

IN THE COURT OF SESSIONS JUDGE :..... GOALPARA

ASGA010004492025



Present: Mr. Utpal Rajkhowa,
Sessions Judge, Goalpara.



Criminal (Revision) No: 08/2025

(Against the order dated 10/01/2025 passed by learned JMFC cum
Civil Judge (Jr. Div), Goalpara, in MCR Case No: 107/2022)

Nistifa Amir Sayful

.....

Petitioner

-VS-

Absana Parbin

.....

Respondent

APPEARANCE :-

Advocate for the petitioner

:- Mr. Hafijur Rahman

Advocate for the respondent

:- Mr. Abdul Motin &
Mr. Ruhul Amin

Date of argument

:- 23/07/2026

Date of Judgment

:- 11/08/2026

JUDGMENT

1. This revision petition u/s 438/439/440 of the BNSS, 2023 has been directed against the impugned order dated 10/01/2025 passed by learned JMFC cum Civil Judge (Jr. Div), Goalpara in MCR Case No. 107/2022 directing the revision petitioner to pay a

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monthly maintenance allowance of Rs. 3000/- to the respondent and Rs. 2000/- to the minor child of the respondent.

2. Being highly aggrieved and dissatisfied with the order dated 10/01/2025, the revision petitioner prays for setting aside the said order mostly on the following grounds:

- i. That the Ld. Court below has erred both in law and on fact in passing the final order against the revisioner.
- ii. That the court below failed to apply its judicious mind in appreciating the law and case records and mechanically passed the impugned order dated 10.01.2025.
- iii. That the impugned order is per incuriam, as it is passed ignoring the relevant provision of law.
- iv. That the Ld. Court below without following the mandatory provision of law passed the impugned order. Because the respondent has extremely failed to prove that the respondent is the legally married wife of the revisioner and both the revisioner and respondent not live together as husband and wife at any place or at any time. Hence the impugned order is highly illegal and pervasive, and liable to be set aside.
- v. That as the respondent is not the legally married wife of the appellant and there is no any domestic relation between the appellant and the respondent at any point of time and the respondent has also extremely failed to establish that the appellant is a businessman and have the monthly income of 50,000/-, as such the order of monthly maintenance of Rs. 3000/- for the respondent and Rs.



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2,000/- for the minor child of the respondent is highly unjustified, which is liable to be set aside.

vi. That, the respondent has failed to prove of her marriage with the revisioner and she has not submit any prove of marriage documents or as well as any Kabin Nama and also do not specified the period of conjugal life with the revisioner in her petition As such the respondent is not entitled to get monthly maintenance and the Hon'ble Court without receiving the "Domestic Incident Report" and not properly going through the monthly income capacity of the revisioner pass the impugned order. As such, the final order liable to be set aside.

vii. That the Ld. Court below has failed to appreciate the case record in passing the Impugned order, hence the impugned order is liable to be set aside.

viii. That the respondent/petitioner who cannot stated in her petition about the time of marriage/ about the place of marriage and the date of marriage and how many days the revisioner live together with respondent it is not specifically mentioned in the petition.

ix. That the the Ld. Court passes same impugned order in connection with DV Case No- 237/2022 and MCR Case No- 107/2022, hence the order of MCR-107/2022 must be set aside due to lack of proof of marriage.

x. That any other ground that may be taken up at the time of hearing with due permission of the court.



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3. I have gone through the Trial court record of MCR Case No. 107/2022. The brief fact of the case of the respondent (petitioner in MCR Case No.107/2022) as reveals from the MCR case is that the respondent got married with the revision petitioner about two years ago as per Muslim Law and started their conjugal life in the shared household of the revision petitioner and a child was born out of their wedlock. After the birth of the child, the revision petitioner started to torture the respondent with demand of Rs. 1,00,000/- as dowry. As the respondent failed to meet the demand, the revision petitioner drove her out from her matrimonial home along with her minor child.

4. It was stated that the respondent does not have any income of her own while the revision petitioner is a businessman and also has a tractor from which he earns Rs 50,000/- per month. It is stated that in spite of having sufficient means, the respondent has been willfully neglecting to maintain the respondent and her child.

5. The case of the revision petitioner, as emerged from the written statement, is that the respondent is not legally married wife of the revision petitioner and he also denies his monthly income of Rs 50,000/- from business. It is stated that the revision petitioner does not have any income who is under the care of his parents. He submits that the respondent and her parents filed this (MCR) false case as the father of the revision petitioner is a government employee. The revision petitioner denies the allegation of dowry demand.



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6. I have gone through the evidence led by both the parties. The respondent has not submitted any documents to prove her marriage with the revision petitioner. But that alone does not prove that she is not the wife of the revision petitioner. When a man and a woman live together as husband and wife and a child born to them, then the law will presume that they are husband and wife. The birth of a child also strengthens their relationship as husband and wife. The evidence of PW-2 and PW-3 (MCR) reveals that they have not denied the marriage of the respondent with the revision petitioner per se but have only stated that they have no idea if they are married to each other. The revision petitioner has not challenged the paternity of the child of the respondent by cogent evidence, mere denial is not sufficient. In a case of maintenance, strict proof of marriage is not necessary, if it is shown that the parties live together for a considerable period however brief it might be, the law will presume that they are married which fact got support from the birth of a child.

7. The revision petitioner cannot escape from his liability to maintain his wife and his minor child on the pretext of having no source of income. Every able bodied person must maintain his wife and children who cannot maintain themselves.

8. The proceedings under DV Act and maintenance proceeding u/s 144 of the BNSS are two separate and independent proceedings. The revision petitioner has submitted copy of the order of DV Case No. 237/2022. Even though holding that the total monthly maintenance allowance in both the cases is Rs 10,000/-, then also that amount is not on the higher side



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considering that the respondent has to go by with that amount along with her minor child.

9. The maintenance must ensure that the wife and children must live with dignity, matching a standard of living comparable to what they enjoyed in the house of her husband/ father. The amount should neither be oppressive and unbearable for the husband nor it is too meagre for the claimant.

10. In view of above discussion, I find that the order dated 10/01/2025 in MCR Case No. 107/2022 does not call for any interference. Accordingly, the said order dated 10/01/2025 is hereby upheld. In result, the revision is dismissed having found no merits.

11. Send back the LCR to the learned concerned court with a copy of this judgment for necessary action.

Given under my hand and the seal of this court on this the 11th day of August, 2026.




(Mr. U. Rajkhowa)
Sessions Judge,
Goalpara.
Sessions Judge
Goalpara

Dictated & Corrected by me:


Sessions Judge, Goalpara.

Sessions Judge

Goalpara

Typed by: Manob Jyoti Kalita, Steno Gr-I

