

**HIGH COURT OF TRIPURA
AGARTALA
Crl. Rev. P. No.51 of 2023**

Sri Rahul Chandra Deb

S/o Sri Ratan Chandra Deb,
Presently posted as Ambulance
Assistant, Army No.15450586
Lower Block Military Hospital
MES Dorjaline (AMC)
Borabazar, Shillong, Meghalaya
Permanent Resident of
Netajinagar, P.O & P.S – Teliamura,
Teliamura, Khowai Tripura

-----Petitioner(s)

Versus

Smti Mitali Paul

W/o Sri Rahul Chandra Deb
D/o Sri Krishna Paul
Resident of Boula Passa, Cinema Hall
P.O & P.S – Kailashahar,
District – Unakoti Tripura

----- Respondent(s)

For Petitioner(s)	:	Mr. B. Deb, Adv, Ms. S. Deb(Gupta), Adv.
For Respondent(s)	:	Mr. D. C. Deb, Adv.
Date of hearing & Judgment & Order	:	24.01.2024
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

Heard Mr. B. Deb, Learned Counsel assisted by
Ms. S. Deb(Gupta), Learned Counsel appearing for the
petitioner as well as Mr. D.C. Deb, Learned Counsel appearing
for the respondent.

2. This Criminal Revision Petition under Section 397 read with Section 401 of Cr.P.C, 1973 and Section 19 of the Family Courts Act, 1984 is filed by the petitioner challenging the order dated 01.06.2023 passed by Learned Judge, Family Court, Kailashahar, Unakoti District in connection with Case No. Crl. Misc. (125) 27 of 2021.

3. The gist of the Revision Petition filed by the present Petitioner in brief, is that the respondent wife as petitioner filed one case seeking maintenance against the present petitioner husband at the rate of Rs.20,000/- per month in view of the provision provided under Section 125 of Cr.P.C. The contention of the respondent in her petition was that the respondent is the legally married wife of the present petitioner husband and their marriage was solemnized on 06.05.2019 according to Hindu Rites and Customs. After the marriage, the respondent wife went to her matrimonial home to start conjugal life with the petitioner husband but the petitioner husband at the instigation of his parents, sister and brother-in-law started subjecting the respondent wife mental and physical torture for bringing a sum of Rs.1,80,000/- from her father but the father of the respondent wife being a petty shopkeeper could not meet up the demand for which the present petitioner husband inhumanely caused torture upon her but inspite of that the respondent wife continued to lead conjugal life with the present petitioner husband with the hope that the husband would correct himself. In the month of August, 2019, the

petitioner husband took her in his place of posting at Shillong where the petitioner husband subjected the respondent wife to severe physical torture and even tried to kill her by throttling her. In the month of October, 2020, the respondent wife returned back to her matrimonial home at Teliamura and therefrom she came to her parental home at Kailashahar during 'Bhaifuta' alongwith the petitioner husband but the petitioner left her therein with assurance to take her back but did not come later on. The respondent wife on several occasions made contact with the present petitioner-husband but the petitioner was reluctant to take her back. The respondent wife in her petition further stated that her husband i.e. the petitioner is an employee under the Central Government and was drawing salary more than Rs.60,000/-. So, she approached the Court for granting maintenance at the rate of Rs.20,000/- per month.

4. The present petitioner as OP contested the said proceeding before the Learned Court below by filing one written objection wherein he stated that the respondent had love affair with a boy of Kailashahar and for that she was reluctant to stay at Teliamura at her matrimonial home and used to remain busy with her mobile phone. It was further asserted that the actual name of the respondent wife is Mitali Paul but that name was concealed at the time of marriage and the respondent wife and her family members pretended her as Tina Paul. It was further asserted that the respondent wife was earning Rs.10,000/- per month by private tuition and her father was an established

businessman at Kailashahar and as such, the respondent wife has/had sufficient means to maintain her and was not entitled to get any maintenance. It was also asserted by the petitioner husband that he was ready to resume conjugal life with the present respondent wife. Before the Learned Court below, the process of reconciliation took place but that was failed. So, Learned Court below thereafter proceeded to dispose of the case in accordance with law.

5. To substantiate the case, the respondent wife as petitioner examined herself as PW-1 but no documentary evidence was adduced by her. On the other hand, the petitioner husband before the Learned Court below examined himself as OPW-1 and also adduced another witness namely Ratan Chandra Deb as OPW-2. No documentary evidence was also adduced by him in support of his defence and finally, Learned Court below by the order dated 01.06.2023 disposed of the petition with the following order:-

"i) The opposite party shall pay an amount of Rs.15,000/- (fifteen thousand) to the petitioner w.e.f the date of filing of the case i.e., from 24-03-2021. The arrear from 24-03-2021 to till date may be paid in installment @ Rs. 5000/- per month along with the regular monthly maintenance till the arrear is cleared.

ii) The amount of maintenance so ordered shall be payable within 10th day of every following English Calendar Month."

