

GAHC010079662023



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

Case No. : Crl.Rev.P./165/2023

BARNALI TALUKDAR
D/O BIBEKANANDA TALUKDAR, HOUSE NO. 37, NABARUN PATH, JATIYA,
GUWAHATI-781006, KAMRUP (M), ASSAM

VERSUS

DEEP JYOTI KALITA
S/O LATE CHANDI CHARAN KALITA, FLAT NO. 1B, ABODE ENCLAVE,
GITNAGAR, P.O.-BAMUNIMAIDAM, PIN-781021, KAMRUP (M), ASSAM

Advocate for the Petitioner : MR. K BHATTACHARJEE, MS. A BARMAN

Advocate for the Respondent : MR. P K MAZUMDAR, MR A CHAKRABORTY, MS. M
BHUYAN, MS. GARGI KASHYAP, MR. A SARMAH, MS. B CHAKRAVARTY

BEFORE
HONOURABLE MR. JUSTICE SANJEEV KUMAR SHARMA

JUDGMENT

Date : 27.07.2026

[1] Heard Mr. K. Bhattacharjee, learned counsel for the petitioner/ wife and Mr. A. Chakraborty, learned counsel for the respondent/ husband.

[2] The instant criminal revision petition has been preferred under Section 401 Cr.P.C. read with Section 397 Cr.P.C., 1973, read

with Section 19 of the Family Court Act, 1984 challenging the impugned judgment and order dated **16.02.2023**, passed by the learned Principal Judge, Family Court No. 1, Kamrup (Metro), Guwahati in F.C. (Crl.) Case No. 346 of 2018.

[3] The facts leading to the present revision petition briefly are that the respondent/ husband had filed a divorce petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 as well as under Section 27 of the Special Marriage Act, 1972 seeking divorce from the petitioner/ wife vide F.C. (Civil) 244/2018, which is pending before the learned Principal Judge, Family Court, Kamrup (Metro), Guwahati. After filing the divorce petition, the petitioner/ wife filed a maintenance case bearing F.C. (Crl.) Case No. 346 of 2018 under Section 125 Cr. P.C., 1973, claiming maintenance amount of Rs. 30,000/-(Rupees thirty thousand) only for their two children who are aged about 14 years and 11 years respectively, who are staying with the petitioner/ wife. The learned Principal Judge, Family Court No. 1 Kamrup (M), Guwahati and passed an order dated **16.02.2023** directing the respondent/ husband to pay an amount of Rs. 25,000/- (Rupees twenty five thousand) only per month from the date of passing of the order.

[4] Although the impugned judgment and order has been

challenged as a whole and it is also stated in the revision petition that the petitioner/ wife ought to have been awarded Rs. 30,000/- (Rupees thirty thousand only) as maintenance per month as sought for by her, in course of hearing the said aspect of the quantum of maintenance has not been pressed and even the calculation of the arrear amount due to the petitioner/ wife has been made on the basis of Rs. 25,000/- (Rupees twenty five thousand only) per month as maintenance so far. Therefore, the short point for consideration in the instant revision petition is as to whether the learned Magistrate erred in directing that the maintenance to be paid from the date of the order and not from the date of the application.

[5] The relevant provision for the purpose of the present case is sub-section (2) of Section of Section 125 Cr.P.C, which reads as follows:

(2) Any such allowance for the maintenance or interim maintenance and expenses for 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.

[6] In course of their arguments, the learned counsel for both the parties have relied upon paragraph 17 of the decision of the Hon'ble Apex Court in the case of **Shaahjan Ali Vs. State of Uttar Pradesh**

& Anr. (2025) INSC 258 which is quoted herein below:-

*“17. This brings us to the next question, i.e., from which date will the maintenance be payable the date of the application or the date of the Order? The appellant has contested the direction of the Family Court wherein it has made the maintenance payable from the date of the order instead of the date of application. Of course, Section 125(2) of the Code empowers the Court to award maintenance from the date of the order but the same has to be justified in the background of the attendant facts and circumstances and should not cause unnecessary hardship to the applicant. In our view, Section 125 of the Code is a beneficial piece of legislation which has been enacted to protect the wife and children from destitution and vagrancy and, in the usual course, it would not be appropriate to disadvantage the applicant for the delay in the disposal of the application by the judicial system. It would be beneficial to reproduce the relevant discussion in **Rajnesh v Neha, (2021) 2 SCC 324**, which is extracted hereunder:*

*'109. The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded. **Even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 CrPC. In the practical working of the provisions relating to maintenance, we find that there is significant delay in***

disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

110. In Shail Kumari Devi v. Krishan Bhagwan Pathak [Shail Kumari Devi v. Krishan Bhagwan Pathak, (2008) 9 SCC 632: (2008) 3 SCC (Cri) 839], ***this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case.*** The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. ***In Bhuwan Mohan Singh v. Meena*** [Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353: (2015) 3 SCC (Civ) 321: (2015) 4 SCC (Cri) 200], this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. ***The delay in adjudication was*** not only against human rights, but also ***against the basic embodiment of dignity*** of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.

111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependant from

being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned.

112. In Badshah v. Urmila Badshah Godse [Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188: (2014) 1 SCC (Civ) 51], the Supreme Court was considering the interpretation of Section 125 CrPC. The Court held: (SCC p. 196, para 13)

"13.3.... purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.

