GAHC010258742022

2026:GAU-AS:16141

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

Case No. : Crl.Pet./1292/2022

SANKAR BISWAS
S/O LATE SUNIL BISWAS,
R/O AMGURI TOWN,
WARD NO. 8, POST OFFICE- AMGURI,
DIST. SIVASAGAR, ASSAM-785683

VERSUS

PUSPA PAUL
W/O SRI SANKAR BISWAS,
D/O SRI RAM CHANDRA PAUL, R/O VILL- ITAKULI
GARMUR NEAR NIGARANANDA ASHRAM, JORHAT ENGINEERING
COLLEGE, DIST. JORHAT,ASSAM-785007

Advocate for the Petitioner : MR. DITUL DAS, MR. R RAHMAN

Advocate for the Respondent : MR. M K DAS (LEGAL AID COUNSEL), G BORUAH

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

Advocates for the Petitioner : Mr. D. Das,
Advocates for the Respondent : Ms. G. Boruah,

Date on which judgment is reserved : **15-10-2026**

Date of pronouncement of judgment : **04-11-2026**

Whether the Pronouncement is of the operative part of the judgment? : N/A

Whether the full judgment has been pronounced? : Yes

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JUDGMENT & ORDER (CAV)

Heard Mr. D. Das, learned counsel for the petitioner and Ms. G. Boruah, learned counsel appearing for the sole respondent.

2. This criminal petition has been filed under section 482 CrPC, read with Section 401 CrPC against the judgment and order dated 22.07.2022, passed by the learned Sessions Judge, Jorhat dismissing the Crl. Revision Case No. 63/2018 filed against the judgment dated 20.10.2018, passed by the learned JMFC, Jorhat in Misc. Case No. 69/2016 under Section 125 CrPC.

3. It is submitted by Mr. Das, learned counsel that the respondent have filed the Misc Case No. 69/2016 under Section 125 CrPC seeking maintenance @ Rs. 25,000/- from the petitioner which is contested by him by filing his written statement and also adduced his own evidence as DW-1.

4. It is the plea of the petitioner that the respondent has voluntarily withdrawn herself from the life and society of the petitioner without any proper justification and as such, she is not entitled to maintenance. He further submitted that the respondent could not show sufficient ground for deserting the petitioner and living separately from the petitioner, but without appreciating those facts, the learned Trial Court as well as the Revisional Court had passed the judgment directing the petitioner to pay Rs.10,000/- towards maintenance to the respondent from the date of the order.

5. Mr. Das, learned counsel further submitted that the respondent could not make out a case that she was subjected to mental and physical torture or the petitioner demanded dowry, for which, she had to left her matrimonial house, rather, it reveals that she withdrawn herself from the life and society of the petitioner without any justifiable ground and voluntarily staying separately from the petitioner and hence, she is not at all entitled to maintenance under Section 125(4) CrPC.

6. Mr. Das, learned counsel further submitted that one divorce proceeding is also pending between the parties instituted by the petitioner seeking divorce. He further submitted that the petition for maintenance does not disclose the torture on the respondent, but, while adducing her evidence, she developed the story and brought some allegation of torture on her. But without appreciating

those facts, the learned Trial Court as well as the learned Sessions Judge/Revisional Court had passed the order of maintenance directing the petitioner for payment of Rs. 10,000/- per month towards her maintenance allowance. He further submitted that the respondent could not even make out a case to live separately from her husband/petitioner and without any justification, she is voluntarily living separately from her husband only to harass him and praying for maintenance. Thus under Section 125 (4) CrPC she is not at all entitled for maintenance and mere separation also does not automatically entitled a wife to maintenance.

7. He further submitted that the respondent is to prove that she was subjected to torture and was bound to live separately from her husband and without proving her case, she cannot claim maintenance only because she is staying separately from her husband/petitioner.