6. Challenging that order, the present petitioner husband has preferred this Revision Petition before the High Court. In course of hearing, Learned Counsel, Mr. B. Deb appearing on behalf of the petitioner at the very outset has

drawn the attention of the Court that the respondent wife was/is not entitled to get any maintenance from her husband i.e. the present petitioner. He also drawn the attention of the Court the provision of Section 125(1) of Cr.P.C. and submitted that there was no neglect/refusal from the side of the petitioner to maintain his wife. Learned Counsel further submitted that in view of the provision of sub-section 4 of Section 125 of Cr.P.C, the present respondent wife is/was also not entitled to get any maintenance from the present petitioner on the ground that the respondent wife without any sufficient reasons had left the present petitioner for which she is not entitled to get any maintenance from her husband. Learned Counsel further drawn the attention of the Court referring the evidence of the respondent wife as PW-1 and submitted that from her evidence, it will be crystal clear that she had voluntarily left the company of her husband and there was no refusal/neglect from the side of her husband i.e. the present petitioner. As such in view of the mandate of the provision of Section 125 of Cr.P.C., the respondent wife was not entitled to get any maintenance but the Learned Court below did not consider the evidence on record and awarded maintenance at the rate of 15,000/- per month against the petitioner husband. Learned Counsel also submitted that the present petitioner husband was drawing Rs.40,000/- and from that amount he has to maintain his old aged parents and since the respondent wife was living separately from the year 2020 so she is not entitled to get any

maintenance which Learned Court below did not consider and relied upon two citations and finally, urged before the Court to annul/set aside the order passed by Learned Judge, Family Court, Kailashahar.

On the other hand, Learned Counsel for the respondent wife first of all, drawn the attention of the Court that there was clear evidence of refusal/neglect by the petitioner husband to pay maintenance to his wife i.e. the respondent of this case. Learned Counsel further submitted that in a proceeding under Domestic Violence Act, the Court ordered for restoration of Shtree Dhan by the petitioner husband to his wife i.e. the respondent of this case. Even there is case pending under Section 498(A) of IPC against the petitioner. Furthermore, the present petitioner inspite of direction by the Court never produced salary certificate before the Court and his present salary would be now more than Rs.60,000/- and finally, Learned Counsel for the respondent wife submitted before the Court that the Learned Court below rightly and reasonably delivered the order awarding maintenance at the rate of Rs.15,000/- per month in favour of the respondent wife and urged before this Court to uphold the order of the Learned Court below.

7. I have heard elaborate arguments of both the sides at length and also gone through the record of the Learned Court below. There is no dispute on record in respect of the

marriage of the present petitioner husband with the respondent wife on 06.05.2019 as per Hindu Marriage Rites and Customs.

8. To substantiate the claim petition, the respondent wife has examined her in the original proceeding as PW-1. On the other hand, the present petitioner husband adduced two witnesses including himself. Now, let us consider what was the evidence on record of the parties under dispute before the Learned Court below.

9. The present respondent as petitioner before the Learned Court below has examined as PW-1. In her examination-in-chief in affidavit, she had asserted all the contentions as raised by her in her claim petition but in course of her cross-examination, she stated that no explanation was given by her in para 7 of her examination-in-chief as to how she saved her life. She informed the fact of causing torture upon her to the superior authority of her husband but she did not lodge any written complaint. She also did not report anything to the nearby boarders of the quarters at Shillong nor she lodged any FIR or any complaint at Shillong. She did not undergo any treatment at Shillong nor she mentioned any single date or time of alleged incident of torture or cruelty upon her in her application for maintenance. She also submitted that she has not submitted any proof in regard to the monthly salary of the petitioner husband. She also mentioned her name as Tina instead of Mitali in the marriage card. Nothing more relevant found from her cross-examination.

10. The petitioner as OPW1 in his examination-in-chief narrated the contentions as made by him in his written objection and during cross-examination by the respondent wife, he deposed that he got married with the respondent on 06.05.2018 although it should be 06.05.2019. He know the name of his wife as Tina Paul and their marriage was a social marriage and also submitted that he has not submitted any salary certificate to the Court. He also deposed that sometimes when his wife used to speak to her parents then on such occasions her parents and his parents also used to speak over phone and he did not mention any name with whom he suspected his wife to have any affair. Further deposed that he did not produce before the Court anything which he suspected to be given to his wife by her brother on which some suspicious things arose and again he deposed that since his wife had departed him in the month of December, 2020, he did not provide any monetary assistance to her.

