GAHC010221922025

2026:GAU-AS:16058

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

Case No. : Crl.Rev.P./456/2025

BAHARUL ISLAM
S/O INTAJ ALI
R/O- SATRA MOINBARI, P/O- MOIANBARI, P/S- KALGECHIA, DIST- BARPETA,ASSAM

VERSUS

JENIFA SIDDIQUE
D/O- ABDUS SUBHAN SIDDIQUE,
W/O NK BAHARUL ISLAM
R/O VILL- SONKUCHI
P.O. JANIA
P.S. BARPETA
DIST. BARPETA, ASSAM
PIN- 781314

Advocate for the Petitioner : K U AHMED, MR. S U AHMED,E DEVI

Advocate for the Respondent : MR. A R BAROOAH (AMICUS CURIAE),

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

03.11.2026

Heard Mr. K. U. Ahmed, learned counsel for the petitioner and Mr. A. R. Barooah, learned Amicus Curiae for the respondent.

2. In this petition, under Sections 438/442/528 of the BNSS, 2023, the petitioner, namely, Baharul Islam, has prayed for setting aside and quashing the Judgment and Order, dated 02.09.2025, passed by the learned Principal Judge, Family Court, Barpeta, in F.C. (Crl) No. 151/2023, and to give prospective effect of the judgment and order, by reducing the amount of maintenance from the date of judgment and order.

3. Mr. Ahmed, learned counsel for the petitioner submits that the petitioner herein is the husband of the respondent, who has instituted a proceeding, being F.C. (Crl) No. 151/2023, under Section 125 of the Cr.P.C., before the Court of the learned Principal Judge, Family court, Barpeta (hereinafter, 'Trial Court'), claiming maintenance for herself and her minor son. In the said proceeding, the petitioner entered appearance and filed his written statement and contested the case of the respondent herein.

3.1 Mr. Ahmed further submits that the petitioner is serving in Indian Army and due to his pre-occupation, he could not adduce evidence in the said proceeding and the Trial court, vide impugned Judgment and Order, dated 02.09.2025, had directed the petitioner herein to pay maintenance to the respondent @ 7000/- per month and to her child @ 5000/- per month, totally Rs. 12,000/- per month,

from the date of filing of the petition.

3.2 It is the further submission of Mr. Ahmed that while passing the impugned judgment and order, the learned Trial Court has not considered the factum of payment of interim maintenance by the petitioner herein to the respondent and has also not passed any order towards adjustment of the same, against the final award. He also submits that the effect of the order may be given from the date of the judgment and order, and not from the date of filing of the petition, and under such circumstances, he has contended to allow this petition.

4. Per contra, Mr. Barooah, learned Amicus Curiae for the respondent, has vehemently opposed the petition. He submits that the petitioner is working in Indian Army and drawing a salary of more than 60,000/- per month and the respondent herein is living hand-to-mouth, and is taking shelter in her parental abode, with her minor son, and if the amount already granted is reduced, then it will cause serious prejudice to her and under such circumstances, he has contended to dismiss the petition.

5. Having heard the submissions of the learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also perused the impugned Judgment and Order, dated 02.09.2025.

6. It appears that basically, on two counts, the petitioner has challenged the impugned Judgment and Order, dated 02.09.2025. The first ground is that the date of effect of the impugned judgment and order is given from the date of filing of the petition, which according to him, ought to have been from the date of passing of the judgment and order. But, this issue is well settled in the case

of **Rajnesh Vs. Neha & Ors.**, reported in **(2021) 2 SCC 324**, wherein, the Hon'ble Supreme Court has categorically stated that it would be from the date of filing of the petition.

7. In the instant case, the learned Trial Court has directed to pay the maintenance to the respondent and her minor son, from the date of filing of the petition and as such, the impugned judgment and order is in conformity with the direction issued by the Hon'ble Supreme Court in the case of **Rajnesh (Supra)**, and as such, the same requires no interference of this Court.

8. Moving forward to the second ground, this Court finds that the learned Trial Court has not passed any order towards adjustment of the interim maintenance, granted by the learned Trial Court vide Order, dated 10.03.2023, before pronouncement of the judgment and order on 02.09.2025.

9. It is to be noted here that vide order, dated 10.03.2023, the learned Trial Court had directed the petitioner herein to pay maintenance to the respondent herein @ Rs. 5000/- per month and to her child @ Rs. 2000/- per month, until further orders. And in the impugned Judgment and Order, dated 02.09.2025, the learned Trial Court has not passed any direction towards adjustment of the aforementioned amount.

10. Accordingly, this Court finds sufficient force in the submission of the learned counsel for the petitioner on this count. And this Court is of the considered opinion that the amount already paid as interim maintenance, by the petitioner herein to the respondent herein and her minor son, has to be adjusted against the amount directed to be paid vide judgment and order, dated

02.09.2025, by the petitioner to the respondent and her minor son. It is provided that the interim maintenance already paid by the petitioner has to be adjusted against the final award.

11. In terms of the above, this criminal petition stands allowed.

JUDGE

Comparing Assistant