

GAHC010015182022



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

**Case No. : Crl.Rev.P./33/2022**

RAMAI DAS  
SON OF LATE PUWABAR DAS  
PRESENTLY ADDRESS OF COMMUNICATION- RAILWAY PROTECTION  
FORCE, GUWAHATI RAILWAY STATION, MAWHATI, PALTAN BAZAAR,  
GUWAHATI, P.S. PALTAN BAZAR, IN THE DIST. OF KAMRUP (M), ASSAM,  
PIN-781007 AND PERMANENT RESIDENT OF VILL- JAIL GAON, P.O.  
DISANGMUKH, P.S. SIVASAGAR, IN THE DIST. OF SIVASAGAR, PIN-785663

VERSUS

THE STATE OF ASSAM AND 2 ORS  
REP. BY THE PP, ASSAM

2:SMTI. BANDANA DAS  
W/O SRI RAMAI DAS  
PRESENTLY RESIDING AT QTR. NO 609 (B)  
OLD FIELD COLONY P.O. AND P.S. BADARPUR IN THE DIST. OF  
KARIMGANJ  
ASSAM  
PIN-788803

3:LISA DAS  
D/O SRI RAMAI DAS  
PRESENTLY RESIDING AT QTR. NO 609 (B)  
OLD FIELD COLONY P.O. AND P.S. BADARPUR IN THE DIST. OF  
KARIMGANJ  
ASSAM  
PIN-78880

**Advocate for the Petitioner : MR. D. K. Bordoloi, ld. Adv.**

**Advocate for the Respondent : Mr. P. Borthakur, ld. Addl. P.P., ASSAM  
Mr. D. Baruah, ld. Adv. For 2 & 3**

**BEFORE**  
**HONOURABLE MRS. JUSTICE MITALI THAKURIA**

Date of hearing : 08.02.2024

Date of Judgment : 26.04.2024

**JUDGMENT & ORDER (CAV)**

Heard Mr. D. K. Bordoloi, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent as well as Mr. D. Baruah, learned counsel for the respondent Nos. 2 and 3.

**2.** This is an application filed under Section 397 *read with* Section 482 of the Code of Criminal Procedure, 1973, praying for setting aside and quashing of the order dated 06.12.2021 passed by the learned Additional Chief Judicial Magistrate, Karimganj in Misc. Case No.318/2016, whereby, directed the petitioner to make a payment of Rs.10,000/- (Rupees Ten thousand) only per month as a maintenance to the aggrieved person i.e. the respondent No.2 and Rs.8,000/- (Rupees Eight thousand) only per month towards the maintenance of her child. Thus, the petitioner was directed to pay a total maintenance of Rs.18,000/- (Rupees Eighteen thousand) only per month towards the maintenance to the present respondent No.2 and for her child from the date of filing the petition.

**3.** The brief fact of the case is that; the respondent No.2 filed a case under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short 'PWDV Act') seeking for monthly maintenance for herself as well as for her daughter/respondent No.3. The respondent No.2 further sought for relief under

Sections 17, 18, 19, 20, 22, 23(2) and 26 of PWDV Act. After receipt of summons/notice from the Court, the present petitioner appeared before the Court and filed his written statement. The learned Trial Court after considering the facts and circumstances of this case and hearing both the sides passed the order directing the petitioner to make a payment of Rs.10,000/- (Rupees Ten thousand) only per month as maintenance to the aggrieved person i.e. the respondent No.2 and Rs.8,000/- (Rupees Eight thousand) only per month towards the maintenance of the child. Further, the learned Trial Court also directed the present petitioner to pay Rs.10,000/- (Rupees Ten thousand) only as a cost of proceedings and Rs.20,000/- (Rupees Twenty thousand) only as compensation to be paid by the aggrieved party/present respondent Nos.2 & 3 by the petitioner. More so, the present petitioner is further directed to apply for the education allowance and medical facilities to the Railway Department for the present respondent No.2 and her child.

**4.** On being highly aggrieved and dissatisfied with the impugned judgment and order dated 06.12.2021, the petitioner preferred this criminal revision petition.

**5.** It is submitted by the learned counsel for the petitioner, Mr. Bordoloi that the learned Additional Chief Judicial Magistrate, Karimganj failed to appreciate the evidence on record in its true perspective and thus, arrived at a wrong decision and as such the impugned judgment is liable to be set aside and quashed. He also submitted that the learned Trial Court did not consider the salary of the petitioner and passed the order, whereby, directing him to pay a sum of Rs. 18,000/- (Rupees eighteen thousand) only per month towards the maintenance of the respondent Nos.2 and 3. Hence, the present petition has

been filed for setting aside and quashing of the judgment and order dated 06.12.2021 passed by the learned Additional Chief Judicial Magistrate, Karimganj in Misc. Case No.318/2016. He further submitted that the respondent No.3 is his daughter and she was born on 31.12.1999 and the impugned judgment and order was passed on 06.12.2021 after she became major, but the learned Trial Court did not consider the fact that at the time of passing the order the respondent No.3 had already became major. More so, the petitioner No.2 declared herself as monk and in the year 2006 she refused to stay with the present petitioner in the same quarter. The respondent No.2 willfully withdrawn herself from the society, but, at present, the petitioner has been depriving to lead his marital co-habitation with the respondent No.2.

