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2026:GAU-AS:17613

THE GAUHATI HIGH COURT

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

WRIT PETITION [C] NO. 2441/2024

Kushal Taw, S/o- Late Monikanta Taw, R/o- Vill.- Oiyengia Borgaon, P.S. Ghilamara, P.O. Mornoi Bebejia, Dist. Lakhimpur, Assam and Present Address – R/o- Naliapool Railway, Mechanical Workshop, P.O. and Dist. Dibrugarh, Pin- 786001, Assam.

.....Petitioner

-VERSUS-

1. The State of Assam, Rep. by the Principal Secretary to the Govt. of Assam, Women and Child Development Department, Dispur, Ghy-781006.
2. The District Commissioner, Lakhimpur, North Lakhimpur, Assam, P.O. and P.S. North Lakhimpur, Dist. Lakhimpur.
3. The Assistant Commissioner and Member, Women Cell, Lakhimpur, North Lakhimpur, Assam, P.O. and P.S. North Lakhimpur, Dist. Lakhimpur.

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4. Monalisha Taw @ Manalisha Taw, D/o- Niru Taw, R/o- Vill.- Oiyengia Borgaon, P.S. Ghilamara, P.O. Mornoi Bebejia, Dist. Lakhimpur, Assam.

.....**Respondents**

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

Advocate for the Petitioner	: Mr. A.K. Kanu, Advocate
Advocate for the Respondent nos. 1 – 3	: Mr. N. Goswami, Junior Government Advocate, Assam
Dates of hearing	: 25.11.2026 & 26.11.2026
Date of pronouncement of judgment	: 26.11.2026
Whether the pronouncement is of the Operative part of the judgment ?	: No
Whether the full judgment has been Pronounced ?	: Yes

JUDGMENT & ORDER

In this writ petition, preferred under Article 226 of the of the Constitution of India, the petitioner has assailed an Order dated 12.03.2024 passed by the respondent no. 3 in his capacity as the Assistant Commissioner, Lakhimpur, North Lakhimpur & Member, Women Cell, Lakhimpur, whereby the respondent no. 3 has directed the petitioner's employer, the Chief Workshop Manager, N.F. Railway, Mechanical Workshop, Dibrugarh to deduct an amount of Rs. 5,000/-

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from the salary of the petitioner and to deposit the said amount in the account of the respondent no. 4 as maintenance. The said Order is stated to have passed in a case, Case no. 82559/2024.

2. I have heard Mr. A.K. Kanu, learned counsel for the petitioner; and Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 1 – 3.

3. Issuance of notice to the respondent no. 4 was directed on 13.05.2024. As per Order dated 26.05.2026 of the Lawazima Court, notice was duly served upon the respondent no. 4. Despite service of notice and grant of opportunities on 26.08.2026, 23.09.2026 & 18.11.2026, by deferring the proceeding for appearance, the respondent no. 4 did not participate in the proceeding. Therefore, the writ petition is taken up for final consideration at the admission stage itself.

4. Mr. Kanu, learned counsel appearing for the petitioner has submitted that earlier, an application under Section 125, Code of Criminal Procedure, 1973 ['CrPC or the Code', for short] was preferred before the Court of learned Sub-Divisional Judicial Magistrate [M], Dhakuakhana, Lakhimpur ['the Trial Court', for short] by the mother of the respondent no. 4 seeking maintenance for herself and her daughter, that is, the respondent no. 4 herein on the ground that the marriage between the mother of the respondent no. 4 and the petitioner was solemnized in the year 1999 and the opposite party therein, that is, the petitioner herein neglected to maintain them. In the said proceeding, the Trial Court decided, on contest, in the negative, thereby, rejecting the claim for maintenance. Mr. Kanu has submitted that when the Order of the Trial Court challenged in revision, the Revisional Court of learned Additional Sessions Judge [FTC], Lakhimpur, North Lakhimpur ['the Revisional Court', for short] dismissed the revision. Mr. Kanu has, thus, submitted that after such judicial determination, the respondent no. 3 could not have assumed any authority and

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jurisdiction to pass any order on maintenance and therefore, the impugned Order dated 12.03.2024 is unsustainable in law and needs to be interfered with.

5. Mr. Goswami, learned Junior Government Advocate, Assam appearing for the State respondents has submitted that as per instructions received by him, the Women Cell, O/o the District Commissioner, Lakhimpur received an application from the respondent no. 4 seeking maintenance from the petitioner and on receipt of the application, the petitioner was put on notice. On receipt of notice, the petitioner appeared before the Women Cell on 24.02.2024. The Women Cell after hearing the parties, had decided on 27.02.2024 to allow Rs. 5,000/- as maintenance and accordingly, the Order dated 12.03.2024 came to be passed. Mr. Goswami has submitted that in the proceedings before the Women Cell, the orders of the Trial Court and the Revisional Court were not brought to the notice. He has further submitted that the Women Cell had decided that a monthly payment of Rs. 5,000/- be allowed as maintenance as a conciliatory measure.

6. I have duly considered the submissions of the learned counsel for the parties and have also gone through the materials brought on record.

7. The petitioner is presently working as a 4th Grade Employee in the Mechanical Workshop, Dibrugarh of the N.F. Railway.

