

GAHC010191972022



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

**Case No. : Crl.Rev.P./465/2022**

MAHIM ALI  
S/O LATE SOLEMAN MOLLA,  
VILL. AND P.O.- KHUPONIKUCHI,  
P.S.- HAJO,  
DIST.- KAMRUP (R), ASSAM, PIN- 781102.

VERSUS

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

2:SUFIYA BEGUM  
D/O SUMOR UDDIN

VILL.- KETEKIBARI

P.O.- BOROMBOI

P.S.- HAJO

DIST.- KAMRUP (R)  
ASSAM  
PIN- 781102

**Advocate for the Petitioner : MD. I H KHAN**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE  
HONOURABLE MRS. JUSTICE MALASRI NANDI**

**JUDGMENT**

**Date : 30.05.2024**

Heard Mr. A. Alim Shaikh, learned counsel for the petitioner. Also heard Mr. A. Mubaraque , learned counsel for the respondent No. 2.

2. The petitioner has preferred this application u/s 397/401 read with section 482 Cr.PC against the impugned Judgment and order dated 20/05/2022 passed by the learned Principal Judge, Family Court, Nalbari in case no. FC (crl) no. 768/2019 u/s 125 Cr.PC.

3. On 06/09/2019, the respondent no. 2 has filed a case u/s 125 Cr.PC before the learned Principal Judge, Family court, Nalbari alleging *inter alia* that she got married to the petitioner on 31/05/2016. After their marriage, they led their conjugal life for a very short period as the petitioner started to torture her both physically as well as mentally and the respondent/wife was compelled to leave her matrimonial home and took shelter in the house of her parents. As such the respondent No. 2 claimed maintenance u/s 125 Cr.PC.

4. On receipt of the notice, the petitioner appeared before the trial court and contested the case by filing written statement denying the allegations leveled against him. During trial, the respondent no. 2 adduced evidence as PW-1, her father as PW-2, and her uncle as PW-3. The petitioner also examined himself as DW-1 and one Rahman Mulla as DW-2. After hearing the learned counsel for the parties, the trial court has allowed the maintenance allowance in favour of the respondent No. 2 and directed the petitioner to pay a monthly maintenance amounting to Rs. 2200/- to the respondent No. 2 from the date of Judgment.

5. Being highly aggrieved and dissatisfied with the Judgment and Order as aforesaid, the petitioner has preferred this Revision Petition.

6. Learned counsel for the petitioner has submitted that the learned trial court has failed to appreciate the materials on record as well as the written statement filed by the petitioner and evidence of DW-1 and DW-2. It is clearly stated in his written statement that the respondent no. 2 frequently fled away from her matrimonial home. She is a disobedient lady, never showed any intention to lead peaceful conjugal life with the petitioner and as such, the

Judgment and Order is liable to be set aside.

7. It is also the submission of the learned counsel for the petitioner that the petitioner is a daily wage earner, earning about Rs. 2500/- to 3000/- per month. The petitioner is having an old aged mother who is totally dependent on the petitioner. Under such backdrop, awarding a maintenance of Rs. 2200/- per month is absolutely unjustified.

8. *Per contra*, the learned counsel for the respondent No.2 submitted that the findings recorded by the trial court has supported by oral and documentary evidence, more so legally admissible evidence. He further submitted that it is not a fit case to quash the impugned judgment and order passed by the trial court by exercising the revisional power of this court.

9. Now the points that arise for consideration in this criminal revision petition are :

- a. Whether the respondent is entitled for maintenance from the petitioner; and,
- b. Whether the findings recorded by the trial court are perverse, warranting interference by this court.

10. In order to claim maintenance, the petitioner has to satisfy the ingredients of Sub-Sections –(1) and (4) of Section 125 CrPC which read as follows:-

**“125. Order for maintenance of wives, children and parents.**

*(1) If any person having sufficient means neglects or refuses to maintain –*

*(a) his wife, unable to maintain herself, or*

*(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*

*(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*

*(d) his father or mother, unable to maintain himself or herself,*

*A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct;*

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*(4)No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."*

11. A fascicular reading of the above two provisions clearly demonstrates that if the husband willfully and intentionally neglects to provide maintenance to his wife then she can approach before the court seeking maintenance. At the same time, wife is not entitled to claim maintenance from her husband if she left the matrimonial house without any cause much less justifiable cause.