8. Mr. Das, learned counsel accordingly submitted that there are sufficient grounds for setting aside and quashing the judgment and order passed by the learned Trial Court below as well as by the learned Sessions Judge dated 20.10.2018 in Misc Case No. 69/2016 and 22.07.2022 in Crl. Revision Case No. 63/2018 respectively, whereby the petitioner was directed to pay maintenance of Rs.10,000/- per month towards maintenance.

9. Mr. Das, learned counsel also cited the decision of Rajasthan High Court as well as High Court of Mumbai in the cases of **Bheekha Ram Vs. Goma Devi and Ors** (Crl. Revision No. 17 of 1997)**; Kalidas Vs. Parwatibal** (Criminal Revision Application No.89-A of 1982), wherein it is also expressed that wife is to establish that she was neglected by her husband to entitle for maintenance

under Section 125(4) CrPC, if she is living with her parents on her own accord.

10. Ms. Boruah, learned counsel appearing for the sole respondent submitted that the present litigation under Section 125 CrPC is pending since last 10 years and the respondent is deprived of getting any maintenance despite the fact that the husband/petitioner has sufficient means to provide her maintenance, who is the legally married wife of the petitioner.

11. The respondent could establish her case that as to how she was subjected to mental and physical torture for which she was bound to leave her matrimonial house and to live separately from her husband/petitioner. The learned Trial Court as well as the learned Sessions Judge had rightly passed the order after proper assessment of the evidence on record, wherefrom, it reveals that she was subjected to torture, for which she had to leave her matrimonial house. She was driven out from her matrimonial house only after 1 year of her marriage and since then, she is living with her parents and the case has been under litigation for more than a decade and the respondent was deprived from her legal right.

12. The order of maintenance passed by the learned Trial Court on 20.10.2018, but till date the respondent is not receiving the maintenance allowance. The maintenance which was granted to the present respondent is only 0.9% of the salary of the petitioner and being an Assistant Professor, the petitioner is getting a handsome salary, but inspite of that the present respondent is not getting any maintenance except some interim maintenance @ Rs.2,000/- per month. At present, the arrear maintenance allowance is amounting to more than Rs.7,50,000/-, but this is not been paid by the

petitioner and the respondent is facing acute financial hardship.

13. Ms. Boruah, learned counsel further submitted that the petitioner filed the divorce case immediately after the completion of 1 year of their marriage and he never had any intention to continue their marital relationship. He never filed any case under the Restitution of Conjugal Rights to bring the respondent back to her matrimonial house, rather, he immediately filed a divorce case against the present respondent. Thus, it is crystal clear that it is not the respondent who withdrawn herself from the life and society of the petitioner, rather, she was driven out from her matrimonial house and she was forced to live separately from the petitioner.

14. She further submitted that in the present case, the petitioner took the plea that the respondent is not entitled for maintenance under Section 125(4) CrPC, but the petitioner never discharged his burden to prove that the respondent had left her matrimonial house on her own or she withdrawn herself from the life and society of the petitioner.

15. Ms. Boruah, learned counsel further relied on a decision of the Apex Court in the case of **Rina Kumari @ Rina Devi @ Reena Vs. Dinesh Kumar Mahto @ Dinesh Kumar Mahato,** decided on 10.01.2025 in Criminal Appeal No…… of 2025 (Special Leave Petition (Crl) No. 5896/2024), wherein it has been observed that "*the preponderance of judicial thought weighs in favour of upholding the wife's right to maintenance under Section 125 CrPC and the mere passing of a decree for restitution of conjugal rights at the husband's behest and non-compliance therewith by the wife would not, by itself, be sufficient to attract the disqualification under Section 125(4) CrPC. Thus, even in such*

situation also, the wife cannot be disentitled from maintenance."