**6.** The accused/petitioner denied the claim of the respondent No.2 that his monthly salary is Rs.79,821/- (Rupees Seven-nine thousand eight hundred twenty-one). However, on 03.02.2022, this Court asked the petitioner to produce his salary certificate by filing an additional affidavit. As per the said document the net salary of the petitioner after all deduction is Rs.27,925/- (Rupees twenty-seven thousand nine hundred twenty-five) which is annexed in Annexure-C. of the petition. It is also denied that that the petitioner has agreed to make payment of Rs.25,000/- (Rupees twenty-five thousand) only as a maintenance to her wife in case of giving permission for 2<sup>nd</sup> marriage as alleged therein. Further, during the time of filing his written statements he was working as Sub-Inspector of RPF and posted at Dimapur Railway Station and his monthly salary was around Rs.33,000/- (Rupees Thirty-three thousand) only for the month of August 2016. Apart from that the petitioner was also paying Rs.3516/- (Rupees three thousand five hundred sixteen) only for the rent of the quarter occupied by the respondent No.2 and by her daughter. The learned counsel for

the petitioner also submitted that as per salary statement for the month of October 2021, the petitioner received his net salary of Rs.51,681/- (Rupees Fifty-one thousand six hundred eighty-one) only and he is also paying Rs.4374/- (Rupees Four thousand three hundred seventy-four) only every month for the government quarter rent for the accommodation of the respondent Nos.2 and 3. But, without considering all the aspects, the learned Trial Court illegally passed the impugned order dated 06.12.2021 by directing the petitioner to pay a sum of Rs.18,000/- per month to the respondent No.2 and to her daughter. Thus, he submits that the maintenance awarded to the respondent Nos. 2 and 3 are excessive and violates the provision of PWDV Act, and as such the interference of this Court is necessary and apart from that the petitioner is suffering from various illness which also requires a good amount of money for his treatment.

**7.** Vide another additional affidavit, the petitioner has stated that at the time of filing his written statement, he was working as a Sub-inspector of RPF and posted at Dimapur Railway Station and net salary of the petitioner for the month of February 2016 was around Rs.26,727/- (Rupees twenty-six thousand seven hundred twenty-seven) only. Further as per the salary statement for the month of January 2021, the petitioner received net salary of Rs.19,590/- (Rupees Nineteen thousand five hundred ninety) only. The petitioner is also paying Rs.3516/- (Rupees three thousand five hundred sixteen) only for the aforesaid month from his salary for occupying the government quarter by the respondent No.2 and her daughter. To substantiate the same, he also submitted a pay slip certificate issued by the Assistant Security Commissioner, N.F Railway, Lumding.

**8.** Vide order dated 13.10.2023, this Court directed the petitioner to produce

the salary certificate by way of filling an additional affidavit and accordingly, as per order, the petitioner submitted the same, where from, it is seen that the net salary after all deduction is Rs.35,846/- (Rupees thirty-five thousand eight hundred forty-six) only for the month of October, 2023. In this regard on 13.11.2023, the Assistant Security Commissioner, N.F Railway, Lumding issued a pay slip certificate of the petitioner. However, at present he is getting net salary of Rs.54,000/- (Rupees Fifty-four thousand) per month. He further submitted that his daughter who is major girl is not at all entitle for maintenance under said Act, however, she may file separate application seeking for maintenance under the appropriate forum.

**9.** In this regard, Mr. Baruah, learned counsel for the respondent Nos. 2 and 3 has submitted that the present petitioner has submitted fake pay slip certificate. He also submitted that their daughter/respondent No.3 is pursuing higher studies and she is still unmarried, and hence, considering all this aspect of the case, the learned Trial Court passed a reasonable order for maintenance. Apart from that the present petitioner was directed to apply for the education allowance and medical facilities to the Railway Department for the present respondent Nos. 2 & 3, but, the petitioner never applied for the same. He also did not apply for new quarter as the Railway authority asked to vacate the quarter No.609 B which is under occupancy of the respondent Nos. 2 and 3 only.

