

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE:  
SONITPUR AT TEZPUR**

**PRESENT :** Smt. M.R. Sharma  
Additional Sessions Judge  
Sonitpur, Tezpur

**CRIMINAL REVISION NO. 30 (S-2) OF 2013**

[Revision Petition under Section 397 / 399 Cr.P.C against the Judgment and Order dated 01-11-2012, and subsequent order dated 18-04-2013 for rejection of the petition filed for vacating the order dated 01-11-2012, passed by Smt. B. Kshetry, Additional Chief Judicial Magistrate, Sonitpur, Tezpur in connection with Misc. Case No. 17 of 2012, under Section 125 Cr.P.C]

Sri Atul Chandra Baruah  
Son of Late Akanti Batruah  
Resident of Kkijan Kamar Khatowalgaon  
P.S – Tiyaka, Dist – Jorhat ..... **Petitioner**

**-VERSUS-**

Smt. Bharati Hazarika Baruah  
Wife of Sri Atul Chandra Baruah  
Daughter of Late Akanti Batruah  
Resident of village Pachigaon  
P.S – Jamugurihat, Dist - Sonitpur ..... **Opp. Party**

**A P P E A R A N C E**

For the petitioner : Smt. D. Sinha, Advocate

For the Opp. Party : Sri P. Borah, Advocate

Date of Hearing : 13-05-2014

Date of Judgment : **19-05-2014**

*M. Sharma*  
*19-5-14*  
*Additional Sessions Judge*  
*Sonitpur, Tezpur*

## J U D G M E N T

This Criminal Revision has been filed Under Section 397 / 399 Cr.P.C. against the Judgment and Order dated 01-11-2012, passed by Smt. B. Kshetry, Additional Chief Judicial Magistrate, Sonitpur, Tezpur in connection with Misc. Case No. 17 of 2012, under Section 125 Cr.P.C, whereby the learned Magistrate directed the Second Party-O.P. (husband) to pay maintenance allowance of Rs. 2,000/-, per month, to the First party-Petitioner (wife), from the date of passing the order. Again the petitioner has also preferred this Criminal Revision against the subsequent order, dated 18-04-2013, for rejection of the petition filed for vacating the order dated 01-11-2012.

2. The relevant facts, leading to the case of the revision petitioner, may be summarized as follows:

That the opposite party-wife Smt. Bharati Hazarika Baruah, as 1st party had filed a Misc. Case being No. 17 of 2012 in the Court of the learned Additional Chief Judicial Magistrate, Sonitpur, Tezpur claiming maintenance for herself @ Rs. 10,000/-, per month, from the revision petitioner-husband.

That in the said Misc. case, upon receipt of the notice, the revision petitioner could not come for filing written statement on 28-08-2012 as it as "Assam Bandh" on that day. So the petitioner could not attend Court as no public conveyance was available on the road. It is also stated by the petitioner that the process server of the Court at Jorhat verbally told the petitioner the petitioner shall receive another notice from the Court if he is unable

to attend the Court on the date fixed on account of "Assam Bandh". The petitioner under bonafide belief waited for another notice from the Court. But the petitioner received a notice from the Court of the Additional Chief Judicial Magistrate, Sonitpur, Tezpur directing him to deposit an amount of Rs. 6,000/- in the Court on 30-03-2013 and then only the petitioner came to know that the case was proceed ex-parte against him and passed an order to pay a sum of Rs. 2,000/- to the First Party-wife.

Thereafter the revision petitioner on 30-03-2013 appeared before the Court of the learned Additional Chief Judicial Magistrate, Sonitpur, Tezpur and filed a petition praying for vacating the ex-parte order dated 01-11-2012. But the learned lower Court after hearing both the parties on 18-04-2013 rejected the said petition.

**3.** Being highly aggrieved and dissatisfied with the impugned Judgment and Orders, dated 01-11-2012 and 18-04-2013, passed by the learned Additional Chief Judicial Magistrate, Sonitpur, Tezpur, the petitioner has preferred this present revision mainly on the following grounds:

i) That the Additional Chief Judicial Magistrate, Sonitpur, Tezpur erred both in law and in facts while passing the impugned ex-parte judgment and order, dated 01-11-2012 and rejecting the petition for setting aside the same on 18-04-2013;

ii) that the learned trial Court for ends of justice should have considered to wait for the

