

GAHC010046982022



2026:GAU-AS:11942

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

Case No. : Crl.Pet./212/2022

RAFIQUE UDDIN SEKH @ RAFIQUE UDDIN
S/O. MOTOFOR ALI, VILL. ABDULLAPUR PART-II, P.O. SARBANANDAPUR,
P.S. LALA, DIST. HAILAKANDI, ASSAM, PIN-788163.

VERSUS

SAINA BEGUM SHEIK
D/O. DHONAI MIA SHEIK, VILL. UTTAR JOSNABAD PT.I (BHOROTPUR),
P.O. VERNARPUR, P.S. LALA, DIST. HAILAKANDI, ASSAM, PIN-788163.

Advocate for the Petitioner : MR. S B LASKAR, MS D DUTTA, MS N KALITA, MR. H A LASKAR

Advocate for the Respondent : MRS. P B BORDOLOI (LEGAL AID COUNSEL),

BEFORE

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 12.08.2026

Date of pronouncement of judgment : 21.08.2026

Whether the pronouncement is of the : NA.

operative part of the judgment ?

Whether the full judgment has been

pronounced?

: Yes

J U D G M E N T & O R D E R (CAV)

Heard Mr. S.B. Laskar, learned counsel for the petitioner. Also heard Mrs. P.B. Bordoloi, learned Legal Aid Counsel for the sole respondent.

2. This application under Section 482 of the Cr.P.C. is directed against the impugned Judgment & Order dated 11.01.2022 passed by the learned Sessions Judge, Hailakandi in Criminal Revision No. 25/2019 (arising out of Judgment & Order dated 09.01.2019 passed by the learned CJM, Hailakandi in M.R. Case No. 187/2015 under Section 125 of Cr.P.C.); whereby, the petitioner/2nd party is directed to pay monthly maintenance of Rs. 3,000/- (Rupees Three Thousand Only) to the minor child of the respondent/1st party, including the arrear maintenance at rate of Rs. 3,000/- from the date of passing of the Judgment & Order dated 09.01.2019 in M.R. Case No. 187/2015, under Section 125 of Cr.P.C.

3. On 17.09.2015, the respondent/1st party had filed a petition, being M.R. Case No. 187/2015 under Section 125 of Cr.P.C, before the Ld. Chief Judicial Magistrate, Hailakandi praying for maintenance from the petitioner at the rate of

Rs. 5,000/- (Rupees Five Thousands Only) per month for herself and Rs. 5,000/- (Rupees Five Thousands Only) per month for her minor child.

4. The petitioner had submitted his written statement and thereby denied all the allegations brought against him by the Respondent/1st party in M.R. Case No. 187/2015 under Section 125 of Cr.P.C.

5. The aforesaid application under Section 125 of Cr.P.C. came to be dismissed by Judgment & Order dated 09.01.2019. As against the said Judgment & Order, a revision was preferred before the learned Session Judge, Hailakandi and by the impugned order, the said revision was partly allowed by directing the petitioner to pay monthly maintenance of Rs. 3,000 only for the minor child of the respondent/1st party, including the accumulated arrear maintenance at the same rate from the date of passing of the Judgment & Order dated 09.01.2019 passed by the learned CJM, Hailakandi in M.R. Case No. 187/2015 under Section 125 of Cr.P.C. Being aggrieved, the petitioner seeks the intervention of this Court in exercise of his inherent jurisdiction.

6. The learned counsel for the petitioner submits that there are contradictions in the evidence of the respondent before the learned Trial Court, which the

learned Appellate Court failed to appreciate. It is submitted that the respondent/1st party had deposed that the petitioner took her to his house one and a half years back and committed sexual intercourse with her. She further deposed that she had been already at two months of pregnancy when the petitioner allegedly took her to his house. Whereas, she also deposed that her baby was six months of age at the time of making the deposition. The statements of the respondent are contradictory to each other; and, as such, she is not worthy of credit. It is also submitted that the Revisional Court also failed to appreciate that the mother of the respondent had lodged an FIR on 11.05.2015, which was registered as Lala P.S. Case No. 226/2015, under Section 420/376/323/34 of IPC against the petitioner, at which time she was medically examined and the medical report did not indicate her being at two months of pregnancy.

7. On the other hand, learned Legal Aid Counsel representing the respondent submitted that the maintenance has been awarded for the child and even an illegitimate child is entitled to maintenance. It is further pointed out that the petitioner was convicted under Section 417 of IPC, in Sessions Case No. 22/2016, which was decided by Judgment dated 21.03.2017 and that case has arisen out of the aforesaid FIR lodged by the mother of the respondent. She

submits that the learned Revisional Court had correctly held that the petitioner was the father of the child and accordingly awarded maintenance as aforesaid.