16. Ms. Boruah, learned counsel for the respondent further submitted that the wife has the right to lead a life in a similar manner as she would have lead in the house of her husband. In that context also she relied on a decision of Apex Court in the case of **Shamima Farooqui Vs. Shahid Khan** reported in **AIR 2015 SC 2025**, wherein in para 15 of the said judgment it has been held as under:

> "*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 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home."*

17. Ms. Boruah, learned counsel further submitted that being an Assistant Professor, the petitioner is getting handsome salary and hence, the respondent is entitled to get the maintenance so that she can lead a life in a similar manner when she was with her husband/petitioner. She accordingly submitted that there is no any ground for setting aside and quashing the concurrent findings of the learned Trial Court as well as the learned Sessions Judge, wherein it is held that the respondent is entitled for maintenance from the petitioner @ Rs.10,000/- per month and accordingly submitted that the present petition is liable to be dismissed.

18. Heard the submission made by the learned counsel for the parties and I

have also perused the case record and the TCR.

19. The marriage and the income of the petitioner is not disputed and it is also an admitted position that he being an Assistant Professor is getting a handsome salary and admittedly the respondent has no source of income of her own to maintain herself. At the same time, it is also an admitted position that the respondent is living separately from her husband and only after 1 year of their marriage, a divorce petition is also filed by the petitioner seeking divorce.

20. It is the main contention of the petitioner that the respondent could not make out a case for getting maintenance under Section 125 CrPC, rather, she withdrawn herself from the life and society of the petitioner and staying in the house of her parents on her own and thus, under the proviso of Section 125(4) CrPC she is not entitled for maintenance as claimed for.

21. On the other hand, it is the case of the respondent that from the date of their marriage, she was subjected to mental and physical torture and thus, she was bound to stay separately from her husband. At the same time, it is also seen that the petitioner did not institute any case for restitution of conjugal rights, rather, immediately after 1 year of marriage, he instituted a divorce case seeking dissolution of their marriage. Thus, it is seen that there is no intention on the part of the petitioner to bring back the respondent to her matrimonial house.

22. Though, it is the plea of the petitioner that there is no disclosure of any torture on the respondent in her petition seeking maintenance, but on perusal of the same, it is seen that she brought the allegation of mental torture on her

and specified as to how she was subjected to mental torture, though there is no such specification about the physical torture on her. Further, it is seen that the learned Trial Court as well as the learned Session Judge while passing the order in the Revision Petition had discussed as to how she was subjected to torture by the petitioner side, which bound her to leave her matrimonial house. Thus, it cannot be held that there was no disclosure of any torture on the respondent or there was no justification in the evidence as well as in the statement made in the petition to justify the ground for leaving the matrimonial house by the respondent. Rather, it reveals that for the torture inflicted on her, she was bound to leave her matrimonial house. Thus, it is not a case under Section 125(4) CrPC to disentitle the respondent from getting maintenance from her husband/petitioner. More so, it is an admitted fact that the petitioner has the capability to provide maintenance @ Rs.10,000/- per month as awarded by the learned Trial Court as well as by the learned Sessions Judge, while passing the orders in Misc. Case No. 69/2016 as well as in Crl. Revision Case No. 63/2018 respectively.

23. Considering all the above aspects of the case, this Court is of the opinion that there is no need of any interference in the concurrent findings passed in Crl. Revision Case No. 63/2018 by the learned Sessions Judge, Jorhat vide its order dated 22.07.2022 and the order dated 20.10.2018 passed by the learned JMFC, Jorhat in Misc. Case No. 69/2016, wherein the petitioner was directed to pay monthly maintenance of Rs.10,000/- per month from the date of order. At the same time, it is also seen that there is a huge arrear amount towards maintenance and thus, the petitioner will take all necessary steps for payment of the arrear maintenance.

24. Accordingly, this criminal petition being devoid of any merit stands dismissed.

25. The interim order passed earlier on 19.12.2022 in the present petition is hereby stands vacated/recalled.

26. The petitioner is directed to pay the maintenance as directed by the learned Trial Court as well as by the learned Sessions Judge.

JUDGE

Comparing Assistant

Rupam Das

Digitally signed by Rupam Das
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