

ASGL010011032022



DISTRICT: GOLAGHAT.

IN THE COURT OF THE SESSIONS JUDGE AT GOLAGHAT.

(Revisional Jurisdiction)

Criminal Revision No.28/2022.

**Present: Mr R. A. Tapadar, A.J.S.
Sessions Judge,
Golaghat.**

SRI BIPUL SARMAH

S/O- Late Tuni Sarmah

R/O- Namti Dhepor Gaon

P.S.- Halowating

District -Golaghat , ASSAM

.....Petitioner / Revisionist.

- *VERSUS*-

(1) SMTI SIBANI DEVI

W/O - Late Rajen Sarmah

R/O - Sapjuri Bongali Gaon

P.S. - Bokakhat

District -Golaghat, ASSAM.

(2) STATE OF ASSAM,

Represented by Public Prosecutor,

Golaghat.

.....Respondents.

APPEARANCE :

For the RevisionistLearned Advocates,Sri H. Saikia,
B. Gogoi, R. Talukdar, C. Borooah,

For the respondent No.1 Learned Chief Legal Aid Defence
Counsel Sri S. Singh.

For the respondent No.2.... Learned Public Prosecutor Sri P. Thengal.

Date of Argument 30.10.2025.

Date of Judgment 27.11.2025.

J U D G M E N T:

(1) The Revisionist, Sri Bipul Sarmah, has preferred the instant Criminal Revision, u/s 397/399 of the Criminal Procedure Code, 1973, challenging the correctness, legality and propriety of the impugned order, dated 10.08.2022, passed by the learned Sub Divisional Judicial Magistrate (M), Bokakhat in Misc. case No.11/2018.

(2) Being highly aggrieved by and dissatisfied with the aforesaid impugned order, dated 10.08.2022, passed by the learned Trial Court, in Misc. case No.11/2018, the Revisionist preferred this Revision on the following amongst other grounds:-

GROUND S :

1. That the learned lower Court erred in law as well as in fact.

2. That the learned lower Court deprived the petitioner/revisionist of the natural justice and passed the order of rejecting the petition no 1999/22 by overlooking the basic principle of law. The lower Court failed to accord importance and legal weight to sections 311 and 125 of Cr.P.C., and completely overlooked them due to undue haste in passing the order in the zeal to serve social justice. The lower Court did not fix the point for determination as a question of whether the respondent No. 1 is the legally wedded wife of the petitioner/revisionist and Miss Lemon Horidas is a daughter, who was legally adopted by the petitioner/ revisionist and admitted her to Sahadev Memorial English School, at Rowriah Tin Ali Jorhat, Assam, respectively.

3. For that, the lower Court failed to appreciate the matter that the petitioner/revisionist, in his written statement, in his examination in chief, and in cross-examination, too, has totally denied his marriage with the respondent no.1 and denied the adoption of the girl child, namely Miss Lemon Horidas. That in the chief examination of the DW 1, 2 and 3, as well as in the cross-examination, they had adduced it, apparently stating that the defence had taken the plea of a totally contradictory statement against the respondent no.1's plea.

4. That in the claim petition even though the respondent no.1 made no claim maintenance for and on behalf of the girl child, Miss Lemon Horidas, but in the said maintenance claim petition, respondent no 1 clearly mentioned petitioner/revisionist as her husband and the petitioner/ revisionist made a promised to respondent that he will adopt the girl child as his own daughter and accordingly, he had taken the girl child along with him and admitted her in to class seven standard at "SAHADEV MEMORIAL ENGLISH HIGH SCHOOL", JORHAT ROWRIAH TINI ALI. That Exhibit no. 1 (the certificate issued by the Sahadev Memorial English School) clearly mentions the petitioner/revisionist as the father of the girl child, namely, Miss Lemon Horidas. So, the petitioner had ample opportunity and substantive right to prove his side, whether the girl child is an adopted daughter of the petitioner/revisionist. Whether a maintenance claim in her name or not, for the sake of multiplicity of future litigation, as a claim of share in pension, share in immovable property, etc. It is the right of the petitioner/revisionist to testify the credibility of contents of the claim petition, as there are 2 (two) nos. of birth certificate of respondent no 1 daughter namely Miss Lemon Horidas, as date of birth on dated 13-12-2006, as per record of register maintained by the department of Birth and Death, Dolamora M.P.H.C

Karbi Anglong as Exhibit no-E (DW) and another one is on dated 12-12-2005, issued and maintained in record of register Birth & Death by the office of the B.P Civil Hospital, Nagaon, Assam respectively.

