

GAHC010275052024



2026:GAU-AS:6329

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

Case No. : Crl.Rev.P./519/2024

DHANJIT SARMA
S/O LATE HEMEN SARMA, R/O MANIKPUR, KAHILIPARA, P.O.-
KAHILIPARA, P.S.-DISPUR, DIST-KAMRUP (M), PIN-781019, GUWAHATI,
ASSAM

VERSUS

NABAMI SHARMA
D/O SRI ANANTA NATH SAHRAM, W/O SRI DHANJIT SHARMA, R/O
JAPORIGOG, BIKRAMPUR, HOUSE NO.55, P.S.-DISPUR, DIST- KAMRUP (M),
GUWAHATI, PIN-781005, ASSAM

Advocate for the Petitioner : MR H BETALA, SHAKEEL RAHMAN, RIYAZ KHAN

Advocate for the Respondent : MR S PARASHAR, MS.TWINKLE SARMA

Linked Case : I.A.(Crl.)/278/2026

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Advocate for : MR H BETALA

Advocate for : MR S PARASHAR appearing for NABAMI SHARMA

Advocates for the petitioner : Mr. H. Betala
Advocates for the respondents : Mr. S. Parashar

BEFORE
HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 28.04.2026
Date of pronouncement of judgment : 07.05.2026
Whether the pronouncement is of the : N/A
operative part of the judgment ?
Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

Heard Mr. H. Betala, learned counsel for the petitioner and Mr. S. Parashar,

learned counsel for the respondent.

2. This revision is directed against the order dated 23.10.2024 passed by the learned Principal Judge, Family Court No. III, Kamrup(M), at Guwahati in F.C(Crl.) Case No. 76/2020 directing the petitioner to pay an amount of Rs. 10,000/- (Rupees Ten Thousand) per month to the respondent and her children w.e.f- 18.02.2020.

3. The respondent/wife had filed an application under Section 125 of the Code of Criminal Procedure, 1973 before the Court of learned Principal Judge, Family Court No. III, Kamrup(M) at Guwahati being F.C (Crl.) Case No. 70/2020 on 18.02.2020 praying for order of maintenance in favour of the respondent and her minor daughter.

4. The petitioner/husband has also filed a case for restitution of conjugal rights before the Family Court, Principal Judge-I, Kamrup (M) on 22.02.2019 being registered at F.C (Civil) Case No. 154/2019 and the same was allowed on contest and decreed in favour of the instant petitioner/husband vide judgment & order dated 12.04.2023.

5. The respondent/wife's case before the learned Court below in brief was

that on 22.02.2016, her marriage with the petitioner/husband was solemnized as per Hindu rites and rituals. Out of their wedlock, one female child was born to both the parties on 30.11.2016. It was the allegation of the respondent wife that after few days of her marriage, she noticed that the petitioner husband is addicted to drugs and is a habitual consumer of Ganja and used to misbehave with the respondent on small issues. The respondent wife got pregnant after one month of marriage and during pregnancy the petitioner husband along with his mother tortured the respondent wife by saying un-parliamentary words, not providing any good food to her and on several occasion kept the respondent wife under starvation.

6. Various other allegations were made against the present petitioner husband including physical assault and also of having taken money from the father of the respondent wife for construction of an RCC building in the land owned by the petitioner. On 06.09.2017, the mother of the respondent wife went to the house of the respondent wife to bring the respondent wife for some days due to Puja but the petitioner husband did not allow the respondent wife to come with her mother rather the petitioner husband had badly beaten the respondent wife and thrown her out of his home and locked it from inside and finding no alternative, the mother of the respondent wife took her to their home

leaving all Stridhan articles, ornaments, clothes, etc. at the house of the opposite party. The respondent wife even lodged an First Information Report (FIR) against the petitioner husband and his mother before the Dispur Police Station.

7. It was the further claim of the respondent wife before the learned family court that the present petitioner husband was earning an income of Rs. 50,000/- per month from all sources besides, having landed property, and a vehicle and other businesses, whereas the respondent wife had no source of income and accordingly, she prayed for monthly maintenance of Rs. 20,000/- for herself and the minor child.

