

GAHC020007542024

2026:GAU-NL:139



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

Case No. : WP(C)/285/2024

SMTI. ABIGAIL ACHIKU YEPTHOMI
AGED ABOUT 33 YEARS, DAUGHTER OF TOHUVI YEPTHOMI,
PRESENTLY RESIDING AT HOUSE NO. 88,
THAHEKHU VILLAGE , DIMAPUR, DISTRICT- DIMAPUR,
NAGALAND, PH.NO.7629018227

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND
SECRETARY/SECRETARY, DEPARTMENT OF LAW AND JUSTICE,
GOVERNMENT OF NAGALAND, KOHIMA, NAGALAND

2:THE DUNGKI VILLAGE COUNCIL
DUNGKI VILLAGE

DISTRICT-PEREN
NAGALAND
THROUGH ITS CHAIRMAN/ SECRETARY

3:SHRI HAILUNGNING ZELIANG
AGED ABOUT 35 YEARS OLD

S/O MR. KELEI ZELIANG
RESIDENT OF H. APARTMENTS
PURANA BAZAR
NEAR ZION HOSPITAL
DIMAPUR-797112

DISTRICT-DIMAPUR
NAGALAND

PH.NO. 708502222

Advocate for the Petitioner : A. ZHIMOMI, VITO K SHOHE, MANJONG KONYAK, G KAMEI, N SOLO, VIKETSONO, LHOUSINO, ESTHER

Advocate for the Respondent : S. MERE, GOVT ADV NL,

**BEFORE
HON'BLE MR. JUSTICE UNNI KRISHNAN NAIR**

Date of Hearing : 27-11-2025
Date of Judgment : 27-02-2026

Judgment and Order (CAV)

Heard Mr. A. Zhimomi, learned Senior Counsel, assisted by Ms. Easter and Ms. Lhousino, learned counsels, appearing for the petitioner. Also heard Mr. Tongpok Pongener, learned counsel, and Ms. S. Mere, learned Government Advocate, appearing for their respective respondents.

2. The challenge in the present writ petition is to an order dated 16-03-2024, issued by the Dungki Village Council, Dungki Village, *inter alia*, dissolving the marriage solemnized between the petitioner and the respondent no.3, on the ground that the said order was so passed without any jurisdiction.

3. The marriage of the petitioner and the respondent no.3 was solemnized on 07-11-2018. It is projected in the writ petition that after lapse of sometime, after solemnization of the marriage, the respondent no.3, who was alleged to be a habitual consumer of alcohol and also to have violent and abusive tendencies. The petitioner projects that she endured the conduct of the respondent no.3 in silence and had not informed about the said matter to her parents as

she believed that the marital issues should be solved by the husband and the wife themselves.

It is further projected that in 2019, when the petitioner and the respondent no.3 were in Delhi, attending to the respondent no.3's medical needs, he had confessed before her of having indulged in extra marital affair. It is projected that the petitioner continued to suffer the abuse as committed on her by the respondent no.3. It is further projected that the respondent no.3 had proposed to go on a marketing trip to Guwahati along with his 3 (three) office employees out of which one was a lady whom he had appointed as a Manager (HR) in Shulem Boutique Hotel, Dimapur, a hotel owned by the respondent no.3. The respondent no.3 had proceeded to Guwahati with the lady Manager in his car and the two other employees in the other car. She further alleges that the respondent no.3 was also earlier found to be openly flirting with the said lady and had also borne her shopping bills. On 28-09-2023, the respondent no.3 on returning to Dimapur had called the petitioner and had informed her that he wanted a divorce and she should leave the house. It is contended by the petitioner that the respondent no.3 had not come to his marital home but had proceeded directly to his parent's home at Kohima. Thereafter it is projected that the respondent no.3 and his parents had subsequently come to Dimapur to the marital house of the petitioner and without the consent of the petitioner had taken away her elder daughter. It is further contended that the respondent no.3 and his parents were pressurizing the petitioner to leave the house as the respondent no.3 did not desire to continue the marriage solemnized with her any more. It is in the said circumstances that the petitioner contends to have left her marital house with her younger daughter on 08-12-2023. The petitioner thereafter instituted proceedings seeking custody of her elder daughter before the Family Court, Dimapur, Nagaland, and the said case was registered as Custody Case