(emphasis supplied)

113. It has therefore become necessary to issue directions to bring about

*uniformity and consistency in the orders passed by all courts, by directing that **maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.***”

(emphasis supplied by bolding; underlining reflects emphasis supplied in original)

[7] Mr. K. Bhattacharjee, learned counsel for the petitioner submits that in view of the clear directions of the Hon’ble Supreme Court in **Rajnesh (supra)** it is imperative that the maintenance be paid from the date of the application. Although, it has been observed in **Sahajan (supra)** that the Family Court may direct such payment from the date of the order, the same has to be justified in the background of the attended facts and circumstance and should not cause unnecessary hardship to the applicant. This means, submits learned counsel that the Family Court has to show specific reasons justifying his decision to award maintenance from the date of the order, which is an exception and not from the date of the application, but no such reasons have been assigned by the Family Court in the impugned order.

[8] Mr. A. Chakraborty, learned counsel for the respondent

submits that the reasons which weighed in the mind of the court are available in paragraph 11 of the impugned judgment. The learned Family Court has taken into consideration all the relevant factors after which it has been decided to grant maintenance from the date of the order, submits the learned counsel. It is further submitted that this is not a case where no maintenance at all was being paid to the petitioner/wife. Rather, pursuant to interim order for maintenance @ of Rs.15,000/- per month, the same was being paid to the petitioner/wife during the course of the proceeding and that is the reason why the final order for maintenance was made effective from the date of the impugned order. Paragraph 11 of the impugned judgment and order which is relevant to the present case, which is reproduced herein below:

”11. Having considered the material on record, it appears that the 1st party is a practicing lawyer and is able to maintain herself without there being any support from her husband 2nd party. The 1st party in her petition in Para No.6 had even stated that she is competent to maintain her family because she is working in practicing lawyer in the Gauhati High Court, but filed the petition seeking maintenance from the 2nd party since he is a father and it is his legal duty to provide maintenance to the children. The 2nd party, however, admitted that he is having legal duty to provide maintenance to his children and accordingly provided fees for 'Crèche' as well as school fees without there being any order passed by this Court. He is an employee of Dr. Bhubaneswar Borooah Cancer Institute, Guwahati and is getting a

sum of around Rs.1,30,000/ and out of which he is getting a sum of Rs. 1,00,000/ as take home pay per month. He is having some financial liabilities which can be inferred from the document so submitted by him. He is taking a personal loan, invest in Sukanya Samridhi Yojana. He is also planning to take home loan and as such considering the income liability of the 2nd party together with considering the facts that some more cases are pending in between the parties, I am of the view that a sum of Rs. 12,500/ to each of the children per month would be appropriate and reasonable maintenance.

12. In result, the petition filed by the 1st party is allowed on contest with a direction to the 2nd party to pay a sum of Rs. 12,500/ to each of the two children totaling Rs.25,000/(Rupees Twenty Five Thousand only) to the 1st party per month as maintenance allowance from the date of this order."

[9] In **Rajnesh (Supra)**, it appears that what impelled the Hon'ble Supreme Court to direct grant of maintenance from the date of the application in all cases including under Section 125 Cr.P.C. is that it was found that in the practical working of the provisions relating to the maintenance, there is significant delay in disposal of the application of interim maintenance for years on end. It was also observed that the rationale of granting maintenance from the date of the application was to enable the wife to overcome the financial crunch which occurs from the separation from the husband.

[10] In the instant case however, as already noted, the present respondent wife was in receipt of Rs. 15,000/- as interim maintenance till disposal or passing of the impugned judgment and order and therefore, the petitioner/ wife would not have difficulty in overcoming the financial crunch which occurs on separation of the husband and more so because of the fact that petitioner/ wife is a practicing lawyer. Who has herself stated in her pleadings that she is quite capable of maintaining herself. It was only for the children, who are school going kids that the maintenance was sought. Furthermore, the other rationale for grant of maintenance from the date of application as mentioned in **Rajnesh (supra)** is the delay in disposal of interim maintenance application, which rationale is not present in the instant case.

[11] The petitioner/ wife had filed the application for maintenance under Section 125 Cr.P.C. before the Family Court on 21.06.2018 which came to be disposed of on 16.02.2023 by the impugned judgment and order i.e. after about four and half years. During this period, however, by order dated 07.01.2019, the present petitioner/ wife was granted interim maintenance of Rs. 15,000/- (Rupees fifteen thousand) only per month for the minor children with effect from the date of the said order. Admittedly the respondent/ husband has been providing maintenance to his children in the form

of fees of crèche as well as school fees without there being any order passed by the court as reflected in the impugned judgment.

[12] All the aforesaid facts find reflection in the impugned judgment and would naturally have been borne in mind by the learned court below while directing the maintenance to be paid from the date of the order and only because the justification thereof has not been separately spelled out does not lead to a presumption that the said order was made without cogent reason or was not justified in the facts and circumstance of the case. There can be no presumption that a judicial order has been passed mechanically and without valid reasons and justification. In fact, it is the other way around.

[13] While it is true that there is a difference of Rs. 10,000/- in the maintenance amount finally awarded in comparison to the amount of interim maintenance, taking into account the depreciation in the value of money on account of inflation over a period of four and half years, the difference in real terms cannot be said to be significant.

[14] Therefore, on an overall consideration of the facts and circumstances, I am of the view that there is no illegality, incorrectness, impropriety that would vitiate the impugned judgment and order.

[15] In view of the above, revision fails and is accordingly dismissed. It is however, made clear that all the arrears of interim maintenance @ of Rs. 15,000/- per month and final maintenance @ of Rs. 25,000/- per month shall be cleared by the respondent/ husband.

[16] Consequently the petition stands dismissed.

JUDGE

Comparing Assistant