8. The petitioner husband appeared and submitted a written statement after failure of counseling and denied the allegations made against him. He further claimed to have provided all necessary care to his wife and child after the birth.

9. It was further averred that on 06.09.2018, the petitioners husband along with the respondent wife and child went to his in-laws' house, but his father-in-law did not allow the respondent wife to return with him and asked him to become a "*Gharjuwai*".

10. It is the further stand of the petitioner husband that he is a driver by profession who drives a drinking water vehicle and does not have a government job having regular remuneration and earns only Rs. 6,000/- per month. It was further claimed that the petitioner husband had approached the respondent wife several times to return to conjugal life which she refused. Both sides adduced evidence and also submitted their respective affidavits of assets and liabilities. The learned Court below, after consideration of the material on record, passed the aforesaid impugned order and hence, the instant Revision.

11. By drawing the attention of this Court to Section 125(4) of the Cr.PC, it is submitted that the claim for maintenance would be restricted if, without any sufficient reasons, the wife refuses to live with her husband. He has submitted that there are materials on record apart from the judgment dated 12.04.2023 which would go to show that the wife, on her own volition is living separately.

12. Learned counsel for the petitioner/husband in support of his contention that the respondent wife had left her husband without just or sufficient cause has referred to the cross-examination of the respondent wife (PW-1), wherein she admitted that on 06.09. 2018 she went to her parental house to attend *Narayan Puja* there, and since then she did not return to her matrimonial home.

Despite having made allegations that the petitioner was a drug addict, the mother of the wife stated in her cross-examination as PW-2 that she had not stated in her evidence-on-affidavit that she had seen the opposite party consuming drugs.

13. Learned counsel for the petitioner has further submitted and drew attention of the court to the evidence of PW-1 /respondent, wherein during cross-examination of PW-1, she admitted that on 06.09.2018, she went to her parental house to attend Narayan Puja there and since then, she has not returned to her matrimonial house. PW-1 stated that she has not submitted any medical document before this Court regarding her mental and physical harassment committed upon her by her in-laws and husband. PW-1 further stated that she has not submitted any documentary evidence regarding her statement that her husband used to take ganja and he is a drug addicted person. PW-1 admitted that her husband had filed a suit of restitution of conjugal rights for bringing her back to her matrimonial home. She further admitted that in that case, the learned Principal Judge, Family Court-1, Kamrup(M) had given the order in favour of the petitioner i.e. her husband. Moreover, in the cross-examination of PW-2, she stated that she knows that the opposite party is a drug addict and had also seen him consume drugs but PW-2

admitted that she had not stated so in her examination-in-chief.

14. On the other hand, the petitioner husband/opposite party in his evidence-on-affidavit as DW-1 has stated that the true fact is that, mainly due to the ill motive and behaviour of the petitioner/wife she came out from his company or conjugal life; however he told her to come back within few days. While she failed to come or return to her matrimonial home, he approached her for several days but she refuses to have a conjugal life with him. DW-1 also stated that it is a matter of sorrow that even the parents of the petitioner/wife asked him to become a "Gharjawai" at their own residence situated at House No. 55, Japorigog, Bikrampur, Guwahati. DW-1 further stated that it is quite impossible on his part to avoid his aged widow mother alone and live with the petitioner as "Gharjawai". Finding no other option, he filed a case for restitution of conjugal rights for taking her back in the Court of the learned Principal Judge, Family Court, which was registered as F.C. (C)-154/2019 and the same was adjudicated and decided in his favour vide judgment & order dated 12/04/2023 directing the petitioner/wife to enter or return to the conjugal life with him within three (3) months from the date of order.

15. DW-1 stated that the petitioner has a dirty heart from which he did not

get any expected peace and comfort. He stated that actually on 06/09/2018, he along with his wife/petitioner and minor daughter went to the parental home of the petitioner on the occasion of Narayan Puja on her assurance to return after two days in the matrimonial home along with the child. But subsequently, she became reluctant to come with him in the matrimonial home and even he visited his parental home after three days and the petitioner's father didn't allow her to come with him and told him to become a "Gharjawai" in their home.