**10.** He further raised the issues that the daughter of the respondent No.2 is also entitled for maintenance under the provision of this Act, inspite of the fact that she became major as any woman can be considered as an aggrieved person under the said act. He further submits that after the birth of second daughter i.e the respondent No.3, the petitioner started behaving her cruelly

alleging that why she gave birth to another girl child. But, for the sake of the family, she tolerated all the tortures and in the middle part of 2014, the petitioner has expressed his willingness for second marriage with another lady and on her refusal he started abusing her mentally and physically. He also threatened the respondent No.2 that if she gives the consent of second marriage mutually then only he will give Rs.25,000/- to the respondent No.2 otherwise, he will kill her.

**11.** The learned counsel for the respondent Nos. 2 and 3 has submitted that the learned Trial Court passed the order after recording the evidence of the witnesses and considering all the aspect of the case and hence, there is no reason to make any interference in the judgment and order passed by the learned Court below. It is further submitted that the petitioner is presently working as Sub-Inspector in RPF in NF Railway and he is getting more than Rs.80,000/- per month as a salary and the maintenance granted by the learned Court below is not enough to meet the expenditure of the respondent Nos.2 and 3. Moreover, the expenditure of her daughter is very high because she is doing her degree course in Delhi and for which heavy expenditure has to be borne. Accordingly, she prays to increase the maintenance allowance to Rs.30,000/- per month.

**12.** In this context, the learned counsel for the petitioner also submitted that the maintenance is always dependent on the factual situation of the case and the Court would be justified in moulding the claim for maintenance passed on various factor. He relies on the decision passed by the Hon'ble Apex Court reported in (**2017) 14 SCC 200 [Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy]**) and emphasized on paragraph No.15 of the said

judgment which read as under;

“Para-15 The review petition under [Order 47 Rule 1 CPC](#) came to be filed by the respondent-wife pursuant to the liberty granted by this Court when the earlier order dated 02.02.2015 awarding a maintenance of Rs.16,000/- to the respondent-wife as well as to her minor son was under challenge before this Court. As pointed out by the High Court, in February 2015, the appellant- husband was getting a net salary of Rs.63,842/- after deduction of Rs.24,000/- on account of GPF and Rs.12,000/- towards income-tax. In February, 2016, the net salary of the appellant is stated to be Rs.95,527/- . [Following Dr. Kulbhushan Kumar vs. Raj Kumari and Anr.](#) (1970) 3 SCC 129, in this case, it was held that 25% of the husband’s net salary would be just and proper to be awarded as maintenance to the respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependant on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Since in February, 2016, the net salary of the husband was Rs. 95,000/- per month, the High Court was justified in enhancing the maintenance amount. However, since the appellant has also got married second time and has a child from the second marriage, in the interest of justice, we think it proper to reduce the amount of maintenance of Rs.23,000/- to Rs.20,000/- per month as maintenance to the respondent-wife and son.”

**13.** After hearing the submissions made by the learned counsels for both sides, it is seen that the present revision petition has been filed by the petitioner mainly on two grounds that the maintenance which has been awarded by the learned court below is excessive and in the same time raised the issues that the respondent No.3 has already attained her majority. Thus, the respondent No.3 cannot claim any maintenance under this act, as she cannot be considered as a child. He further raised the issue that the learned Trial Court had passed the order without considering the evidences and the other aspect of the case and directed the petitioner to pay an amount of Rs. 18,000/- in total towards the maintenance allowance for the respondent Nos. 2 and 3. Further, the petitioner has submitted that he is also paying Rs.4,374/- (Rupees Four thousand three hundred seventy-four) only every month for the quarter rent occupied by the

respondent Nos.2 and 3 from his salary. The learned counsel for the petitioner submitted a salary certificate issued by the Assistant Security Commissioner, N.F Railway, Lumding and from the pay slip of month of November 2023, it is seen that his net salary after deduction is only Rs. 36,231/- (Rupees thirty-six thousand two hundred thirty-one) only.

**14.** On the other hand, it is case of the respondent Nos. 2 and 3 that the present petitioner is working as a Sub-Inspector of RPF and his monthly salary is Rs.79,821/- (Rupees Seventy-nine thousand eight hundred twenty-one) only. More so, the daughter (respondent No.3) of the respondent No. 2 is pursuing her higher studies in Delhi for which she needs good amount of money towards her educational expenses. As per the respondent No.2, the quantum of maintenance which was awarded is not at all sufficient to maintain herself and her daughter; as a good amount of money is required for her daughter's higher studies. At the time of filing of the present petition, the respondent No.3 was a minor but, at present she has became a major girl. However, it cannot be denied that she is not a married and still pursuing her studies and thus, both the respondent Nos. 2 and 3 are not earning person and they are still dependent on the maintenance awarded by the learned Court below i.e. Rs. 18,000/- (Rupees eighteen thousand) only.