No.12/2023. The petitioner, in view of the domestic violence she was subjected to, has also contended to have instituted a domestic violence case being D.V Case No.1/2024 before the Court of JMFC, Dimapur, Nagaland. Vide an order dated 19-12-2023 passed in Custody Case No.12/2023, the petitioner was granted interim custody of her elder daughter. However said direction was modified vide order dated 19-03-2024, by allowing the respondent no.3 joint custody. The respondent no.3 although was allowed visitation and joint custody rights, it is alleged by the petitioner that the respondent no.3 has virtually abandoned the children to the custody of the petitioner. The petitioner projects that as on date both the children are in the custody of the petitioner and Custody Case No.12/2023 is still pending disposal.

The petitioner projects that in the D.V. Case No.1/2024 vide order dated 04-03-2024, the learned Trial Court had directed for payment of an amount of Rs.1,00,000/- (Rupees One Lakh) each by the respondent no.3. The said amount was however, reduced subsequently to Rs.60,000/- (Rupees Sixty Thousand) vide an order dated 31-05-2024, the petitioner being aggrieved had assailed the said order before the Appellate forum and the appeals are presently pending disposal.

It is in the above background that the petitioner contends that the respondent no.3 filed a petition dated on 22-02-2024, before Dungki Village Council, Dungki Village, praying for dissolution of his marriage with the petitioner, herein. The petitioner projects that the said application was filed before the Dungki Village Council, Dungki Village, without jurisdiction, inasmuch as, the family of the respondent no.3 although originated from the Dungki village, however, the respondent no.3 had permanently settled in Dimapur and even after their marriage the petitioner and the respondent no.3 had set up their marital home at Dimapur and had never taken up residence in Dungki

village. The petitioner also projects that the petitioner and the respondent no.3 belongs to two different Naga tribes, the respondent no.3 ought not to have instituted proceedings before the Dungki Village Council. The petitioner further projects that based on the application submitted by the respondent no.3, the Dungki Village Council issued summons dated 24-02-2024 and 08-03-2024, to the petitioner. The said summons being served upon the petitioner, the petitioner vide communication dated 11-03-2024, had requested the Village Council not to entertain the petition submitted by the respondent no.3 as dispute with regard to their marriage is already sub-judice.

The petitioner projects that the Village Council without properly appreciating the objections raised by her, proceeded ex-parte against the petitioner, herein, and vide order dated 16-03-2024, by holding that the petitioner had left her marital home on her own accord and she being declared to be no longer the wife of the respondent no.3, was directed to handover the custody of the younger daughter of the petitioner to the respondent no.3 and the petitioner was also directed to return all the properties that she had taken away from her marital home. Further the declaration made by the Village Council to the effect that the petitioner not being the legal wife of the respondent no.3 any further, tantamounts to a divorce being so ordered by the said Village Council, dissolving the marriage between the petitioner and the respondent no.3, herein.

Being aggrieved by the said order passed by the Dungki Village Council, the petitioner has instituted the present writ petition assailing the same.