8. The learned Revisional Court in the impugned judgment had been persuaded to take the view that the evidence on record clearly established that the petitioner/2nd party took the first party to his house and kept her there for a night and on the following morning she was driven out, which vital fact was overlooked by the learned Trial Court. The learned Revisional Court also came to the view that there must have been physical relationship between the parties which prompted the petitioner to take the respondent to his house and the purpose of keeping her for a night was for having physical relationship. The petitioner/2nd party merely denied the allegation but could not adduce any evidence in support of his contention. It is further held by the learned Revisional Court that the 2nd party did not challenge the paternity of the child by bringing cogent and reliable evidence and did not make any effort to secure DNA evidence.

9. In the aforesaid Sessions Case No. 22/2016, in which the petitioner was convicted under Section 417 of IPC, it has been clearly held as established that the petitioner/accused therein was in a continuous physical relationship with the

victim of the said case i.e., the present respondent. The aforesaid finding of fact in the aforesaid Sessions case has remained unchallenged, which also goes to point towards the fact that the petitioner herein is the father of the child in respect of whom the maintenance has been awarded.

10. As far as the question as to whether the aforesaid finding of the Sessions court in the aforesaid case has relevance or any binding effect in a proceeding under Section 125 of Cr.P.C. is concerned, reference may be made to the decisions of the Hon'ble Supreme Court in this regard.

11. The question as to the applicability of principle of *res judicata* in criminal matters have been considered by the Apex Court in several decisions. In the matters of ***Pritam Singh & Anr. vs. The State of Punjab*** reported in ***AIR 1956 SC 415***, ***Bhagat Ram vs. State of Rajasthan*** reported in ***(1972) 2 SCC 466*** & ***The State of Rajasthan vs. Tarachand Jain*** reported in ***(1974) 3 SCC 72***, the Supreme Court has consistently laid down the principle that the principle of *res judicata* is equally applicable in criminal matters.

12. In ***Pritam Singh*** (supra), a three Judge Bench of the Supreme Court placing reliance on ***Sambasivam vs. Public Prosecutor, Federal of Malaya*** reported in ***(1950) AC 458***, decided by a Bench of Five Judges of the Judicial

Committee, opined that maxim *res judicata* is no less applicable to criminal than to civil proceedings. In the said matter, accused Pritam Singh was earlier tried for an offence under the Arms Act based on a recovery of a weapon from him. In the said case Pritam Singh was acquitted. In a subsequent trial, the same recovery was again sought to be used by the prosecution as one of the circumstances in an offence of murder. It was held:

"The effect of a verdict of acquittal pronounced by a competent Court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication."

The maxim 'res judicata pro veritate accipitur' is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any steps to challenge it at the second trial."

13. Thereafter in ***Tarachand Jain*** (supra), the Apex Court referred to ***Bhagat Ram*** (supra) and ***Sambasivam*** (supra) to hold thus:

"13.....The question as to what is the binding effect of a decision in subsequent proceedings of the same original matter was considered by this Court in the case of *Bhagat Ram v. State of Rajasthan*, [(1972) 2 SCC 466: 1972 SCC (Cri) 751] and it was held that the principle of *res judicata* is also applicable to criminal proceedings and it is not permissible in the subsequent stage of the same proceedings to convict a person for an offence in respect of which an order for his acquittal has already been recorded. Reliance in this context was placed upon the observations of the Judicial Committee in the case of *Samba Sivam v. Public Prosecutor, Federation of Malaya*. [1950 AC 458] In *Bhagat Ram* case [(1972) 2 SCC 466 : 1972 SCC (Cri) 751] a Single Judge of the High Court to whom a limited question had been referred because of a difference of opinion between two Judges of the Division Bench, not only decided the question referred to him, he also interfered with the acquittal of the accused regarding certain offences in respect of which an order for acquittal had already been made earlier by the Division Bench. It was held that it was not within the competence of the Single Judge to reopen the matter and pass the above order of conviction in the face of the earlier order of the Division Bench for acquittal. Although *Bhagat Ram* case [(1972) 2 SCC 466: 1972 SCC (Cri) 751] related to acquittal, the principle laid down in that case, in our opinion, holds good in a case like the present wherein the question is about the binding

effect of the earlier Division Bench judgment regarding the validity of the sanction for the prosecution of the accused-respondent."

14. The petitioner was charged under Section 417 and 376 of IPC in the Sessions Case No. 22/2016 and the learned Court found the petitioner/accused therein to be guilty of the offence under Section 417 of IPC, while acquitting him of the offence under Section 376 of IPC. While deciding the question of liability of the petitioner under Section 417 of IPC, the learned Court recorded a categorical finding that the petitioner/accused came to the categorical finding as below:-

