

GAHC010020582021



2025:GAU-AS:7253

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

Case No. : Crl.Pet./90/2021

MUSTT. LOZZATAN BEGUM
D/O NUR ISLAM, W/O SHAHIDUL ISLAM, R/O VILL-BORTALOWA, P.O. AND
P.S.-DHALIGAON, DIST-CHIRANG, BTAD, ASSAM, PIN-783385

VERSUS

SHAHIDUL ISLAM
S/O SAYED ALI, R/O VILL- BORTALOWA, P.O. AND P.S.-DHALIGAON, DIST-
CHIRANG, BTAD, ASSAM, PIN-783385

Advocate for the Petitioner : MR. A K HUSSAIN, MR A HAQUE,MR. B HUSSAIN,MS S
HAZARIKA

Advocate for the Respondent : MD. S ALOM, MR. M S ALAM,MS. A BEGUM

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner : Mr. A.K. Hussain,
Advocate.

For the Respondent : Mr. S. Alom,
Advocate.

Date of Hearing : 27.05.2025.

Date of Judgment : 04.06.2025.

JUDGMENT AND ORDER (CAV)

Heard Mr. A.K. Hussain, the counsel appearing for the petitioner. Also heard Mr. S. Alom, learned counsel representing the sole respondent.

2. This is an application under Section 482 of the Criminal Procedure Code challenging the judgment dated 05.12.2020 passed by the learned Sessions Judge, Chirang at Kajalgaon in Criminal Revision Case No.02/2020.

3. The petitioner filed an application being Misc. Case No.26/2018 under Section 125 of the CrPC in the court of the learned Judicial Magistrate First Class, Chirang, Kajalgaon. By a judgment dated 16.12.2019, the learned Judicial Magistrate First Class granted a maintenance of ₹2,500/- for the petitioner and another amount of ₹500/- to her child.

4. The respondent being aggrieved by the said judgment, filed a revision petition being Criminal Revision Case No.02/2020 in the Sessions Court at Chirang.

5. The learned Sessions Judge refused to grant maintenance to the present petitioner though the order granting maintenance to her child was upheld. The reason for refusal by the learned Sessions Judge can be gathered from a portion of a judgment, which is quoted as under:

“Not only that her evidence is self-contradictory, but also goes against her pleadings. This makes her testimony wholly unreliable. While she has admitted that she has been living separately from her husband, she has not been able to show that there was any sufficient cause for living separately. A perusal of the impugned judgment and order also indicates this. However, the learned trial court proceeded on the presumption that no woman would leave her matrimonial home without any reason and therefore, if at all a woman has left her matrimonial home, something there on the part of the husband or his family members must exist. This unfortunately is not a presumption permitted by law. If that be the permission of the law, then in all such cases for maintenance, evidence would be wholly unnecessary and would

become an eye wash and that will make the bald statements of all petitioner believable by court.”

6. Mr. A.K. Hussain has submitted that the provision under Section 125 CrPC is a social legislation meant to safeguard married women. According to Mr. Hussain, unlike a civil case, in a proceeding under Section 125 CrPC, the evidence need not tally with the pleadings in the petition.

7. Mr. Alom has submitted that the learned trial court failed to appreciate the evidence and arrived at an incorrect finding. Mr. Alom has supported the judgment passed by the learned Sessions Judge.

8. I have given my anxious consideration to the submissions made by the learned counsel of both sides.

9. The learned Sessions Judge had held that before passing the judgment, the trial court presumed many things. The learned Sessions Judge held that the present petitioner failed to prove that she had sufficient reasons to live separately from her husband.

10. I have carefully gone through the trial court judgment.

11. The petitioner and the respondent are dark complexioned people. But their child was fair complexioned. That is the reason why the dispute between the wife and the husband arose. The husband started to physically harass the wife and drove her out of the matrimonial house along with the child. These things have appeared in evidence.

12. This Court is of the opinion that the petitioner had shown sufficient reason to live separately from her husband. The learned trial court has passed a reasoned judgment, which did not require any interference by a superior court.

13. For the aforesaid reasons, the inherent power of this Court deserves to be exercised for the ends of justice. Accordingly, the Criminal Petition is allowed. The judgment dated 05.12.2020 passed by the learned Sessions Judge, Chirang at

Kajalgaon in Criminal Revision Case No.02/2020, is set aside.

14. The respondent is directed to pay the maintenance as directed by the learned Judicial Magistrate First Class, Chirang, Kajalgaon in Misc. Case No.26/2018.

The Criminal Petition is disposed of accordingly.

JUDGE

Comparing Assistant