



2026:GAU-AS:6332

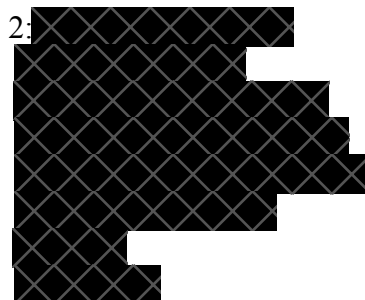
THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)

Case No. : CrI.Rev.P./307/2024



VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM



Advocate for the Petitioner : MR. B C DAS, MR. S H RAHMAN

Advocate for the Respondent : PP, ASSAM, MR N Z CHOUDHURY(R-2),MR N A MAZARBHUIYA(R-2),MR. A R BHUYAN (R-2)

Advocates for the petitioner : Mr. B C Das

Advocates for the respondents : Mr. A R Bhuyan

Mr. P Borthakur

BEFORE

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 21.04.2026

Date of pronouncement of judgment : 08.05.2026

Whether the pronouncement is of the : No.

operative part of the judgment ?

Whether the full judgment has been : Yes

pronounced?

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

Heard Mr. B C Das, learned counsel for the petitioner. Also heard Mr. A R Bhuyan, learned counsel appearing for the respondent No. 2 and Mr. P Borthakur, learned Addl. PP for the State respondents.

2. This revision is directed against the impugned order dated 26.06.2024 passed by the learned Chief Judicial Magistrate, Goalpara in Case No. MCR-116/2021, directing the petitioner/2nd party to pay an amount of Rs. 12,000/- (Rupees Twelve Thousand) only, per month towards maintenance of the 1st party/repondent and Rs. 8,000/- (Rupees Eight Thousand) only per month for the maintenance of her daughter (till

she attains majority) in total Rs. 20,000/- (Rupees Twenty Thousand) only per month, from the date of institution of the proceeding.

3. A proceeding under section 125 CRPC was instituted by the present respondent/wife (1st party) against the present petitioner/husband (2nd party) claiming maintenance for herself and the minor child born out of their marriage.

4. The facts of the case may be discussed. The parties are referred to as 1st party (wife) and 2nd party (husband) hereinafter.

5. The case of the 1st party is that the 1st party entered into marriage with the 2nd party socially as per Muslim Shariyat on 22.03.2013. After marriage, the 1st party started her conjugal life with the 2nd party at the house of the 2nd which continued party for about 10 months and thereafter at Krishnai, Jyotinagar for about 15 months and during conjugal life they were blessed with a one female child namely [REDACTED] [REDACTED] on 02.01.2016. However after 2 years, 2nd party demanded Rs 10,00,000/- from the 1st party and on refused to meet the said demand, the 2nd party started torturing mentally and physically torturing the 1st party and on April, 2017 the 2nd party drove the 1st party out of her matrimonial house along with her minor child. Several times, the 1st party along with her minor child went to the house of 2nd party to continue her conjugal life with the 2nd party but the 2nd party did not allow her to enter into her matrimonial house. Since April, 2017, 1st party having no alternative took shelter in the house of her own parents. The 2nd party neither visited

her nor provided any maintenance to her and her minor child. The 2nd party is a businessman, who deals with medicine and has pucca house constructed on his own land and from all sources he earns about Rs.1,50,000/-per month and the 1st party on the other hand, has no income of her own and has been passing her life at her parental house.

6. Upon perusal of the case record and finding sufficient ground for proceeding against the 2nd party u/s 125 Cr.P.C., notice was issued to the 2nd party and the 2nd party appeared and contested the case by filling written statement wherein he denied all the allegations except the marriage and the birth of their minor child out of the Wedlock

7. The case of the 2nd party as it appears from the written statement is that he never assaulted the 1st party and had not demanded anything or Rs. 10,00,000/- from the 1st party and that the 1st party used to visited her parental house frequently without his consent and on 16.04.2017 willfully left the house of the 2nd party and went to her parental house along with minor child. The 2nd party along with two village elders went to the house of 1st party to bring back the 1st party and made several attempts to return back the 1st party and restore their conjugal life but the 1st party refused to return back and threatened to kill the 2nd party or with dire consequences and hence the 2nd party fled away from there. The 2nd party denied his income as alleged

and stated that he earns Rs.400/- per working day as a private pharmacist and has been somehow maintaining himself and his family members.

