

GAHC010001042026



2026:GAU-AS:11940

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

Case No. : Crl.Pet./35/2026

SHRI SURAJ CHETRY
S/O- LATE PADMA BAHADUR CHETRY.
R.O - VILL- KAMALPUR, P.S - JONAI, DIST- DHEMAJI, ASSAM, PIN- 787060

VERSUS

SMTI. NAYANMONI CHOUDHURY
D/O- MAMANI CHOUDHURY.
R/O - JONAKI PATH, FATASIL AMBARI, P.S - FATASIL AMBARI, PIN - 781025,
KAMRUP METRO , ASSAM

Advocate for the Petitioner : MR. P HAZARIKA, MR. A K ROY,MR. T R SARMA

Advocate for the Respondent : MS. R KALITA, MR F Z MAZUMDER,MS. C BARMAN

:::BEFORE:::

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Advocate for the petitioner : Mr. T.R. Sarma.

Advocate for the respondent : Mr. F.Z. Mazumdar.

Date on which judgment is reserved : 14.08.2026.

Date of pronouncement of judgment : 21.08.2026.

Whether the pronouncement is of the : No.
operative part of the judgment ?
Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

Heard Mr. T.R. Sarma, learned counsel for the petitioner. Also heard Mr. F.Z. Mazumdar, learned counsel for the respondent.

2. This is an application under Section 528 read with Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), praying for quashing of the petition and entire proceedings in F.C(CrI) No. 557/2024 claiming maintenance under Section 144 of BNSS, 2023 pending in the Court of the Principal Judge, Family Court, Kamrup (Metro) at Guwahati.

3. The facts projected by the petitioner are that the respondent was known to the petitioner through their common friends while the petitioner was studying at Guwahati at Indian Technical Institute, Zoo Road during the period September, 2014 to August, 2016. During the period when the petitioner was pursuing his course at Indian Technical Institute he along with another friend was staying at a rented room at Anuradha, Bamunimaidam, Guwahati.

4. The respondent who was trying to come in close contact with the petitioner offered him a proposal of marriage, which was however out rightly denied by the petitioner. After the

petitioner denied the proposal of the respondent for marriage, she along with her mother tried various means to convince the petitioner but he was quite clear on his stand not to marry her. As a result of that the respondent instituted FIRs against the petitioner on false and concocted stories. Pursuant to the FIRs lodged by the respondent, the petitioner was subjected to face criminal trials in G.R. Case No. 2162/2016 registered under Sections 417, 294 and 506 of IPC and G.R. Case No. 4091/2016 under Sections 341, 323 and 506 of IPC. In G.R. Case No. 2162/2016 the petitioner was acquitted after trial on 22.08.2017 and the G.R. Case No. 4091/2016 was disposed of on 01.06.2023 as uncontested for withdrawal of prosecution under Section 321 of Cr.PC.

5. The respondent has also instituted a case under Domestic Violence Act, 2005, being Misc. Case No. 106/2016 against the petitioner and his mother, which is pending disposal in the Court of learned Sub-Divisional Judicial Magistrate, Sadar-I, Kamrup (M) at Guwahati.

6. The petitioner filed Criminal Petition No.1119/2024 before the Honb'le Gauhati High Court for quashing the Misc. Case No. 106/2016 initiated by the respondent under the Domestic Violence Act, 2005.

7. The learned counsel for the petitioner submitted that the petitioner never married the respondent and she is not his lawfully wedded wife as claimed by her. Neither the petitioner lived with her as husband and wife at any point of time. The respondent filed her affidavit in opposition in the Criminal Petition No.1119/2024 wherein she stated on oath that their marriage was solemnized on 27.01.2015 following Hindu rites and rituals at Krishna Mandir, Narengi, Guwahati.

8. The learned counsel for petitioner stated that during pendency of the Criminal Petition No. 1119/2024, the respondent filed a petition before the Principal Civil Judge, Family Court at Guwahati under Section 144 of the BNSS read with Section 7 of the Family Court Act claiming maintenance and the said petition is numbered as F.C.(Crl.) Case No. 557/2024. In the petition filed under Section 144 of the BNSS of the respondent has stated that her marriage with the petitioner took place as per Hindu rites and rituals and the marriage was solemnized at Dhemaji on 15.01.2015.

9. It is submitted that the respondent has stated false and misleading statements before the Court regarding her pregnancy. The respondent stated before the learned Magistrate in DV Case No. 106/2026 that after her marriage in the year 2015, she got pregnancy but that was forcefully aborted and thereafter she conceived for the second time and she was carrying 5 months of pregnancy as on 31.08.2016 and the petitioner, whom she stated to be her husband, has deserted her and she has been living with her mother. But in her petition before the learned the Principal Judge, Family Court at Guwahati in F.C (Crl.) Case No. 557/2024 she stated that she gave birth to a female child on 14.12.2016 at GMCH but the child was dead and thereafter again she conceived again on 12.03.2017. The facts narrated by the respondent are self contradictory and proves that the respondent has falsely filed the cases against the petitioner only to extract money from him.

10. It is contended that in view of the aforesaid contradictory statements of the respondent before the Courts below as regards the date and place of her marriage to the petitioner, it is evident that the respondent has lodged the cases against the petitioner with an ulterior

motive and therefore, the said proceedings pending before the learned Family Court under Section 144 BNSS is liable to be quashed.

11. Per contra, the learned counsel for the respondent submits that the respondent, in support of her claim to be the wife of the petitioner adduce evidence in this regard only at the time of trial and thereafter, only the learned Trial Court can form an opinion whether the respondent was married to the petitioner or were in a relationship of husband and wife which would entitle her to maintenance under Section 144 BNSS.

12. It is further submitted that the petitioner / husband would also get the opportunity to rebut any such evidence as may be adduced by the respondent herein at the trial and the further opportunity to adduce his own evidence. It is not within the remit of this Court in exercise of inherent power to decide disputed questions of facts for which evidence is required. It is also the contention of the learned counsel for the respondent that merely because there are some differences in the dates or places of marriage as may have been mentioned by the respondent in different proceedings cannot be a ground for quashing of the impugned proceedings.

13. I find sufficient force in the submissions of learned counsel for the respondent.

14. Although the contradictory statements of the respondent made in different proceedings as to the dates and places of marriage do create some doubt regarding the factum of marriage, it is trite law that in a proceeding under Section 144 BNSS, it is sufficient to establish a relationship in the nature of husband and wife and the same can be established

only in the course of a trial by adducing evidence.

15. In the cited case of *Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit and Another* reported in (1999) 7 SCC 675, it has been held by the Hon'ble Apex Court that if the claimant proves that they live together as husband and wife, the Court can presume a legal marriage, shifting the burden to the other party to rebut this presumption. Therefore, in the instant case, even if there is discrepancy with regard to the dates and places of marriage as stated by the respondent, the same is to be looked at during the trial and besides the factum of actual marriage, the question regarding the nature of the relationship as to whether it amounted to a relationship of husband and wife is also required to be examined for the purpose of determining whether the respondent herein is entitled to maintenance.

16. For the aforesaid reasons, this Court declines to quash the impugned proceedings in exercise of its inherent powers.

17. The criminal petition accordingly stands dismissed.

JUDGE

Comparing Assistant