

GAHC010123172025



2026:GAU-AS:617

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

Case No. : Crl.Rev.P./212/2025

TUFAZZUL HUSSAIN
S/O.- SAMEJ UDDIN,
R/O.- VILL. -DABALIAPARA, P.S.- HOWLY,
DIST.- BARPETA, ASSAM.

VERSUS

FULMALA KHATUN
W/O.- TUFAZZUL HUSSAIN,
D/O.- LATE CHAND KHAN,
R/O.- VILL. -JAHURPAM, P.S.- HOWLY, DIST.- BARPETA, ASSAM.

Advocate for the Petitioner : MR. S C BISWAS, N. UDDIN MOLLAH, B KALITA, MS. S. CHANDA, MR. F A HASSAN

Advocate for the Respondent : MR. A ROSHID, MS. T BEGUM

BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS

JUDGMENT & ORDER (CAV)

Date : 20-01-2026

(Pranjal Das, J)

Heard Mr. S.C. Biswas, learned counsel for the petitioner. Also heard Ms. T.

Begum, learned counsel for the respondent.

2. The petitioner **Tufazzul Hussain** is invoking the revisional jurisdiction under section 438/442 of BNSS 2023, aggrieved by the order dated **17.03.2025**, passed by the learned Principal Judge, Family Court, Barpeta, in **F.C. (Cri.) Case No. 356/2020**, directing him to pay monthly maintenance of Rs.3000/- to the respondent, Fulmala Khatun, w.e.f 17.11.2021.

3. Before going further, the facts giving rise to the present proceeding may be noticed. The **respondent as 1st party** filed the petition before the learned Family Court, Barpeta under Section 125 Cr.P.C. seeking maintenance and claiming to be the wife of the petitioner/2nd party. Her contention was that the petitioner/2nd party married her under Islamic Law and subsequently, she also stayed with him in his house. However, the petitioner and his other wife tortured her and pushed her out of that house. The 1st party also made allegations of illegal demand for money made by the petitioner, stated to be her husband.

4. It was contended by the respondent/1st party that she was unable to maintain herself and therefore, she should be granted maintenance. The petitioner/2nd party contended that the respondent was not his wife and that he came to know her while she was working as an advocate clerk in Barpeta court, where he was working in a computer printing shop. He denied that he was financially well off as was contended by the 1st party.

5. During the proceeding, the respondent adduced evidence of herself as PW-1 and another person as PW-2. The petitioner/2nd party adduced evidence of only himself.

6. Upon considering the evidence, the learned Family Court, Barpeta was

pleased to grant maintenance to the respondent as already mentioned above.

7. The learned counsel for the petitioner supporting his pleadings in the revision petition submits that the order is erroneous as the learned Family Court, Barpeta wrongly held that the respondent was the wife of the petitioner.

8. It is contended that there was clear material that the respondent was married to other person and therefore, the learned Court below ought not to have accepted her evidence regarding her marriage to the petitioner in the absence of other evidence regarding her previous marriage.

9. It is contended that the petitioner has not been able to prove before the learned Court below about her marriage to the petitioner and has not been able to prove sufficiently that she was legally married wife of the petitioner. On the basis of such submissions and contention, the learned counsel for the petitioner seeks interference with the impugned judgment and order.

10. On the other hand, the learned counsel for the respondent submits that the learned Family Court, Barpeta, has rightly accepted the evidence of the 1st party about her marriage to the petitioner and that during the proceeding, the respondent 1st party has been able to prove her marriage to the 2nd party and also her inability to maintain herself and hence, there is no infirmity in the order of maintenance.

11. I have perused the revision petition, the impugned judgment and order, the evidence laid before the learned Family Court below during the proceeding and other relevant materials.

12. I find that the primary contention of the petitioner side is questioning the existence of the marriage between the parties and denying the status of the

respondent as the wife of the petitioner.

13. Before proceeding further, the provisions of **Section 125 Cr.P.C.** may be reproduced herein below: -

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;

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this Sub-Section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother; and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the 2nd proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

For the purposes of this Chapter-

a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order; or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the

manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made;

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due;

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

(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.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

14. Thus, from the statutory provisions, it is clear that a wife who is unable to maintain herself can seek maintenance under 125 Cr.P.C.(as it existed then).

15. It is well settled that strict proof of marriage is not necessary for granting maintenance under section 125 Cr.P.C. It is also statutorily provided that even a divorced wife, i.e. a wife who has been divorced from the 2nd party/husband can also seek maintenance.

16. In this regard, reference may be made to the following two decisions of the Hon'ble Supreme Court: -

Dwarika Prasad Satpathy v. Bidyut Prava Dixit, (1999) 7 SCC 675 (para 6)

6. ".....In our view, validity of the marriage for the purpose of summary proceedings under Section 125 Cr.P.C is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under Section 494 IPC. If the claimant in

proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption.”

Rohtash Singh v. Ramendri, (2000) 3 SCC 180 (para 8,9,10,11)

8. *Admittedly, in the instant case, the respondent is a divorced wife. The marriage ties between the parties do not subsist. The decree for divorce was passed on 15-7-1995 and since then, she is under no obligation to live with the petitioner. But though the marital relations came to an end by the divorce granted by the Family Court under Section 13 of the Hindu Marriage Act, the respondent continues to be a “wife” within the meaning of Section 125 Cr.P.C on account of Explanation (b) to sub-section (1) which provides as under:*

“Explanation.—For the purposes of this chapter—

*(a)**

(b) ‘wife’ includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.”