16. The petitioner/husband as DW-1 stated that the respondent wife had lodged a case against him under Section 498A Indian Penal Code, 1860, which has been charge-sheeted before the Ld. CJM Kamrup(M), Guwahati vide P.R.C Case No-1100/2022 and that the learned Chief Judicial Magistrate, Kamrup(M), Guwahati vide its Judgment & order dated 19/01/2024 gave acquittal to him and his mother and sister holding the evidence of the petitioner highly contradictory and doubtful one and fully unreliable.

17. DW-1 stated that the learned Chief Judicial magistrate, Kamrup(M), Guwahati in the said judgment also came to the conclusion that there is no material to prosecute u/s 498A of Indian Penal Code, 1860. DW-2 i.e. the mother of the opposite party has corroborated the evidence of DW-1.

18. During his cross examination, the DW-1 had admitted the petitioner's suggestion that he did not file any execution case after getting final judgment and order in F.C. (Civil) case No. 154/2019 for restitution of conjugal rights. He further stated that the petitioner has been staying in her parental house since 06.09.2018 and that their child is at present aged about 8 years. He also stated that he has no knowledge where their child is studying at present as he is not allowed to meet their child. DW-1 has admitted that in Exhibit-2, it is not mentioned that "there is no material to prosecute under Section 498A of the Indian Penal Code, 1860". Moreover, the DW-2 has stated in her cross examination that the petitioner has been staying at her parental house since 06.09.2018. PW-1 stated that she has not disclosed the source of receiving money in her bank account since three years and has not submitted any voucher regarding her statement at point No. 7 of column-G of her affidavit of assets and liabilities. PW-1 stated that she did not take her gold ornaments with her to her parental house.

19. Learned counsel for the petitioner husband submitted that despite holding that physical cruelty was not proved, the learned Court below came to the finding that the respondent wife had left her matrimonial home for sufficient reasons.

20. It is further submitted that the petitioner husband had filed an application for restitution of conjugal rights which was decreed ex-parte in his favor, directing the respondent wife to resume conjugal life which she refused to comply with. In the said order dated 12-014-2023 in F.C (Civil) Case No. 154/2019, the learned family court recorded the conclusion that the respondent wife had left her matrimonial house without any sufficient cause. Furthermore, the criminal case under Section 498 AIPC lodged by the respondent wife against the petitioner husband and his mother and sister was also dismissed by the learned CJM Kamrup(M) vide the order dated 19-1-24, acquitting him and his mother. Having regard to the findings of the learned Courts, i.e., the learned family court as well as the learned CJM (M) in the aforesaid two cases, which are in favor of the petitioner, the learned Principal Judge, Family Court, in the instant case, ought not to have held that the respondent wife had sufficient reason to leave the company of her husband that is the petitioner. On the other hand, learned counsel appearing for the respondent wife submitted that the respondent wife had succeeded in establishing before the learned court below that she was compelled to leave the house of the petitioner for sufficient reasons. Furthermore, with regard to the findings recorded by the learned family court in the proceedings for restitution of conjugal right or by the learned CJM Kamrup(M) in the aforesaid criminal case under section 498A Indian Penal

Code, 1860, the same have no bearing insofar as the present proceedings are concerned, which is an independent one, and therefore, the learned court below has rightly not taken into consideration the aforesaid decisions. In this regard, learned counsel has placed the reliance upon the decision of the Apex court in *Rina Kumari @ Rina Devi @ Rina vs. Dinesh Kumar Mahato @ Dinesh Kumar Mahato & Anr., (2025) 3 SCC 33* in support of his aforesaid contentions.

21. I have given my anxious considerations to the rival submissions as well as to the material on record.

22. As far as the evidence in this case is concerned, the learned Court below found as follows:

"....14. Considering the materials on record I am of the opinion that during the examination of the petitioner side, the opposite party has failed to contradict the evidence of th petitioner regarding her leaving the matrimonial home under compelling situations and staying with their minor chlid at her parental house. The act of physical cruelty though not proved but the evidence on record clearly shows that the petitioner was subjected to mental cruelty by her husband/opposite party in various forms. The grounds of mental cruelty gave sufficient reasons to the petitioner to leave her matrimonial home. From the totality of evidence of both the

sides, it appears that the petitioner has been able to show that she left the matrimonial home under compulsion only and took shelter in her parental home. Thus, I hold that the wife/petitioner had left her matrimonial home under compulsion."