11. OPW-2, Ratan Chandra Deb is the father of the present petitioner. He in his examination-in-chief admitted the fact of marriage and deposed that the respondent wife stayed at her matrimonial home for two/three months and she used to busy over her phone almost for the entire day and also deposed that often there used to be quarrel in between his son and daughter-in-law. Further deposed that the respondent wife is presently staying at her parent's house for almost one year/one and half year. During cross-examination he deposed that a case

was lodged against him and others by the respondent wife at Kailashahar PS and the case was resulted in charge-sheet vide Kailashahar Woman PS case No.21/2021. These are the sum and substance of the evidence on record of the parties under dispute before the Learned Court below.

12. As I have already stated that there is no dispute on record in respect of the fact of marriage of the present petitioner with the respondent wife in the year, 2019. It is also on record that since the month of December, 2020 both the parties are residing separately. Admittedly, the respondent wife before the Learned Court below save and except herself could not adduce any other witness nor produced any documentary evidence regarding income of the petitioner husband. The petitioner husband in course of his cross-examination by the respondent wife specifically admitted that he drew salary of Rs.40,000/- and also he himself admitted that he has not produced any salary certificate before the Court.

13. Learned Court below in delivering the judgment relied upon the citation of the Hon'ble Apex Court in **Chaturbhuji vs. Sita Bai (2008) 2 SCC 316** wherein it has been held that the object of granting maintenance is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife

while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 Cr.P.C is a measure of social justice and is specially enacted to protect women and children. The object is to prevent vagrancy and destitution.

14. From the evidence on record, it is crystal clear that initially the respondent wife did not lodge any complaint against the present petitioner but later on she filed one case at Kailashahar against her husband and others which has been admitted by the father of the present petitioner during his cross-examination before the Court which the present petitioner has suppressed. The present petitioner husband also asserted that the respondent wife is earning Rs.10,000/- per month by doing private tuition but in this regard, no documentary evidence was produced and proved by the petitioner husband. It was also asserted that the respondent wife had some illicit relation with a boy at Kailashahar but to substantiate that allegation, no oral or documentary evidence was proved and produced by the petitioner husband before the Learned Court below. So, legally there was no scope on the part of the Court to believe that part of the evidence. Now, here we are dealing with a proceeding under Section 125 of Cr.P.C which was enacted to prevent vagrancy and destitution of a distressed lady.

15. In course of hearing, Learned Counsel for the petitioner drawn the attention of the Court to the relevant provision of Section 125 and Section 125(4) of Cr.P.C and for

the sake of convenience, the relevant provision is reproduced below under:

"125. Order for maintenance of wives, children and parents- (1) If any person having sufficient means neglects or refuses to maintain-"

"125(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,] 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."

Learned Counsel for the petitioner at the time of hearing stressed upon the very sentence of the provision "Person having sufficient means neglects or refuses" again stressed upon "without any sufficient reason, she refuses to live with her husband" and submitted that there was no evidence on record that the petitioner husband refused or neglected to provide maintenance to the respondent wife rather there was also evidence on record that the present respondent wife had voluntarily left her matrimonial house and refused to live with her husband i.e. the petitioner as such she was not entitled to get any maintenance.

16. Here in the case at hand as already stated the respondent wife as petitioner has only adduced her evidence before the Learned Court below. She specifically asserted that she did not report anything in writing to the superior authority of the petitioner husband regarding causing cruelty upon her by her husband at Shillong or she did not lodge any complaint at Shillong for the alleged assault but it is on record that she later on filed one case at Kailashahar against the present petitioner husband and other family members and it is also on record

since December 2020, both the parties are residing separately. It is on record that the present petitioner husband did not provide anything to the respondent wife towards her maintenance and furthermore, the O.P. also could not produce any oral/documentary evidence on record that the father of the respondent wife has/had sufficient means to provide maintenance to his daughter. There is further no evidence on record that the present petitioner husband did take any step to bring her back i.e. the respondent wife at her matrimonial home nor he filed any case against the respondent wife for restitution of conjugal rights which indicates that there might had some reason which compelled the respondent wife to stay at her parental house after deserting her matrimonial home. So, there was no scope to come to any conclusion that there was no refusal or neglect from the side of the petitioner husband to provide any maintenance to the respondent wife. Furthermore, no convincing argument adduced by the Learned Counsel representing the petitioner to disbelieve the contention raised by the respondent wife in her claim petition for maintenance.

17. Learned Counsel for the petitioner further in course of hearing relied upon two citations. In **Rajnish Vrs. Neha and another** dated 04.11.2020 reported in **(2021) 2 SCC 324**, Hon'ble Supreme Court framed some guidelines on certain aspect pertaining to the maintenance in matrimonial matters. In Para 65, Hon'ble Apex Court observed as under:

"65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with

limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the court concerned, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage.”