4. The learned counsel for the petitioner by reiterating the facts noticed, hereinabove, has submitted that the marriage of the petitioner and the respondent no.3 was solemnized by following

Christian rituals. He submits that jurisdiction is not vested with the said Village Council to entertain applications for divorce or marriage. He submits that the order dated 16-03-2024 passed in the matter, was so passed, solely under the influence of the respondent no.3, herein. He submits that the petitioner on receiving the notice from the Village Council had submitted her objections in the matter. However, the said objections as submitted in the matter, which also touches upon the jurisdiction of the Village Council to entertain the application submitted by the petitioner by the respondent no.3, has not been considered by the Village Council while passing the impugned order dated 16-03-2024. He further submits that the conclusions drawn by the Village Court in the matter is clearly perverse and has been so drawn only to justify the dissolution of marriage between the petitioner and the respondent no.3. The learned Senior Counsel for the petitioner further submits that the projection made by the Village Council in its order dated 16-03-2024 with regard to the provisions of Article 371A (ii) (iii) is clearly misplaced, inasmuch as, it is settled by the decisions of this Hon'ble Court that the provisions of the Indian Divorce Act, is also applicable in the State of Nagaland and the provisions of Article 371 would not in any way undermine the application of the provisions of the Indian Divorce Act, 1869, in the State.

5. In support of his such submission, the learned Senior Counsel has relied upon the decision of this Hon'ble Court in the case of **Nihoto Sema Vs. Kanili Kimi Limi** reported in **(1986) 2 GLR 296**. The learned Senior Counsel for the petitioner has relied upon the decision of a Co-ordinate Bench of this Court rendered in the case of **Neikhol Changsan Vs. Thongkomang Armstrong Changsan** reported in **(2022) 5 GLT 392**.

6. In view of the above premises, the learned Senior Counsel for the petitioner submits that the impugned order passed by the Dungki Village

Council would mandate an interference from this Court.

7. Per contra, the learned counsel for the respondent no.3 has at the outset submitted that the marriage between the petitioner and the respondent no.3 was solemnized by the pastor of Life Square Church, Dimapur, in presence of two witnesses. He submits that the allegations leveled against the respondent no.3, by the petitioner, in the matter are clearly exaggerations and without any substance. He further submits that an attempt of reconciliation between the respondent no.3 on the one hand and the petitioner and her family members on the other hand was pursued by the pastor conducting their marriage and one Mrs. Zhepitoli, however the same was not successful.

8. The learned counsel for the respondent no.3 has further submitted that the Naga customary law on marriage and divorce falls under an exclusive category and the same finds special protection under Article 371A of the Constitution of India. He submits that the Village Council in Nagaland is empowered to adjudicate on customary law. He projects that as per the Naga custom, a Naga and his descendants hailing from a particular village remains citizen of that village and are amenable to that village's law and tradition even if they do not reside therein, unless they relinquish such citizenship by taking the citizenship of another village. He further submits that a Naga lady irrespective of the tribe or village she may belong to, on her marriage is deemed as a member of the tribe and village of her spouse. The children born of such marriage also are automatically recognized as the members of the clan and tribe of the father. He submits that the petitioner in the present case had abandoned the company of the respondent no.3 and the reconciliation efforts initiated in the matter at the instance of the respondent no.3 had also failed to make the petitioner seek a reason in the matter and thereafter left with no other alternative, the respondent no.3 had taken up the matter before the Dungki Village

Council which according to him is the competent forum for deciding the issue. He submits that when the petitioner had willfully deserted the respondent no.3 and the reconciliation attempts having been failed, divorce had automatically occasioned from the side of the petitioner and on such desertion, the petitioner and the respondent no.3 can no longer be deemed to be husband and wife. He submits that the impugned order passed by the Dungki Council only formalizes the dissolution of marriage which had already occasioned in the matter. He submits that the provisions of the Rules for Administration of Justice and Police in Nagaland, and also the Village Council's Act 1978, empower the Dungki Village Council to decide even on matrimonial disputes. He submits that the Village Councils had passed the impugned order upon appreciating the evidences placed before it in the matter. The petitioner in the event is aggrieved by the impugned order passed by the Village Council, she is required to assail the same before the Appellate forum as prescribed in the matter.

9. In the above premises, learned counsel for the respondent no.3 submits that the impugned order passed by the Dungki Village Council having been so passed in accordance with the jurisdiction conferred on it in the matter would not mandate an interference from this Court.