8. In support of the case, 1st party has adduced evidence of herself as PW-1 and two other witnesses PW-2, Abbas Ali and PW-3 Muslim Ali. The 2nd party also adduced evidence of himself as DW-1 and Sajahan Ahmed as DW-2 and Latifor Rahman as DW-3.

9. After hearing the parties and on consideration of the evidence, the learned magistrate held that the 1st party had sufficient grounds to live separately from her husband and that the 2nd party having sufficient means had neglected to maintain the 1st party, and that therefore, she was entitled to get maintenance from the 2nd party.

10. The only ground of challenge in the present revision is to that part of the impugned order, whereby the learned Magistrate has granted a maintenance amount of Rs. 12,000/- to the respondent wife/1st party and another amount of Rs. 8,000/- for the child, totalling Rs. 20,000/-, per month as would be evident from the grounds as stated herein, as also the submissions of learned counsel for the petitioner.

11. It is submitted by the learned counsel for the petitioner that the learned magistrate has not taken into consideration the amount of Rs. 6,000/- including Rs. 2,000/- for house rent that has been awarded in another case under the Prevention of Domestic Violence Against Women Act (hereinafter referred to as the DV Act), upon an application filed by the present respondent/wife and the same has not been adjusted

against the amount of maintenance granted by the learned Magistrate in the instant case. It is further submitted that the 1st party/respondent wife, although claimed that the petitioner was having income of Rs. 1,50,000/- per month, being in the medicine business, failed to adduce any evidence in this regard, but despite the same, the learned magistrate has awarded an excessive amount of Rs. 20,000/- per month for the wife and the child, while totally ignoring the evidence of the petitioner/husband (2nd party), as to his income which is stated to be Rs. 400/- per day, which he earns as a worker in a pharmacy, owned by some other person and also the fact that the petitioner has married for the second time, out of which another child has been born. It is submitted that the petitioner (husband) has no capacity to pay the awarded amount of Rs. 20,000/- per month, in addition to the amount of Rs. 6,000/- per month, awarded in the aforesaid case under the DV Act.

12. A perusal of the record indicates that the respondent/wife as 1st party had made a claim in her pleadings as well as in her evidence that the petitioner/husband used to earn Rs. 1,50,000/- per month from his medicine business, but failed to adduce any documentary evidence in this regard. On the other hand, the petitioner/husband as 2nd party stated in his evidence that his income was Rs. 400 per day i.e. Rs. 12,000/- per month, working as a salesman in a pharmacy.

13. A perusal of the statement of assets and liabilities submitted by the petitioner/husband before the learned Magistrate would show that he has stated his

income to be Rs. 12,000/- to Rs. 15,000/- per month. In the column No. 9, meant for furnishing copies of bank statements of all accounts for the last three years, the petitioner/ husband has made the remark as NIL, inferring thereby that he does not have a bank account.

14. The learned Magistrate, in the impugned order, has held that the petitioner failed to produce any document relating to his employment nor did he examine the owner of the pharmacy as a witness and thereby, failed to establish his employment, and thereby, he had withheld his evidence because of which inference can be drawn that the 2nd party concealed facts as to his income before the Court. Since the income of the 2nd party was a fact especially within his knowledge, it was his duty to prove the same with reliable evidence, in view of Section 106 of the Indian Evidence Act, but he failed to do so, thereby rendering the version of the 1st party wife as regards his income believable. The learned magistrate also held that the 2nd party/husband concealed the fact of his income in his affidavit of assets and liabilities by not producing the bank statements as required by law, and drew adverse presumption against him.

15. In view of the aforesaid findings, the learned Magistrate was of the view that half of the amount of Rs 1,50,000/- per month, claimed by the 1st party/wife as being the income of the 2nd party, can well be presumed to be the current income of the

2nd party/ husband per month. In other words, the learned Magistrate held the income of the 2nd party to be Rs 75,000/- per month, by applying the aforesaid formula and accordingly, awarded a total amount of Rs 20,000/- per month as maintenance payable to the first party wife and the child.

