GAHC010151122026

2026:GAU-AS:16967

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

Case No. : Crl.Rev.P./374/2026

VERSUS

For the appellant : Ms. D. Pathak, Adv.
For the respondent : Mr. S. Paul, Adv.

BEFORE

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 11/11/2026
Date of pronouncement of judgment : 18/11/2026
Whether the pronouncement is of the operative part of the judgment ? : No
Whether the full judgment has been pronounced? : Yes

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JUDGMENT AND ORDER (CAV)

(Michael Zothankhuma, J)

1. Heard Ms. D. Pathak, learned counsel for the petitioner-wife and Mr. S. Paul, learned counsel for the respondent-husband.

2. This is an appeal against the impugned Judgment & Order dated 18/05/2026 passed by the learned Principal Judge, Family Court, Nalbari in Case No.82/2025 under Section 144 of the BNSS, whereby the prayer for grant of maintenance by the petitioner-wife was dismissed.

3. The reason for dismissal of the application under Section 144 BNSS by the learned Family Court was that the appellant-wife had not given any explanation as to how she was financing her lifestyle that was evident from her cross-examination regarding her "enjoyful life at Guwahati" uploaded by her on social media. The learned Family Court was also of the view that though the petitioner had denied that she was presently employed, she being an able-bodied person, she could not plead inability to maintain herself only on the ground that she was currently without work. Further, it appeared that the petitioner had left the matrimonial home voluntarily and without any reasonable ground for their separation. As such, in view of Section 144(4) BNSS, the petitioner-wife was not entitled to maintenance, as she did not return to her matrimonial home to live a conjugal life with the respondent-husband.

4. The learned counsel for the petitioner submits that though the petitioner was earlier working with Lavaniya Trade & Agencies, she is no longer employed at present. The petitioner's counsel also submits that the petitioner-

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wife was living with her parents and that her mother was a sick woman needing constant medication and care. She submits that the respondent-husband, on the other hand, is a rich person having a lot of land besides working in a private firm earning a salary of Rs.20,000/- per month. The respondent-husband also owns a pig farm, a goods vehicle, and accordingly, earns Rs.50,000/- per month from all sources. The petitioner's counsel thus submits that the respondent-husband should pay maintenance of Rs.15,000/- per month to the petitioner-wife. The learned counsel for the petitioner also submits that the respondent-husband was having an extra-marital affair.

5. The counsel for the respondent-husband, on the other hand, submits that the petitioner works in V-Mart Company earning a salary of Rs.10,000/- per month. Further, the goods vehicle which the respondent had bought had been sold to a third party and the EMI to be paid for the said vehicle was now to be repaid by the said third party. The learned counsel for the respondent-husband also submits that the respondent had taken a personal loan of Rs.40,000/- to Rs.50,000/- and has been repaying the loan every month. He submits that the respondent also owns a shop and is living with his parents. He also submits that the petitioner-wife had after their separation visited his house, broken the lock of their Godrej almirah and taken valuable ornaments and cash amounting to Rs.50,000/-. Further, the petitioner-wife was working as a Saleswoman under Nestle product distributor and earning a monthly salary. The counsel for the respondent-husband also submits that the petitioner-wife was having an extra-marital affair. He submits that in view of the above reasons, the respondent should not be directed to pay maintenance to the appellant.

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6. We have heard the learned counsels for the parties.

7. The legislative intent behind the erstwhile Section 125 Cr.P.C, which has now been replaced by Section 144 of the BNSS, 2023, is 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 object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to the fundamental rights and natural duties of a man to maintain his wife, children and parents, when they are unable to maintain themselves.

8. Thus, what we have to see is as to whether the petitioner-wife was unable to maintain herself and as to whether the respondent-husband had sufficient means to maintain the petitioner-wife. In the present case, it appears that the respondent-husband had the means to maintain the petitioner-wife, inasmuch as, the Affidavit of Assets and Liabilities submitted by the respondent-husband shows that the salary credited in the respondent-husband's bank account on 31/07/2026 was Rs.12,834.86/-, while he had been given a salary of Rs.14,007.10/- by V-Mart Retail Limited on 31/08/2026.

9. Besides the above salary of the respondent-husband, the counsel for the respondent-husband had stated that he had taken a personal loan of Rs.40,000/- to Rs.50,000/- from a friend, which he was repaying. Further, he had also bought a goods carrying vehicle, which he apparently sold, wherein the duty of paying the EMIs was passed on to the third party who had bought his vehicle.

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10. The first issue with regard to whether the respondent-husband had the means to support his wife is answered in the affirmative due to the above facts.

11. The other issue that has to be decided is whether the income of the respondent-husband was sufficient to maintain his wife and whether the petitioner-wife was unable to maintain herself. In this regard, we would have to see the documents submitted by the petitioner-wife and the Affidavit of Assets and Liabilities submitted by her.

12. From the Statement of Accounts, that is a part of the Assets and Liabilities of the petitioner-wife, there is nothing discernible as to the salary being given to the petitioner-wife by her employer. Having said that, our attention has been drawn to the Annexure-A3 of the affidavit dated 08/10/2026 filed by the petitioner-wife, wherein Certificate dated 11/09/2026 has been issued by Lavaniya Trade & Agencies certifying that the petitioner-wife was working in the said organization as a Sales Promoter since April, 2025 till 11/09/2026 and that her monthly salary was Rs.7,500/-. Her performance and conduct was said to be exemplary and highly appreciated.