**15.** Though, it is claimed by the respondent No. 2 that the petitioner is getting salary of Rs.80,000/- (Rupees Eighty thousand) only per month and he is discharging his duty as a Sub-Inspector of RPF, but, she could not furnished any salary certificate to substantiate her statement that the petitioner is drawing a net salary of Rs.80,000/- (Rupees Eighty thousand) only per month. Further, it is seen from the pay slip of November 2023 that the petitioner is getting net

salary of Rs. 36,231/- (Rupees thirty-six thousand two hundred thirty-one) only after the deduction. Though, it has been stated that at present his net salary is Rs.54,000/- (Rupees Fifty-four thousand) only per month. Further from the certificate submitted by the petitioner, as per order dated 13.10.2023, his net salary is shown as Rs.35,846/- (Rupees thirty-five thousand eight hundred forty-six) only after deduction for the month of October, 2023. And, as per the pay slip of November' 2023 his net salary is 36,231/- (Rupees thirty-six thousand two hundred thirty-one) only after deduction and his gross salary is Rs.52,682/- (Rupees Fifty-two thousand six hundred eighty-two) only. But, no pay slip has been furnished by the petitioner for the current year of 2024 wherein, the probability of increase of salary cannot be denied.

**16.** The learned counsel for the petitioner also raised the point that his daughter/respondent No.3 has already become major and thus, she is not entitle for maintenance and she is no more a child to get the maintenance under this Act.

**17.** In this context, the learned counsel for the respondent has submitted that as per present act any women can be a aggrieved person and there is no specification about the age of the aggrieved women. Herein the instant case also, it is seen that the respondent Nos. 2 and 3 being the wife and daughter respectively received the maintenance from the petitioner and in the same time, it is also a fact that the respondent No.3 is still dependent on the petitioner and neither she is married nor she has any source of her own income. As per proviso of Section 125 of Cr. P. C. also the major girl is entitles for maintenance till his marriage if she is a dependent. It is claimed by the respondent No.2 that her daughter/respondent No.3 is still pursuing her studies in Delhi and requires

a good amount of money. She further stated that she is not a working lady and thus, she is still dependent upon the petitioner for her maintenance as well as maintenance for her daughter.

**18.** I have perused the judgment and order dated 06.12.2021 passed by the learned Additional Chief Judicial Magistrate, Karimganj in Misc. Case No.318/2016, wherein, the learned Court below had discussed in detail, the evidence of DW Nos. 1 and 2 who are the respondent Nos. 2 and 3 respectively and apart from that he also discussed about other two witnesses who gave their evidences in support of the respondents. From the entire analysis made by the learned Court below, it is seen that the evidences of the respondent Nos. 2 and 3 could not be rebutted by cross examining the respondents and the petitioner did not adduced any evidence in support of the case. Accordingly, the learned Court below rightly came to a conclusion that the aggrieved person was put to domestic violence by the petitioner and thus, the matter was decided in favour respondent Nos. 2 and 3. While, passing the order of maintenance, the learned Court below had taken into consideration the gross and net salary of the present petitioner as well as the price hike of essential commodities and educational expenses for the respondent No.3 and accordingly decided the quantum of maintenance in favour of the respondent Nos. 2 and 3. Apart from the maintenance, the learned Court below also directed the present petitioner to apply for educational allowance and medical expenses for the aggrieved person from the concerned authority i.e. the Railway department.

**19.** So from the entire discussion made above, it is seen that the learned Court below considered all the relevant factors while deciding the quantum of maintenance for the respondent Nos. 2 and 3. From the discussion made above,

it is also seen that as per the pay slip of November 2023 his net salary is Rs. 36,231/- (Rupees thirty-six thousand two hundred thirty-one) only and the gross salary of Rs. 52,682/- (Rupees Fifty-two thousand six hundred eighty-two) only. But, the probability of increasing of salary for the current year of 2024 also cannot be denied. Further, though, the respondent No.3 has become major during the pendency of this case, but, there is no evidence that she is independent and till date she is not married to any person; she is totally dependent upon the petitioner for her maintenance including her educational expenses, as she is still pursuing his studies in Delhi.

**20.** Thus, considering all the facts and circumstances of the case, I do not find any reasons to make interference in the judgment and order passed by the learned Court below in Misc. Case No. 318/2016 and the awarded amount of maintenance is found to be reasonable and justified. In the result, I find no merit in this petition and accordingly, the same stands dismissed.

**21.** The petitioner is hereby directed to pay maintenance to the respondent No.2/wife @ Rs.10,000/- and to the respondent No.3/daughter @ Rs.8,000/- per month as awarded by the learned Court below. The petitioner is further directed to pay arrear amount of maintenance, if any.

**22.** With above observations, this petition stands disposed of.

**JUDGE**

**Comparing Assistant**