“Though, it has been alleged in the case that the accused committed sexual intercourse with the victim, but it reveals from the evidence of PW-2, the victim, that she had love affairs with accused Rafique for about 5 years and the accused had sexual intercourse with her for 16 times and she did not file any case against the accused earlier. Ext.-1, statement of the victim also goes to show that the victim had love affairs with accused Rafique and on the relevant night accused Rafique went to the house of the victim and asked the victim to go with him and then the victim went to the house of the accused. PW-6, Mayarun Nessa in her evidence has specifically stated that since last 2 and half years the victim had love

affairs with accused Rafique. The victim herself has also specifically stated in her evidence that on the promise of marriage the accused committed sexual intercourse with her on several dates. PW-1 has also claimed that she was reported by the victim about the said commission of sexual intercourse with her by the accused on the promise of marriage. Though, the defence side has denied the fact that the accused gave assurance for marriage but it has not been denied that there was love affairs between accused Rafique and the victim. On the other hand, except putting mere suggestion denying giving of assurance for marriage the defence side has failed to rebut the contention of the PWs on the points that there was love affairs between accused Rafique and the victim and on the promise of marriage the accused had sexual intercourse with the victim. After going through the evidence on record minutely, I also find no reason to disbelieve the facts that on the promise of marriage the accused had sexual intercourse with the victim and made her pregnant resulting birth of a child."

15. As already discussed herein above, the Hon'ble Apex Court has clearly held and laid down the principle that the principle of *res judicata* is equally applicable in criminal matters, as in civil proceedings. Although the fact situation in the authorities discussed above are somewhat different, the principle involved would

be applicable to the facts of the present case as well, in the considered opinion of this Court. A Court of competent jurisdiction i.e., the Sessions Court has returned a categorical finding that the petitioner had a physical relationship with the respondent and out of that relationship, the child was born and such finding has remained unchallenged. Since the issue that was required to be decided in the proceedings under Section 125 of Cr.P.C. is also as to whether the petitioner is the father of that child so as to entitle this child to maintenance, the question of physical relationship between the petitioner and the respondent was also the foundational issue and the decision on the said question leads to an answer to the question of paternity of the child. The said issue, having been already decided in an earlier proceeding as above, the finding therein would operate as *res judicata* in the proceedings under Section 125 of Cr.P.C. as well.

16. In the above view of the matter, reliance can very well be placed on the findings of the Sessions Court in the aforesaid Sessions case with regard to the existence of a physical relationship between the parties leading to the birth of the child.

17. Therefore, in view of the aforesaid facts, no interference in exercise of inherent powers is called for.

18. As far as the question of DNA testing is concerned, learned counsel has referred to the decision of the Hon'ble Supreme Court in ***Ivan Rathinam v. Milan Joseph*** reported in ***2025 3 Supreme 600***, wherein it has been held:-

“29. It is well-established that access and non-access under Section 112 do not require a party to prove beyond reasonable doubt that they had or did not have sexual intercourse at the time the child could have been begotten. "Access" merely refers to the possibility of an opportunity for marital relations. [Mir Muzafaruddin Khan v. Syed Arifuddin Khan, (1971) 3 SCC 810, para 6; Chilukuri Venkateswarlu v. Chilukuri Venkatanarayana, (1953) 2 SCC 627, para 4] To put it more simply, in such a scenario, while parties may be on non-speaking terms, engaging in extra-marital affairs, or residing in different houses in the same village, it does not necessarily preclude the possibility of the spouses having an opportunity to engage in marital relations. [Banarsi Dass v. Teeku Dutta, (2005) 4 SCC 449; Kamti Devi, supra note 2] Non-access means the impossibility, not merely inability, of the spouses to have marital relations with each other. [Aparna Ajinkya Firodia, supra note 3; Sham Lal v. Sanjeev Kumar, (2009) 12 SCC 454] For a person to rebut the presumption of legitimacy, they must first assert non-access which, in turn, must be substantiated by evidence.

30. It is only when such an assertion is made, that the court can consider the question of ordering a DNA test to establish paternity. In Goutam Kundu v. State of W.B. (supra), this Court laid down the following parameters to decide whether a court

can order a DNA test for the purposes of Section 112:

"(1) that courts in India cannot order blood test as a matter of course.

(2) wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained.

(3) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act.

(4) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman.

(5) No one can be compelled to give sample of blood for analysis."

31. These parameters have been subsequently followed by this Court in Sharda v. Dharmpal (supra) and Bhabani Prasad Jena v. Orissa State Commission for Women (supra). In these cases, it was held that DNA tests may be ordered, only if a strong prima facie case of non-access is made out, with sufficient material placed before the court to arrive at a decision."

19. In the instant case, far from making out a strong *prima facie* case of non-access, it has been established by way of evidence that the petitioner had sexual intercourse with the respondent on multiple occasions and therefore, the submission of the learned counsel made at the bar for DNA test cannot be

accepted.

20. No doubt the authorities discussed above were in relation to situations where the marriage itself is not denied, but the husband denied paternity of the child on ground of non-access to the wife. Yet, the principles laid down in the aforesaid cases would be applicable even in case where the marriage is itself is denied.

21. In view of the above, the petition is found to be devoid of merit and is accordingly dismissed.

JUDGE

Comparing Assistant