10. I have heard the learned counsel for the parties and perused the materials available on record.

11. The issue arising in the present writ petition is to the effect as to whether the order dated 16-03-2024, passed by the Dungki Village Council, dissolving the marriage between the petitioner and the respondent no.3, herein, would be sustainable.

12. This Court has appreciated the rival contentions brought on record

by the petitioner and the respondent no.3. The facts as noticed, hereinabove, being not in dispute is not reiterated. The Village Council had proceeded to issue the impugned order by projecting that it is empowered to do so under the provisions of Article 371A of the Constitution of India.

13. The learned counsel for the respondent no.3 had also reiterated the said position. However, the learned counsel for the petitioner had submitted that the dissolution of a Christian marriage would be so permissible by a forum so determined for the purpose under the provisions of the Indian Divorce Act, 1989. And in this connection had relied upon the decision of this Court in *Nihoto Sema* (supra).

14. In the case of *Nihoto Sema* (supra), the question arising before this Court was as to whether the Indian Divorce Act, 1869, is operative in the state of Nagaland. The Co-ordinate Bench of this Court upon considering the said issue in the light of the applicable provisions including the provisions of Article 371A had drawn the following conclusion.

“One other submission of learned counsel is that by virtue of clause (1) of Article 372 of the Constitution the customary laws of Nagaland relating to marriage and divorce prior to the commencement of the Constitution continue to be in force after the commencement of the Constitution until altered or repealed and, therefore, the Indian Divorce Act is inapplicable in the State of Nagaland. But, clause (2) of Article 372 of the Constitution of India empowered the President to make by order such adaptations of such law, whether by way of repeal or amendment, as may be necessary or expedient, for the purpose of bringing the provisions of such law into accord with the provisions of the Constitution and to provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made. In exercise of the said power, the President made the Adaptations of Laws Order, 1950, which came into force on the 26th day of January, 1950. After adaptation, section 2 of the Indian

Divorce Act read as follows:

"This Act extends to the whole of India except part B States."

Section 2 of the Act was again amended by the Part B States (Laws) Act, 1951 (No. III of 1951), which came into force on 1.4.1951. By this Act, in section 2 of the Act, for the words "except Part B States", "except the State of Jammu and Kashmir" had been substituted. After the aforesaid amendment, section 2 of the Act reads as follows:

"This Act extends to the whole of India except the State of Jammu and Kashmir."

The State of Nagaland is a part of India. Therefore, there is no escape from the conclusion that the Act is also applicable to the State of Nagaland.

Then, there remains the submission of the learned counsel for the petitioner that as far as practicable the parties who are indigenous inhabitants of Naga Hills should be directed to settle the dispute consensually without disturbing the Naga social fabric under the provisions of Rule 30 of the Rules for the Administration of Justice and Police in the Naga Hills District. It is submitted that under the Sema Customary law, disputes are settled by the chiefs and their 'chochomi'. Reference is made to J. H. Hutton's "The Sema Nagas", in p. 187 of which it has been observed:

"A woman who objects to her husband can leave him at any time, but will not get her ornaments back if she does so against her husband's consent, unless he has seriously ill-treated her, in which case she could claim the return of her ornaments as well as a fine for the ill-treatment. In any case the marriage price would have to be repaid to him. Divorce is, however, probably less frequent among the Semas than among neighbouring tribes, of whom the Aos are particularly bad in this respect, almost making it the rule rather than the exception to be divorced at least once during their lives, and usually for infidelity."

Therefore, there is nothing to show even in the texts that there is

any customary form of divorce prevalent amongst the Sema Nagas.

The contention of the learned counsel relying upon the provisions of Article 371A of the Constitution providing that no Act of Parliament in respect of Naga customary law and procedure shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decided, need not detain us long in view of the express provisions of section 26 of the State of Nagaland Act, 1962 (Act 27 of 1962) and the further fact that the Indian Divorce Act, 1869 is not an Act of Parliament to which the provisions of Article 371A of the Constitution are attracted. The Patna High Court in Jhaman Mian Vs. State, AIR 1966 Pat 375 (DB) also expressed a similar view.”