23. Since the petitioner/husband has chosen not to annex the cross-examination of the PW-1/wife with the instant revision petition and the case has proceeded to hearing without the records being called for, this Court has to go by the findings recorded by the learned Court below holding that the element of mental cruelty has been established by the respondent wife, which compelled her to leave her matrimonial home.

24. As far as the reference to the earlier proceedings for restitution of conjugal rights is concerned, wherein the learned family court had found in favor of the petitioner and had also held that the respondent wife had left the company of the petitioner husband without sufficient cause, in the cited case *Rina (supra)*, the Hon'ble Apex Court had held as follows:

"27. Now, turning to the decisions of this Court on the point, in Kirtikant D. Vadodaria vs. State of Gujarat and another 18, it was held that Section 125 Cr.P.C. has to be given a liberal construction to fulfil and achieve the intention of the legislature and, therefore, the passing of a decree for restitution of conjugal rights against the wife

would not, by itself, defeat her right to maintenance under Section 125(1) Cr.P.C. It was further observed that the mere 'failure' of the wife to live with her husband would not be sufficient to disentitle her from receiving maintenance from him, especially as the crucial word carefully chosen in the relevant provision is 'refusal'.

29. Thus, the preponderance of judicial thought weighs in favour of upholding the wife's right to maintenance under Section 125 Cr.P.C. and the mere passing of a decree for restitution of conjugal rights at the husband's behest and non-compliance therewith by the wife would not, by itself, be sufficient to attract the disqualification under Section 125(4) Cr.P.C. It would depend on the facts of the individual case and it would have to be decided, on the strength of the material and evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband, despite such a decree. There can be no hard and fast rule in this regard and it must invariably depend on the distinctive facts and circumstances obtaining in each particular case. In any event, a decree for restitution of conjugal rights secured by a husband coupled with non-compliance therewith by the wife would not be determinative straightaway either of her right to maintenance or the applicability of the disqualification under Section 125(4) Cr.P.C.

30. Another contention that was urged before us is that the findings in the judgment for restitution of conjugal rights by the Family Court, being a Civil Court, would be binding on the Court seized of the petition under Section 125 Cr.P.C, as they are to be treated as criminal proceedings. This specious argument needs

mention only to be rejected outright. No doubt, in Shanti Kumar Panda vs. Shakuntala Devi 20, this Court held that a decision by a Criminal Court would not bind the Civil Court while a decision by the Civil Court would bind the Criminal Court. However, maintenance proceedings are essentially civil in nature and the reason for inclusion of the provisions dealing therewith in the Code of Criminal Procedure was clarified by the Law Commission of India in September, 1969. Significantly, as long back as in the year 1963, in Mst. Jagir Kaur and another vs. Jaswant Singh 21, a 3-Judge Bench of this Court held that proceedings under Section 488 of the Code of Criminal Procedure, 1898, the precursor to Section 125 Cr.P.C., are in the nature of civil proceedings; the remedy, being a summary one; and the person (seeking that remedy, ordinarily being a helpless person. Therefore, even if non-compliance with an order for payment of maintenance entails penal consequences, as may other decrees of a Civil Court, such proceedings would not qualify as or become criminal proceedings. Nomenclature of maintenance proceedings initiated under the Code of Criminal Procedure, as those provisions find place therein, cannot be held to be conclusive as to the nature of such proceedings.

31. *Further, in Iqbal Singh Marwah and Another vs. Meenakshi Marwah and Another, (2005) 4SCC 370 while dealing with the contention that an effort should be made to avoid conflict of findings between Civil and Criminal Courts, a Constitution Bench pointed out that there is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final*

or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein.