13. It is no doubt true that it is the duty of the husband to maintain his wife, if he has got the means to maintain the wife and the wife cannot maintain herself. However, in the present case, the affidavit of Assets and Liabilities submitted by the respondent-husband shows his monthly salary for the month of August to be approximately Rs. 14,000/-. On the other hand, the basic salary of the petitioner-wife as on as on 11/09/2026 was Rs.7,500/-. A quick glance of the salary of the petitioner-wife and the respondent-husband shows the

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difference in their salary is not too much, in view of the fact that the basic salary of Rs.7,500/- per month could mean that that the salary of the petitioner-wife was slightly more than Rs.7,500/- per month.

14. The above being said, when the respondent-husband has apparently taken a personal loan of Rs.40,000/- to Rs.50,000/-, besides earning Rs.14,000/- per month, we are of the view that the actual income of the respondent-husband could be much more than Rs.14,000/- per month, inasmuch as, he appears to have an income other than the salary he receives from 'V Mart , Retail Limited. This is due to the fact that the respondent-husband had also bought a goods vehicle, which he has apparently sold to a third party.

15. In the case of ***Chaturbhuj Vs. Sita Bai,*** reported in ***(2008) 2 SCC 316***, the Supreme Court has held that Section 125 Cr.P.C is intended to prevent destitution. In the case of ***Rajnesh Vs. Neha & Anr.,*** reported in ***(2021) 2 SCC 324***, the Supreme Court held that maintenance must be fair, reasonable and commensurate with the status of the parties and the financial capacity of the husband. In the case of ***Deepa Joshi Vs. Gaurav Joshi,*** reported in ***2026 INSC 370***, the Supreme Court has held that repayments of loans, particularly where such repayments result in creation or acquisition of assets, partake the character of capital investment and cannot be equated with essential or unavoidable expenditure. Such financial commitments, being voluntary in nature, cannot be accorded precedence over the statutory and other enforceable obligation of maintenance.

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16. The above being said, the next question to be decided is whether the petitioner-wife refuses to live with her husband. The facts of the case show that while the parties had married on 09/03/2023 as per Hindu rites and rituals, the couple separated approximately three months after their marriage. The allegation made by the parties against each other that they were having extramarital affairs is not proved by either of the parties. There is nothing discernible in the pleadings to show that the petitioner-wife refuses to live with her husband, as there is nothing from either side showing that a petition has been filed for restitution of conjugal life.

17. The finding of the learned Family Court that the petitioner-wife is having an "enjoyable life at Guwahati" as uploaded by her on social media does not, in our view, prove that the petitioner-wife was able to finance her lifestyle through employment. However, in view of Annexure- A3 of the petitioner-wife's affidavit dated 08/10/2026, wherein the petitioner stated that she was presently working as a saleswoman in a shop in the name and style of Lavaniya Trade and Agencies, we are of the view that the petitioner though being able to maintain herself to a certain degree, is entitled to some more maintenance on account of the fact that she should be entitled to the same lifestyle she had been accustomed to, prior to her separation.

18. The petitioner-wife claims Rs.15,000/- per month. No fixed formula exists for determining maintenance. ***Rajnesh (supra)*** directs that the Court shall consider the status and standard of living of the parties, the reasonable needs of the wife, the husband's income and earning capacity, the liabilities of the husband and the income of the wife. The Supreme Court has also said that

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no set formula can be laid down as held in the case of ***Smt. Jasbir Kaur Sehgal Vs. District Judge Dehradun & Ors.,*** reported in ***(1997) 7 SCC 7***. About 25% of the husband's net income has been regarded as just and proper in the case of ***Dr. Kulbhushan Kumar Vs. Raj Kumari & Anr.,*** reported in ***(1970) 3 SCC 129***, and ***Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy***, reported in ***(2017) 14 SCC 200***. That figure is a broad guideline and not a rule of law and the amount must always depend on the facts of the case.

19. As to the income of the respondent-husband, his own Affidavit of Assets and Liabilities shows a salary of Rs.14,007.10/- credited on 31/08/2026. As held earlier, his actual income is likely to be more than that, since he has taken a personal loan and had purchased and sold a goods vehicle. The petitioner-wife's assertion that he earns Rs.50,000/- per month, owns a pig farm and has considerable land, is not supported by any document and we are unable to accept it. In ***Rajnesh (supra),*** the Supreme Court has laid down that every party must make a full and truthful disclosure of income, and that where a party does not do so the Court may draw an adverse inference. The respondent-husband has not explained how he repays his loan, or the income from the shop he is said to own. As per the available material, we take his income from all sources at Rs.18,000/- per month. We have also considered his liabilities, namely the personal loan and the fact that he lives with his parents. As to the petitioner-wife, her income is taken as Rs.7,500/- per month. We note the certificate dated 11/09/2026 shows that her employment with Lavaniya Trade & Agencies and her affidavit dated 08/10/2026, which states that she is presently working. Though the difference between the incomes of the parties is not large,

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we do not consider it appropriate to deny her maintenance on that account.

20. We are also conscious of the fact that no application for restitution of conjugal rights has been preferred by the respondent-husband. There is also no application filed by either of the parties for a divorce decree. There is nothing to show that the petitioner-wife is not willing to resume her conjugal life either.

21. On considering all the above facts, we are of the view that the respondent-husband should provide maintenance of Rs.2,000/- per month to the petitioner-wife, with effect from November, 2026, which should be paid in the account of the petitioner by the 7th of each month. The impugned Judgment and Order dated 18/05/2026 passed by the learned Principal Judge, Family Court, Nalbari in Case No.82/2025 is hereby set aside, with the prayer for maintenance being allowed @ Rs. 2,000/- per month from November, 2026.

22. The criminal revision petition is accordingly disposed of.

23. Send back the TCR.

JUDGE **JUDGE**

Comparing Assistant

Anupam Chutia

Digitally signed by Anupam Chutia
Date: 2026.11.18 14:30:36 +05'30'

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