitted that as the petitioner is a chronic defaulter, the respondent has no other option but to approach the executing Court for the proper and fair implementation of the judgment dated 26.04.2018 passed by the learned Principal Judge, Family Court, Kamrup, Guwahati.

10. Having heard the learned counsel for the parties and on perusal of the trial court records, which reflects that the petitioner is very much irregular on payment of monthly maintenance to the respondent.

11. On the other hand, the petitioner is an Aircraft Maintenance Engineer by profession. Though the petitioner has raised an issue that he was terminated from his service on 16.05.2019 and since then he has no any regular income,

but no any document is available in the record regarding his termination from the Airlines Company. It also reveals from the trial court record that though the original maintenance order was passed on 26.04.2018 directing the petitioner to pay Rs.25,000/- per month but subsequently on his approach before this Court, he was directed to pay Rs.10,000/- per month as on interim measure. But the petitioner has also failed to pay the said amount as maintenance allowance to the respondent. The petitioner though stated that the respondent is a practicing lawyer under Gauhati High Court and she has good income but to substantiate the fact, the petitioner has not filed any document to show that the respondent has sufficient income to maintain herself.

12. Section 125 of Cr.PC was conceived to ameliorate the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home so that some suitable arrangements could be made to enable her to sustain herself and the children, as observed by the Hon'ble Supreme Court in ***Bhuvan Mohan Singh vs. Meena and others*** reported in ***(2015) 6 SCC 353***.

13. In ***Dukhtar Jahan vs Mohd. Farooq*** reported in ***(1987) 1 SCC 624***, it was held that –

“....Proceedings u/s 125 of the Code, it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.”

14. In the case of ***Vimla (K) vs. Veeraswamy (K)*** reported in ***(1991) 2 SCC 375***, the Hon'ble Supreme Court while discussing about the basic purpose u/s 125 of the Code, opined that –

“ Section 125 of the Code of Criminal Procedure is meant to

achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife.”

15. In ***Kirtikant D. Vadodaria vs State of Gujarat*** reported in **(1996) 4 SCC 479**, the Hon’ble Apex Court while advertng to the dominant purpose behind Section 125 of the Code, ruled that –

“... While dealing with ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

16. In ***Chaturbhuji Vs. Sitabai***, reported in **(2008) 2 SCC 316**, reiterating the legal position, the Court held as follows –

“... Section 125 Cr.PC is a measure of social justice and is specially enacted to protect women and children and as noted by the Hon’ble Supreme Court in ***Captain Ramesh Chander Kaushal Vs. Veena Kaushal***, reported in **(1978) 4 SCC 70** falls

within constitutional sweep of Article 15 (3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in ***Savitaben Somabhai Bhatiya vs. State of Gujrat***, reported in ***(2005) 3 SCC 636.***"

17. In the case of ***Nagendrappa Natikar vs. Neelamma***, reported in ***(2015) 1 SCC (CrI) 407***, it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children.

18. In view of the aforesaid legal proposition, it is a settled principle of law that the husband is required to earn money by physical labour if he is abled bodied and could not avoid his obligation except on the legally permissible grounds mentioned in the statute. The object of maintenance proceedings is not to punish a person for his past neglect but to prevent vagrancy and destitution of a deserted wife by providing food, clothing and shelter by speedy remedy.

19. Reverting to the case in hand, the learned Family Court awarded maintenance allowance in favour of the respondent wife amounting to Rs.25,000/- in a month directing the petitioner husband to pay the said maintenance regularly. But the record reveals that the petitioner is very much irregular in payment of maintenance towards the respondent. Though the learned counsel for the petitioner has pointed out that the petitioner has no

source of income as he was terminated from his service since long but this Court is neither impressed nor is ready to accept such submissions. The petitioner being an abled bodied young person, he is obliged to earn by legitimate means and maintain his wife. Having regard to the evidence of the respondent wife before the Family Court and the other evidence on record, this Court has no hesitation in holding that the petitioner has sufficient source of income and is abled bodied, has failed and neglected to maintain the respondent wife. Considering the totality of facts and circumstances of the case, this Court is of the view that the maintenance allowance granted by the Family Court i.e. Rs.25,000/- in a month to the respondent wife needs no interference by this Court.

20. It is accordingly directed that the petitioner shall pay maintenance allowance of Rs.25,000/- per month to the respondent wife as per order of the Family Court dated 26.04.2016. However, the entire amount of arrear shall be deposited by the petitioner in the Family Court within 6 (six) months from the date of judgment i.e. from today after adjusting the amount if any already paid or deposited by him. To that extent, the order dated 30.11.2022 is modified.

21. With the above observation, the criminal revision petition is disposed of accordingly.

JUDGE

Comparing Assistant