9. *On account of the explanation quoted above, a woman who has been divorced by her husband on account of a decree passed by the Family Court under the Hindu Marriage Act, continues to enjoy the status of a wife for the limited purpose of claiming maintenance allowance from her ex-husband. This Court in Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508 : AIR 1978 SC 1807] observed as under: (SCC p. 74, para 9)*

“9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause — the cause of

the derelicts.”

10. *Claim for maintenance under the first part of Section 125 CrPC is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation provided by Explanation (b) to sub-section (1) of Section 125 CrPC. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to maintenance allowance. The Calcutta High Court had an occasion to consider an identical situation where the husband had obtained divorce on the ground of desertion by the wife but she was held entitled to maintenance allowance as a divorced wife under Section 125 CrPC and the fact that she had deserted her husband and on that basis a decree for divorce was passed against her was not treated as a bar to her claim for maintenance as a divorced wife. (See: Sukumar Dhibar v. Anjali Dasi [1983 Cri LJ 36 (Cal)] .) The Allahabad High Court also, in the instant case, has taken a similar view. We approve these decisions as they represent the correct legal position.*

11. *learned counsel for the petitioner then submitted that once a decree for divorce was passed against the respondent and marital relations between the petitioner and the respondent came to an end, the mutual rights, duties and obligations should also come to an end. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her.”*

17. Thus, it is clear that in the capacity of a wife, for a woman to seek maintenance from the 2nd party, she has to reasonably prove by the standard of a maintenance proceeding under Section 125 Cr.P.C. - that she is the wife of the 2nd party or that she was the former wife of the 2nd party, having been divorced

from him and has not remarried.

18. For the purpose of getting maintenance under 125 Cr.P.C. (Section 144 of BNSS), if a woman was earlier married to another person, there has to be reasonable proof that that the said marriage has been dissolved - followed by the marriage to the person from whom she seeks maintenance. As already noticed earlier, proof of marriage does not have to be strict. However, without rendering reasonable proof about dissolution of her earlier marriage, the woman as 1st party will not be able to seek maintenance as a wife of the person, from whom she is seeking maintenance.

19. Coming back to the facts of the instant case, I have perused the evidence of the respondent 1st party before the learned Family Court during the proceeding.

20. In her cross-examination, she has stated that she was married to one Manik Ali in 2000, from whom she has 3 children, who at the time of her deposition were aged 21 years, 19 years and 16 years respectively.

21. The 1st party who adduced evidence as PW-1. In her cross-examination, the respondent/1st party, adducing evidence as PW-1 - clearly stated that the said Manik Ali did not divorce her and rather, she gave divorce to the said Manik Ali in 2017. She has also stated in her such testimony that she filed a photocopy of the divorce affidavit in this case and that the original was with her. She has gone on to reiterate that she got legally divorced from Manik Ali.

22. Interestingly, the respondent has also stated in her cross-examination that she got to know the petitioner, while working as a Mohori/advocate's clerk in the Barpeta Court premises, though she denied that she was earning Rs. 2000/- per

month, working as such.

23. In the context of the testimony of the respondent about her earlier marriage with Manik Ali and subsequent divorce, both sides have produced photocopy of an affidavit, wherein such fact of divorce has been mentioned. The affidavit has been sworn by the respondent.

24. Upon perusing the impugned judgment, her deposition and relevant portions of the case record received - I find that during the proceeding, the respondent/1st party did not even exhibit such document.

25. Needless to say that a marriage cannot be dissolved by way of an affidavit made before the Notary. There is also no material to indicate that the respondent invoked the provisions of - *Dissolution of Muslim Marriages Act, 1939* - for dissolving her marital tie with the said Manik Ali. Rather, she has mentioned about dissolving her marital tie with Manik Ali from her side and in support of the same, merely stated about submitting a copy of the affidavit, while retaining the original.

26. Thus, the earlier marriage of the respondent with Manik Ali is an admitted position. However, during the proceeding before the learned Court below, the respondent could not adduce sufficient evidence in support, to show that the said marriage with Manik Ali has been lawfully dissolved and that she is no longer his legally wedded wife.

27. Reference to the affidavit in her cross-examination and about submitting a copy of the affidavit in the maintenance proceeding - would not constitute sufficient proof of dissolution of her earlier marriage - so as to confer any status of wife of the present petitioner, even if it is accepted that she had married the present petitioner. In any case, as already stated, any such affidavit sworn by

the respondent before Notary Public would not constitute legally acceptable dissolution of the marriage.

28. Thus, I come to the considered finding that perhaps the learned Family Court erred in overlooking this aspect of the matter and in accepting the marital status of the respondent, as wife of the petitioner.

30. Having come to the aforesaid finding regarding the marital status of the respondent - it can be said that she could not have claimed maintenance from the petitioner as his legally wedded wife and therefore, she cannot be granted maintenance from the side of the petitioner.

31. Accordingly, in the facts and circumstances and in view of the above discussion - the impugned judgment and order dated **17.03.2025**, passed by the learned Principal Judge, Family Court, Barpeta, in **F.C. (Crl.) Case No. 356/2020**, is hereby **set aside and quashed**.

32. The instant criminal revision petition stands **allowed** and **disposed of** on the aforesaid terms.

JUDGE

Comparing Assistant