15. A perusal of the said conclusions would reveal that the provisions of Article 371A has been held to not restrict the application of the provisions of the Indian Divorce Act, 1989, in the State of Nagaland. Accordingly, this Court holds that the dissolution of a Christian marriage in the State of Nagaland is to be so done by application of the provisions of the Indian Divorce Act, 1969.

16. As noticed, hereinabove, the parties to the proceeding have admitted that the marriage between the petitioner and the respondent no.3 was performed in a church by complying with the Christian marriage rituals in presence of a pastor and two witnesses. Therefore, the marriage between the petitioner and the respondent no.3 is deemed to have been solemnized in terms of the provisions of the Indian Christian Marriage Act, 1872, in a church.

17. The Indian Divorce Act, was enacted to amend the law relating to divorce of persons professing the Christian religion and to confer upon certain Courts jurisdiction in matrimonial matters, Section 14 of the Act of 1869, confers power to a Court to pronounce decree for dissolving a marriage. The term Court has been defined in the provisions of Section 3

(4) of the Act of 1869, to mean the High Court or the District Court as the case may be.

The term District Court means in the case of any petition under the Act of 1869, the Court of District Judge within the local limits of whose ordinary jurisdiction or whose jurisdiction under the Act of 1869, the marriage was solemnized or the husband and the wife reside or last resided together. Section 3 (2) of the said Act defines the term "District Judge" to mean the Judge of Principal Civil Court of original jurisdiction, however designated. Therefore, the power to grant a decree for dissolving a marriage can only be done either by the "High Court" or the "Court of District Judge".

18. The respondents no.3 has projected that the petitioner and the respondent no.3 being indigenous persons belonging to the State of Nagaland, the customary law prevailing empowers the Dungki Village Council to also adjudicate upon the matrimonial disputes arising in between them.

19. A similar issue had arisen before this Court, in the case of *Neikhol Changsan* (supra) and a Co-ordinate Bench of this Court had proceeded to draw the following conclusions;

26. At this stage, this Court would like to take into consideration the submission made by the learned counsel for the respondent to the effect that apart from Christian marriage which was solemnized before the Presbyterian Church, Songpijang (Ngalsong), the petitioner and the respondent have also married as per the Kuki customs and rituals and the divorce between the petitioner and the respondent was duly recognized by the Songpijang Village Committee in its resolution dated 13.01.2011. The said submission is completely misconceived in view of the judgment of the Supreme Court rendered in the case of *Molly Joseph (@) Nish Vs. George Sebastian @Joy*, reported in (1996) 6 SCC 337 wherein the Supreme Court in paragraph - No.4 observed as follows:-

"4. From a bare reference to the different provisions of the Act including preamble thereof it is apparent that Divorce Act purports to amend the law relating to divorce of persons professing the Christian religion and to confer upon courts which shall include District Court and the High Court jurisdiction in matrimonial matters. In this background, unless the Divorce Act recognizes the jurisdiction, authority or power of Ecclesiastical Tribunal (sometimes known as Church Court) any order or decree passed by such Ecclesiastical Tribunal cannot be binding on the courts which have been recognized under the provisions of the Divorce Act to exercise power in respect of granting divorce and adjudicating in respect of matrimonial matters. It is well settled that when legislature enacts a law even in respect of the personal law of a group of persons following a particular religion, then such statutory provisions shall prevail and override any personal law, usage or custom prevailing before coming into force of such Act. From the provisions of the Divorce Act it is clear and apparent that they purport to prescribe not only the grounds on which a marriage can be dissolved or declared to be nullity, but also provided the forum which can dissolve or declare the marriage to be nullity. As already mentioned above, such power has been vested either in the District Court or the High Court. In this background, there is no scope for any other authority including Ecclesiastical Tribunal (Church Court) to exercise power in connection with matrimonial matters which are covered by the provisions of the Divorce Act. The High Court has rightly pointed out that even in cases where Ecclesiastical Court purports to grant annulment or divorce the Church authorities would still continue to be under disability to perform or solemnize a second marriage for any of the parties until the marriage is dissolved or annulled in accordance with the statutory law in force."