5. That the PW 4, namely Mrs Jury Devi Borpujari, in her examination in chief, states that the petitioner/ revisionist has promised and accordingly he adopted her and admitted her in school as his daughter. And in the PW.3 evidence and in Ext- 1 is the admission register and the name of Miss Lemon Horidas as Ext - 1(1), and in the said Ext - 1, the Ext - 1(2) exhibited as the name of the petitioner/revisionist as father. The name of the father of Lemon Horidas is reflected as Bipul Sarmah @ petitioner/revisionist in Ext-3, and the same is exhibited as Ext-3(2).

6. That therefore the Exhibited document is a issue in fact and fact in issue have relevancy to prove that the respondent has file a false Misc case of maintenance from the petitioner/respondent, so the law give substantive right to petitioner /revisionist to disprove all the alleged allegation against him as well as respondent no.1 trying to mislead Court by not only concealed the real fact as well as Exhibited false fake document.

(3) The brief facts of this revision petition is that the Revisionist filed an application u/s 311 of the

Cr.P.C. for examination of the Director of Health, Birth and Deaths, to prove the birth certificate of the daughter of the first party in Misc. case No.11/2018, as there were two birth certificates in the name of the daughter of the first party, issued by competent authority.

(4) The learned SDJM(M), Bokakhat, by order dated 10.08.2022, rejected the petition, holding that the first party/respondent No.1, in the application filed u/s 125 Cr.P.C., admitted that her first husband had expired in the year 2010 and she has a daughter by the name of Miss Lemon Horidas from the side of her first husband. The respondent No. 1 has nowhere claimed that the Revisionist is the father of her daughter, namely, Miss Lemon Horidas. As such, the paternity of the aforesaid girl child is not in issue in the Misc. case. That apart, learned SDJM(M), Bokakhat held that the respondent No.1 is not seeking any maintenance for the aforesaid girl child from the Revisionist and as such, it is not necessary to examine the Director of Health, Births and Deaths to prove the birth certificate of the child. The learned SDJM(M), Bokakhat, held that the revisionist examined as many as 6 witnesses, and one witness was re-examined at the instance of the Revisionist; as such, the Revisionist had ample opportunity to prove his case. Accordingly, learned SDJM (M), Bokakhat, rejected the petition.

(5) I have learned from Chief Legal Aid Defence Counsel and the learned Public Prosecutor. The learned Counsel for the Revisionist did not argue the case, despite being given the opportunity to do so on or before 25.11.25.

DISCUSSIONS, DECISION AND REASON THEREOF:

(6) I have gone through the Revision petition and the grounds taken by the Revisionist, the record of the learned Trial Court and also considered the submissions of learned Counsel for both the parties.

(7) In the Misc. case no.11/2018, admittedly, the first party has stated that her daughter, Miss Lemon Horidas, was born through her first husband, and she is not seeking maintenance for her daughter from the Revisionist.

(8) The Revisionist in the petition has taken the ground that the respondent No.1 had stated that he had adopted the daughter of the respondent No.1, and he admitted her daughter to school, showing the Revisionist as the father of the aforesaid girl child. That apart, the Revisionist also stated that the examination of the Director of Health is necessary to avoid multiplicity in the claim for pension and immovable property when it arises in the future.

(9) The Misc. case 11/2018 was filed u/s 125 Cr.P.C. The proceeding u/s 125 Cr.P.C. is summary in nature, and it does not decide the other rights of the parties, like status, adoption and inheritance, etc. In a proceeding u/s 125 Cr.P.C., the only question to be decided is whether the respondent No.1 is entitled to maintenance from the Revisionist. The question of adoption is governed by the provisions of the Hindu Adoption and Maintenance Act, 1956, and the Juvenile Justice (Care and Protection of Children) Act, 2015, and the question of inheritance, etc., status of the party can only be decided in a civil proceeding, and not in a proceeding u/s 125 Cr.P.C. The ground taken by the Revisionist is not substantive. That apart, the Revisionist preferred the Revision against an interlocutory order, and such Revision is not maintainable in law. Accordingly, it is held that the revision petition is devoid of merit and the same is dismissed on contest.

Both parties are directed to appear before the learned SDJM(M), Bokakhat, on 20.12.2025 for further directions.

(10) Send back the case record of Misc . 11/2018 to the Court of the learned SDJM(M), Bokakhat, along with a copy of the judgment passed by this Court.

Given under my hand and seal of the Court on
this the 27th day of November, 2025, at Golaghat.

Dictated & corrected by me :

Sessions Judge,
Golaghat.

Sessions Judge.
Golaghat.

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