16. It is the considered view of this Court that mere failure of the 1st party/husband to furnish documents regarding his employment, which may or may not exist as he appears to be having informal employment, does not necessarily discredit his evidence, as to his own income, which he has stated to be between Rs 12,000/- to Rs 15,000/- in his statement of assets and liabilities. Non-examination of the owner of the pharmacy is also not a factor to be taken into account, inasmuch as the employee may not be in a position to drag the employer to the witness box for fear of losing his employment. Neither of the two are relevant grounds to disregard the evidence of the 2nd party/husband. Since the 2nd party had made a 'NIL' remark in his statement of assets and liabilities indicating that he had no bank account, in the absence of proof to the contrary, the learned magistrate clearly erred in holding that the second party had concealed any fact as regards his income.

17. Under the said circumstances, it was entirely arbitrary on the part of the learned Magistrate to shift the burden of proof upon the 2nd party to establish that his income per month did not amount to Rs 1,50,000/- or Rs. 75,000/- per month.

18. It is also to be noticed that the 1st party/wife in her application had stated that her husband is a businessman who deals in medicines and the same is also stated in her examination-in-chief and, and in neither case it has been stated that her husband owns a pharmacy, not to speak of its location or name. It is only in her cross-examination that the 1st party/wife stated that her husband has pharmacy business, but she has not submitted any documents in that regard, but yet claimed that he earned around Rs 1.5 to 2 lakhs from the said business. None of the other PWs stated in their examination-in-chief that the petitioner owns a pharmacy and what they said was that the opposite party is a businessman who deals in medicines. Even the PW-3, who is a resident of the same locality as that of the 1st and 2nd parties when they lived together, failed to state in his evidence anything about the pharmacy supposedly owned by the 2nd party. Even in his cross-examination, he has not given any details of such pharmacy, which leads to the inference that the said witnesses knew nothing about the business or income of the 2nd party/husband.

19. Although the learned magistrate has referred to the order passed in the DV case awarding an amount of maintenance to the 1st party, there is nothing to show that the learned Magistrate has adjusted the said amount of Rs 6,000/- per month so awarded against the award of Rs 20,000/- per month awarded as total maintenance under the impugned proceedings under Section 125 Cr.P.C, which is also in violation of the decision of the Apex court in *Neha Vs. Rajneesh : (2021) 2 SCC 324*.

20. In the aforesaid facts and circumstances, it was clearly beyond jurisdiction on the part of the Magistrate to have regarded the income of the petitioner as Rs 75,000/- per month, de hors any evidence in this regard and therefore, the aforesaid findings cannot be sustained.

21. Since there is nothing to dislodge the statement of the 2nd party/husband in his statement of assets and liabilities, that his income is Rs 12,000/- to Rs 15,000/- per month, the same not being an improbable figure, the same has to be taken as the basis for deciding the quantum of maintenance to be granted to the wife and the child. It is to be taken note of that the petitioner has married for the second time and it appears from the evidence that he also has to support his aged mother besides his second wife and the child born out of the second marriage on an income of Rs 12,000 to Rs. 15,000/- per month. Even if the income of the petitioner/husband is to be taken on the higher side of Rs. 15,000/- per month, then considering the fact that there are six persons involved i.e. the petitioner/husband himself, the respondent/wife, their child, the mother of the petitioner, his second wife and their child, even if the whole income is equally apportioned between all six persons, the figure would come to Rs. 2,500/- per person and by the said calculation, the wife/respondent and the child would be entitled to not more than Rs. 5,000/- in total per month. However, since an amount of Rs. 6,000/- in all has been awarded in the proceedings under the DV Act to the respondent/wife and the child, which order is not under

challenge in the present proceedings, the respondent/wife and the child would not be entitled to any further amount as maintenance.

22. In view of the above, it is held that the respondent/wife and the child are entitled to a total maintenance of Rs. 6,000/- per month, out of which Rs. 2,000/- would be on account of the child. The said amount after adjustment with the maintenance awarded in the proceedings under the DV Act would therefore come to 'NIL'.

23. The rest of the findings in the impugned order shall remain undisturbed.

24. The impugned order therefore stands accordingly modified and the revision stands allowed accordingly.

JUDGE

Comparing Assistant