8. One Smti. Niru Taw as the first party filed an application under Section 125, CrPC before the Trial Court impleading the present petitioner as the second party seeking maintenance of Rs. 20,000/- each for herself and her daughter, that is, the respondent no. 4 herein. The said application was registered and numbered as Misc. Case no. 05/2019. It was alleged that the first party got married to the present petitioner in the year 1990 socially and out of the marital relationship, the respondent no. 4 was born. Allegation was made to the effect that after the birth of the respondent no. 4, the first party was subjected to

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cruelty and subsequently, the second party married another woman deserting the first party and her daughter i.e. the respondent no. 4 herein.

8.1. The present petitioner as the second party contested the proceedings under Section 125, CrPC by filing his written statement denying his marital relationship with the first party. He had, however, admitted that he had coitus with the first party, Niru Taw and out of such relationship, the respondent no. 4 was born in the year 1998. One of the issues framed for decision by the Trial Court was : whether the first party was a wife of the second party and they had a daughter out of the wedlock. During the course of the proceedings, the first party adduced evidence of two witnesses with herself as P.W.1. The respondent no. 4 herein adduced evidence as P.W.2. The petitioner adduced evidence of three witnesses including himself as D.W.1.

8.2. After appreciation of the evidence led, the Trial Court reached a finding that the first party failed to prove that she was a legally wedded wife of the second party, that is, the present petitioner. The Trial Court further observed that the respondent no. 4 herein was his illegitimate daughter. The Trial Court had found that the second party got married to one Smti. Rumi Taw on 16.04.1998 and had the extra-marital relationship with the first party in the year 1999. The Trial Court proceeded to hold that the first party was not entitled to any maintenance from the second party. The Trial Court recorded that the second party during his testimony had admitted that the respondent no. 4 herein was his illegitimate daughter. As since the respondent no. 4 had completed the age of 18 years and was aged about 22 years, the Trial Court in his Final Order dated 18.03.2020 had held that the respondent no. 4 would not be eligible to receive any maintenance under Section 125[1][c], CrPC as the said provision would be applicable only if the illegitimate child was suffering from some kind of physical and mental abnormality. While dismissing the application, Misc. Case no. 05/2019 by the final Order dated 18.03.2020, the Trial Court had held that the first party and her daughter, that is, the respondent no. 4 herein were not entitled to any maintenance from the present petitioner.

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9. When the Final Order dated 18.03.2020 was challenged in a criminal revision petition, Criminal Revision no. 1[1]/2022 by Smti. Niru Taw before the Revisional Court, the Revisional Court observed that the revisional petitioner had failed to prove that she was the wife of the present petitioner-respondent as the revisional petitioner failed to discharge the burden of proof regarding marital relationahip with the petitioner. The Revisional Court had observed that the revisional petitioner not being the married wife of the petitioner, was not entitled to any maintenance from the present petitioner under Section 125, CrPC. The Revisional Court in its Judgment dated 08.06.2023 had further observed that the respondent no. 4 having attained the majority was not entitled to receive any maintenance under Section 125[1][b], CrPC. As it was not the case of the respondent no. 4 that she was suffering from any kind of physical or mental abnormality or injury because of which she was unable to maintain herself, the Revisional Court in its judgment had held that the respondent no. 4 was also not entitled to get any maintenance. With the above findings, the Revisional Court dismissed the revisional petition.

10. It is in the backdrop of the above judicial determination, the sustainability of the Order dated 12.03.2024 passed by the respondent no. 3 stands for scrutiny. The respondent no. 3 has not been able to show any source of statutory power under which the impugned Order dated 12.03.2024 came to be passed.

11. Undoubtedly, the Trial Court herein was vested with the power to pass an Order for maintenance if a person having sufficient means neglects or refuses to maintain [a] his wife, unable to maintain herself, or [b] his legitimate minor child, whether a 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.

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12. Once the Trial Court had made the determination as regards maintenance, such decision is subject to challenge under Section 399 r/w Section 401, CrPC before the Revisional Court. The Order dated 18.03.2020 passed by the Trial Court was challenged before the Revisional Court in Criminal Revision no. 1[1]/2022, which was decided with findings against the revision petitioner as well as the respondent no. 4 herein. The determination so made by the Trial Court and the Revisional Court can only be a subject-matter of challenge before a competent higher judicial forum. In the absence of any challenge, the Order dated 18.03.2020 passed by the Trial court and the Judgment dated 08.06.2023 passed by the Revisional Court have attained finality.

13. The respondent no. 3 has no power, authority and jurisdiction to adjudicate or determine the rights of the parties with regard to maintenance, after the judicial determination made already on the point of maintenance in the afore-stated manner. At best, the Women Cell or the respondent no. 3 as a Member of the Women Cell could have taken up any conciliatory measure, but they could not take up the role of a court or an adjudicatory tribunal to determine the rights of the parties on maintenance and to pass an order granting maintenance like the order impugned herein. The Women Cell is not a forum for discharging the functions of judicial character or of a court.

14. In view of the above discussion, this Court finds that the Order dated 12.03.2024 passed by the respondent no. 3 is without any power, authority and jurisdiction and therefore, it cannot stand the scrutiny of law and is liable to be set aside and quashed. It is accordingly set aside and quashed.

15. Resultantly, the writ petition stands allowed. There shall, however, be no order as to cost.

Ananta Konwar
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JUDGE

Comparing Assistant

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