27. From the reading of the above quoted paragraph of the judgment, it would be seen that the Act of 1869 is the law relating to divorce of persons professing the Christian religion and to confer upon courts which shall include District Court and the High Court jurisdiction in

matrimonial matters. The provisions of the Act of 1869 is clear and apparent to the effect that they purport to prescribe not only the grounds on which a marriage can be dissolved or declared to be nullity, but also provided the forum which can dissolve or declare the marriage to be nullity. Such power has been vested either in the District Court or the High Court. Most pertinently the Supreme Court further observed that when the legislature enacts a law even in respect of personal law or personal law of a group of persons following a particular religion, then such statutory provision shall prevail and override any personal law, usage or customs prevailing before coming into force of such Act. This judgment of the Supreme Court has also been recently followed in the case of Clarence Pais (supra). In view of the above judgment it would be clear that the customary laws of the Kukis, in the instant case, shall take a back seat to the provisions of the Act of 1869 as the marriage in the instant case was solemnized was a Christian marriage in a church. Even otherwise, if this Court takes into consideration Annexure-15 to the petition which are the various queries answered by the highest body of the KUKI INPI ASSAM, it is inter-alia mentioned that a Kuki customary law can neither dissolve a Christian marriage performed in a church nor can it force a couple to reunite against the will of the couple.

28. Therefore, a Christian marriage solemnized can only be dissolved as per law. The Act of 1869 stipulates the various grounds under which the marriage can be dissolved as could be seen from Section 10 of the Act of 1869. A perusal of the impugned order would show that none of the grounds enumerated in clauses (i) to (x) of Section 10(1) of the Act of 1869 were taken into consideration while dissolving the marriage. A perusal of the impugned order shows that the court below, on the basis of the conclusion of Songpijang Village Committee and recognizing the divorce case between the petitioner and the respondent had passed the ex-parte decision which is completely inconceivable in law.

29. In the back drop of the above observations, this Court therefore concludes that the Judge, Subordinate Autonomous Council Court,

Dima Hasao, Haflong, Assam, did not have the jurisdiction to pass the impugned order to dissolve the Christian marriage between the petitioner and the respondent. It is no longer *res-integra* that when a court passes an order/decreed having no inherent jurisdiction to do so, the said order/decreed is a nullity and void *ab-initio*. As the impugned order is a nullity, the question of attaining finality as contended by the respondent does not arise.”

20. This Court has perused the conclusions drawn by the Co-ordinate Bench in the case of *Neikhol Changsan* (supra) and is in respectful agreement with the same. This Court holds that a Christian marriage solemnized can only be dissolved as per law. The Act of 1869 stipulates the grounds under which a marriage can be dissolved and accordingly the said grounds being permissible to be so raised before the “District Court” or the “High Court”, the Village Council in the considered view of this Court in passing the ex-parte decision vide the order dated 16-03-2024, had done so without any jurisdiction vested in it.

21. It is a settled position of law that when a forum passes an order/decreed without having no inherent jurisdiction to do so, the said order/decreed is a nullity and void *ab-initio*. Accordingly, the order passed by the Dungki Village Council having been so passed without any jurisdiction conferred on it in the matter, is an order in nullity and the same would not be maintainable.

22. In view of the conclusions reached by this Court hereinabove, the impugned order dated 16-03-2024, stands set aside. The petitioner having already instituted a divorce proceeding before the Principal Family Judge, Family Court, Dimapur, which has been registered as divorce case no. 72/2024, the petitioner and the respondent no.3 are at liberty to pursue the said proceeding and take the same to its logical conclusion.

23. With the above observations and directions, the present writ

petition stands disposed of.

JUDGE

Comparing Assistant