In Para 72, the Hon’ble Supreme Court further observed as under:

“72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

72.1 (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate’s Court concerned, as the case may be, throughout the country;

72.2 (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3 (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [Kaushalya V.Mukesh Jain,(2020) 17 SCC 822]. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on basis of the affidavit filed by the applicant and the pleadings on record;”

Referring the same, Learned Counsel submitted that the respondent wife did not submit any affidavit showing disclosure of assets and liabilities as mandated by the Hon’ble Supreme Court.

18. In this regard, after going through the record of the Learned Court below, it appears that the respondent-petitioner at the time of filing application under Section 125 of Cr.P.C. submitted affidavit of assets and liabilities for non-agrarian deposits in Enclosure-1 before the Learned Court below. Similarly, the present petitioner husband also submitted affidavit of assets and liabilities as per Enclosure-1 in pursuance of the direction of the Hon'ble Supreme Court wherein he specifically mentioned in the relevant column showing his monthly income as Rs.40,490/-. So, the aforesaid citation of the Hon'ble Apex Court is not required to be taken into consideration in this case since the direction of the Hon'ble Supreme Court has been duly complied with by the parties.

19. Learned Counsel for the petitioner also relied upon another citation of the Hon'ble Supreme Court of India in **Aditi Alias Mithi v. Jitesh Sharma** dated 06.11.2023 reported in **2023 SCC OnLine SC 1451** wherein Paras 15, 16 & 17 Hon'ble Supreme Court observed as under:

"15. Nothing is evident from the record or even pointed out by the learned counsel for the appellant at the time of hearing that affidavits were filed by both the parties in terms of judgment of this Court in Rajnesh's case (supra), which was directed to be communicated to all the High Courts for further circulation to all the Judicial Officers for awareness and implementation. The case in hand is not in isolation. Even after pronouncement of the aforesaid judgment, this Court is still coming across number of cases decided by the courts below fixing maintenance, either interim or final, without their being any affidavit on record filed by the parties. Apparently, the officers concerned have failed to take notice of the guidelines issued by this Court for expeditious disposal of cases involving grant of maintenance. Comprehensive guidelines were issued

pertaining to overlapping jurisdiction among courts when concurrent remedies for grant of maintenance are available under the Special Marriage Act, 1954, Section 125 Cr.P.C., the Protection of Women from Domestic Violence Act, 2005, Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act, 1956, and Criteria for determining quantum of maintenance, date from which maintenance is to be awarded, enforcement of orders of maintenance including fixing payment of interim maintenance. As a result, the litigation which should close at the trial level is taken up to this Court and the parties are forced to litigate.

16. As in the case in hand, the impugned order passed by the High Court is cryptic and is bereft of reasons. In our opinion, the same deserves to be set aside and the matter is liable to be remitted to the High Court for consideration afresh. Ordered accordingly. As the respondent remained unrepresented, the High Court may issue notice for his appearance on the date so fixed by it.

17. Considering the facts of the case in hand and the other similar cases coming across before this Court not adhering to the guidelines given in **Rajnesh's** case (supra), we deem it appropriate to direct the Secretary General of this Court to re-circulate the aforesaid judgment not only to all the Judicial Officers through the High Courts concerned but also to the National Judicial Academy and the State Judicial Academies, to be taken note of during the training programmes as well. Ordered accordingly."

I have gone through the said citation. It appears that since the respondent wife has complied with the direction of the Hon'ble Supreme Court in **Rajnesh** (supra), so the present citation is not helping us to take any adverse inference against the present respondent of this case.

20. After hearing Learned Counsel of both the sides and after going through the evidence on record before the Learned Court below, it appears that Learned Court below after taking into consideration all aspects has rightly delivered the final order awarding maintenance allowance at the rate of Rs.15,000/- per month to the respondent wife with effect from 24.03.2021 with further direction to clear the arrear

maintenance with effect from 24.03.2021 to till date by paying installment at the rate of Rs.5000/- per month along with regular maintenance till the arrear is clear with further direction to pay the maintenance within tenth day of every following English calendar month. In course of hearing, nothing is raised by the Learned Counsel for the respondent wife regarding non-payment of arrear maintenance by the petitioner husband. So, this Court does not find any scope to interfere with the judgment of the Learned Court below nor find any scope to pass any observation in respect of the arrear maintenance allowance as ordered by the Learned Court below.

21. In the result, the Revision Petition filed by the petitioner is hereby dismissed on contest with costs. The order dated 01.06.2023 passed by Learned Court below in CrI. Misc.(125) 27 of 2021 is hereby upheld and accordingly affirmed. The present petitioner shall comply with the order of the Learned Court below without any further delay. With these observations, this Revision Petition is disposed of.

22. Send down the LCR along with copy of judgment and order.

JUDGE