

GAHC010219412012



2024:GAU-AS:12792

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

**Case No. : Crl.Rev.P./317/2012**

SWAPAN KR. GOYARY  
S/O- LT. UCHAN GOYARY, VILL. and P.O.- BALLAMGURI, P.S.- BIJNI, DIST.-  
CHIRANG, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR

2:DAUTEB GOYARI  
W/O- SRI SWAPAN KR. GOYARI  
VILL.- RANGIJHORA  
P.S.- BIJNI  
DIST.- CHIRANG  
BTAD  
ASSAM

**Advocate for the Petitioner** : MR.R S CHOUHAN,

**Advocate for the Respondent** : MR.S BHUYAN, PP, ASSAM,MRA KUNDU

**BEFORE**  
**HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

**ORDER**

**13.12.2024**

1. None appears for the parties on call. None did represent the petitioner when

the matter was called for hearing on 04.12.2024, however, in the interest of justice, the matter was adjourned. However, Mr. S. Bhuyan, learned counsel for the respondent No. 2 and Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent are present.

2. This criminal revision petition under Section 397/401 read with Section 482 of the Cr.P.C., 1973, is filed challenging an order dated 07.06.2011, passed by the learned Sub Divisional Judicial Magistrate (M), Bijni in C.R. No. 312/2010, whereby, the respondent wife was granted a residence order, maintenance allowance and monetary relief for an amount of Rs. 50,000/-. The further challenge is an order dated 21.03.2012 passed by the learned Additional Sessions Judge (F.T.C) Bongaigaon, whereby, the said order dated 07.06.2011 was affirmed so far relating to orders of residence, payment of maintenance allowance but the monetary relief was modified by reducing it to Rs. 30,000/-.
3. When the matter was listed for motion on 25.06.2012, this Court recorded that the learned counsel for the petitioner submitted that except monetary relief of Rs. 30,000/- as awarded by the trial Court and affirmed by the appellate Court, rest of the order are not in challenge in this petition. Accordingly, considering the said fact, the monetary relief of Rs. 30,000/- granted by the trial Court was stayed by this Court.
4. The brief facts leading to the present case is as follows:-
  - I. that the respondent wife filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as Act, 2005) inter alia alleging that the petitioner husband had deserted her and got married to another woman and merrymaking with his newly wedded wife ignoring the basic requirements of the complainant. It was also stated in the complaint that they have a daughter, who is

pursuing her studies in class VII at that relevant point of time. Accordingly, a prayer was made seeking protection order under Section 18, residence order under Section 19, maintenance order under Section 20, compensation under Section 22 of the Act, 2005.

- II. The petitioner husband filed a written statement with a contention that petition was not maintainable and denied that he had committed any kind of domestic violence in the form of mental/physical verbal and emotional abuse. It was also contended that he made no economic violence as well as dowry related violence against his wife.
- III. The complainant wife in support of her case examined as many as three witnesses including herself. The petitioner husband examined himself as DW-1 in support of his case.
- IV. After elaborately discussing the testimonies of the witness, the learned trial Court concluded that the petitioner husband in his written statement as well as in his evidence candidly admitted that he married another wife and now he has been residing with the second wife in another place. It was concluded that the petitioner husband has failed offer any plausible explanations as to what prompted him to leave the company of the aggrieved person with whom he spent eighteen years of conjugal life. The learned trial court also concluded that salary of the petitioner husband is not less than Rs. 20,000/- per month. It was also concluded that the act of the petitioner husband prima facie constitute domestic violence upon the complainant wife. It was further observed that the petitioner husband cannot be allowed to treat his wife and children as an object and behave in a manner he likes. It was also concluded that the petitioner husband has failed to dispute the allegations by adducing his defence evidence inasmuch as the complainant wife has been able to establish her case.

V. Accordingly, the impugned order was passed by directing to pay maintenance of Rs. 3,000/- each to the complainant and her daughter per month and such amount is to be paid within second week of every English calendar month so that they can live a modest life. The learned trial Court also granted an amount of Rs. 50,000/- under Section 20(1)(d) of the Act, 2005.

VI. Being aggrieved, the petitioner approached the learned appellate Court which was registered as Criminal Appeal No. 17(3)/2011.

VII. The learned appellate Court after re-appreciation of evidence while upholding the judgment so far relating to award of maintenance modified the award of compensation under Section 20(1)(d) of the Act, 2005 to Rs. 30,000/- and being aggrieved, the present criminal revision petition is filed.

5. The fundamental case of the petitioner is before the learned Magistrate is denial of the allegation in total that the wife could not maintain herself and that she is not having any source of income and also denied the statement of the wife that the petitioner is having sufficient income.

6. After perusal of the material available on record including the evidence adduced by the respondent wife as well as the husband, the learned appellate Court came to a conclusion that the husband is an able bodied person and he has not provided any kind of maintenance to the wife.

7. This Court has also perused the material available on record including the evidence of PW-1, PW-2 and PW-3 as well as the written statement.

8. The object of revisional power of this Court under Section 397 Cr.P.C. is to set right a patent defect or an error of jurisdiction or law. Such power can be

exercised where the decision under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. It is equally well settled that a revisional jurisdiction of High Court should not be exercised in a routine manner. The Hon'ble Apex Court in **Chandra Babu vs State** reported in **2015 (8) SCC 774** held that normally revisional jurisdiction should be exercised in a question of law however, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. The Supreme Court went to say that the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

9. This Court is in agreement with the findings recorded by the court below which are based on sound reasoning. In the considered opinion of this Court and as discussed herein above, the learned Court below has duly appreciated the evidence on record and the conclusion arrived at on the basis of such appreciation of evidence cannot be termed as a decision which could not have been arrived at on the basis of evidence available on record. This Court has not found anything as regards as patent defect of jurisdiction or law. The learned counsel has not also been able to show any non compliance of any provisions of law or that the findings recorded is based on no evidence or that material evidence is ignored or that judicial discretion is exercised arbitrarily or perversely. In the case in hand, after perusal of the material available on record, this Court finds no ground to interfere with the findings of fact and the determination made by the learned Court below.
10. In view of the aforesaid discussions and reasons, this criminal revision petition stands dismissed.
11. Registry to send a copy of this order to the learned Court of Sub Divisional Judicial Magistrate, (M), Bijni.

12. Interim order, if any, stands vacated. LCR be sent back.

**JUDGE**

**Comparing Assistant**