35. *Viewed thus, the findings in the proceedings for restitution of conjugal rights, which were partly uncontested as Reena did not appear before the Family Court to adduce evidence or advance her case after filing her written statement, did not clinch the issue and the High Court ought not to have given such undue weightage to [the said judgment](#) and the findings therein."*

25. The aforesaid judgment in *Rina (supra)*, the Hon'ble Apex Court discussed the provisions of Section 40, 41, 42 & 43 of the Indian Evidence Act and corresponding Sections 34 to 37 of the Bharatiya Saikshya Adhiniyam, 2023, held that Section 41 of the Evidence Act specifically deals with instances where an earlier judgment order or decree constitutes conclusive proof whereas section 42 provides that an earlier judgment is relevant if it relates to matters of public nature relevant to the inquiry but such judgments, orders or decrees are not conclusive proof of what they state. The Apex Court also referred to the decision of the three- Judge Bench of the Apex Court in *KG Premshankar vs. Inspector of Police & Anr., (2002) 8 SCC 87* in the context of when a judgment in a civil proceeding in the same cause of action would be relevant in a criminal case and it was observed as follows:

"30. *What emerges from the aforesaid discussion is – (1) the*

previous judgment which is final can be relied upon as provided under [Sections 40 to 43](#) of the Evidence Act; (2)..; (3)..; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of [Sections 40 to 43](#) are satisfied, but it cannot be said that the same would be conclusive except as provided in [Section 41](#). [Section 41](#) provides which judgment would be conclusive proof of what is stated therein.

31. *Further, the judgment, order or decree passed in previous civil proceeding, if relevant, as provided under [Sections 40 and 42](#) or other provisions of the [Evidence Act](#) then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. ... Hence, in each and every case, the first question which would require consideration is – whether judgment, order or decree is relevant, if relevant – its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.”*

26. From the above, it is crystal clear that the findings of the learned family court in the proceedings for restitution of conjugal rights would have no bearing on the present case, which would have to be decided on the evidence placed before the court. Furthermore, it is also evident that the proceeding findings in the proceedings under Section 498A of the Indian Penal Code, 1860, which is a criminal case, would have no bearing on the proceedings of the present case before the learned Principal Judge, family court, Guwahati, in any

case. A perusal of the order passed by the learned CJM dated 19.01.2024 annexed to the instant petition leads to the impression that the petitioner was acquitted on the benefit of doubt or due to lack of sufficient evidence, and it is not a case where the petitioner had got a clean acquittal, meaning thereby, that the charges against the petitioners were false.

27. In view of the above, I find no reason to interfere with the findings of the learned family court on this aspect of the matter.

28. As far as the quantum of maintenance is concerned, the Hon'ble Supreme Court of India in the case of Jasbir Kaur Seghal vs. District Judge, Dehradun & Ors (1997) 7 SCC 7 has held as follows:

"8.....The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate."

29. Learned Court below had not come to a finding as to the approximate income of the petitioner. While the respondent wife had claimed that the income of the petitioner was Rs. 50,000/- per month, it is evident from the impugned order itself that she could not prove any source of income of the petitioner or that he had any landed property or vehicles from which he derived any income. It is the contention of the petitioner that his income is Rs. 6,000/- per month, which he earns by driving a drinking-water vehicle, and which evidence has remained largely un-rebutted. No reference to any statement of assets and liabilities of the petitioner husband was been made in the impugned judgment. However, it is also not believable that a driver of a commercial vehicle would work at the rate of Rs. 6,000/- per month only in a city like Guwahati, where the average earnings of a driver currently is in the range of Rs. 12,000/- to Rs. 18,000/- per month. However, at the relevant point of time i.e., when the maintenance proceedings were instituted i.e., the year 2020, the rates would have been somewhat lesser. But in any case, it appears that the amount of Rs. 10,000/- per month allowed as monthly maintenance for the wife and the child keeping in view the admitted fact that the mother of the petitioner/husband is not dependent on him, being a government servant does not appear to be unreasonably high, warranting interference in exercise of revisional powers.

30. In view of the above discussion, the revision stands dismissed.

JUDGE

Comparing Assistant