12. As per testimony of PW-1 i.e. the respondent No.2, the petitioner and his family members subjected her to cruelty and hence, she left her matrimonial home. The other witnesses examined by the respondent i.e. PW-2, her father and PW-3, her uncle also supported the statement of the respondent by stating that after few days of marriage of the respondent with the petitioner, the petitioner started to torture her both mentally as well as physically. The petitioner also asked her to bring money from her parental home. As the parents of the respondent are poor, they did not meet the demand of the petitioner and as a result of which, the respondent was compelled to leave the house of her husband and took shelter in the house of her parents.

13. Though the petitioner examined one witness in support of his case but he also alleged against the respondent in the same tune whatever stated by the petitioner in his statement that the respondent could not adjust herself in her in-laws house due to her bad nature and conduct. She always insisted her husband to live separately from her in-laws. The petitioner also alleged that the respondent has not followed the procedure as contemplated under the Mohammeden law.

14. After going through the evidence of the witnesses as well as the provision of law under Section 125 CrPC, it is clear that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain his wife. Sometimes a plea is advanced by the husband that he does not have means to pay as he does not have a suitable job or business. But these are all bald excuses and in fact they have no acceptability in law. If

the husband is healthy, able bodied and in a position to support himself, he is under the legal obligation to support his wife.

15. The Hon'ble Supreme Court in the case of *Chaturbhuj –vs- Sita Bai* reported in (2008) 2 SCC 316 has held that the grant of maintenance to wife is a measure of social justice. The court has held as under :

*“Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in [Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors.](#) (AIR 1978 SC 1807) 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 v. State of Gujarat and Ors.](#) (2005) 3 SCC 636.”*

16. A Division Bench of Madhya Pradesh High Court in the case of [Durga Singh Lodhi Vs. Prembai and others](#), reported in 1990 Cr.L.J. 2065 has held that mere absence of visible means or real estate will not entitle such a person to escape the liability to pay maintenance awarded under Section 125(1), as even at the stage of enforcement of the order under Section 125(1), an able bodied healthy person capable of earning, must be subjected to pay maintenance allowance. If, with this visible capacity to earn, he avoids payments, it has to be held that he has so done for no sufficient cause. If such a person avoids to discharge that obligations despite issuance of a distress warrant, he can be sentenced to imprisonment for a term specified in sub-section (3) of Section 125 Cr.P.C.

17. The Hon'ble Supreme Court in the case of *Shamima Farooqui Vs- Shahid Khan*, Criminal Appeal Nos. 564-565 of 2015, decided on 06.4.2015, has held as under:

*“A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held*

*entitled to grant of maintenance within the parameters of [Section 125 Cr.P.C.](#), it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar."*

18. The Hon'ble Supreme Court in the case of [Laxmi Bai Patel vs. Shyam Kumar Patel](#) reported in 2002 (44) ACC 1102 SC has held as under:

*"To put it differently, does the statements made by the wife that she had left the matrimonial home voluntarily and that she was earning Rs. 50/- per day by agricultural operations, disentitle her to receive maintenance from her husband? It is our considered view that such statements without anything more would not be sufficient to deny maintenance to the wife from her husband. It is to be kept in mind that it is the responsibility of the husband to maintain his wife and wife has the right to claim maintenance so long as she stays away from the matrimonial home under compelling circumstances. The wife's right to claim maintenance under [Section 125 Cr.P.C.](#) can be denied only in the circumstances provided under sub-section (4) of the said section."*

19. In view of the aforesaid legal proposition, it can be said that the marriage between the parties is not disputed and it is also not in dispute that the respondent No. 2 has left the house of her husband on being harassed, the husband is duty bound to pay maintenance to the wife.

20. For the foregoing discussion, this court is of the considered view that the learned trial court has scrutinized the material available in record in right perspective and the said findings are based on some reasoning and hence, interference by this court under Sections 401/397/482 CrPC is unwarranted. This revision petition is devoid of any merit and accordingly the same is liable to be dismissed.

21. In the result, the criminal revision petition is dismissed.

Send back the trial court record.

**JUDGE**

**Comparing Assistant**