*M. K. Das  
13/5/14  
Jl. Sessions Judge  
Sonitpur, Tezpur*

service of the net notice on the ground that the date fixed for appearance of the petitioner was "Assam Bandh";

iii) that the learned Magistrate failed to consider the mandate of the provision of Section 126 (2) of Cr.P.C. providing that " all the evidence shall be taken in presence of the person against whom an order for payment of maintenance is proposed to be made".

iv) that the learned trial Court has committed illegality by ignoring the presence of the petitioner in the hearing of the CR Case No. 17 of 2012 and considered to proceed ex-parte without applying its judicial mind to the order dated 28-08-2012 and 15-09-2012;

v) that the learned Magistrate, has caused illegality and irregularity in passing the said orders;

Under the above facts and circumstances, the Revision Petitioner has prayed for setting aside the impugned Judgment and Orders dated 01-11-2012 and 18-04-2013, passed by the learned Additional Chief Judicial Magistrate, Sonitpur, Tezpur.

4. I have heard the argument advanced by the learned counsel of both the parties. I have also carefully gone through the impugned Judgment and Orders of the learned Magistrate.

5. I have gone through the record of the learned trial Court and on perusal of the order dated 18-04-2013 against which this revision has been filed, the learned trial Court had passed a reasonable order wherein it transpires that the Revision Petitioner-O.P. had appeared before the Court earlier on 30-03-2013 and had filed the petition for vacating the ex-parte order passed on 05-10-2012, after summons was duly served. The learned trial Court had also fixed the date on 09-04-2013 for objection and objection hearing. Further more, on the next date, i.e. on 09-04-2013 both the parties were heard. Again on 18-04-2013 the order was passed on the petition filed by the 2nd party that he could not appear on 28-08-2012 on which date there was 'Assam Bandh'. But it is seen from the order, though fresh summons was issued on him he did not receive the summons and ex-parte order was passed. But the order also shows that notice on the 2nd party was returned after due service but even then, the 2nd party - Revision Petitioner was absent without any step. So, the case proceeded ex-parte.

6. The learned trial Court by the impugned order dated 18-04-2013 had also stated that judgment was passed on 01-11-2012 as though the summons was served, the Revision Petitioner did not appear and the ground shown for vacating the ex-parte order was also not satisfactory. Also the learned trial Court mentioned that the petition for setting aside the ex-parte order was not made within 3 (three) months as required u/s 126 (2) of the Cr.P.C. and was made after 5 months.

7. Considering all the facts stated above, the Revision petition was admitted by this court on the condition that an amount of Rs. 3,000/- out of the arrear

of Rs. 6,000/- was to be paid. The said order was passed on 05-06-2013, but the order sheet shows that till date, no such amount has been paid by the Revision Petitioner before this Court to the O.P.-Petitioner. The learned trial Court had passed the order in most justified and legal manner and the proceedings u/s 125 Cr.P.C. are part of beneficial legislation and the Revision Petitioner-O.P. has delayed the matter and had also not paid any maintenance till date. However, considering all facts and circumstances, The Revision Petition is **allowed** on the following conditions :-

(i) The Revision Petitioner Sri Atul Chandra Baruah will appear before the Trial Court within a period of one month from the receipt of this judgment and order, will contest the case by filing written statement within a period of one month;

(ii) the learned trial Court shall accept the written statement on payment of Rs. 5,000/- to the O.P.-petitioner Smt. Bharati Hazarika Bruah and will also allow cross-examine the witness of the O.P.-petitioner. The learned trial Court is at liberty to allow the O.P.-petitioner (wife) to adduce any other evidence, if so required, in the event of written statement being filed by the Revision Petitioner-O.P.

8. During the pendency of the trial, the Revision Petitioner is also directed to pay an interim maintenance of Rs. 1,000/-, per month, to the O.P.-petitioner (wife).

9. With the above directions, the Revision Petition is disposed of on contest.

Return the lower court record along with a copy of judgment of this Court.

This judgment is given under my hand and the seal of this Court on this **19th day of May, 2014**.



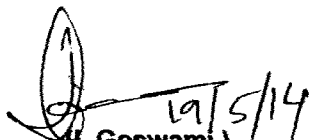
**(M.R. Sharma)**  
**Additional Sessions Judge**  
**Sonitpur : Tezpur**

Dictated and corrected by me  
and every page bears my  
signature.



**(M.R. Sharma)**  
**Additional Sessions Judge**  
**Sonitpur : Tezpur**

Transcribed and typed on dictation by me –



**(F. Goswami)**  
Stenographer