GAHC020000772026 2026:GAU-NL:459

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

Case No. : CRL.REVN/5/2026

SMT. ABIGAIL ACHIKU ZELIANG (NEE YEPTHOMI)
AGED ABOUT 35 YEARS, D/O TOHUVI YEPTHOMI, PRESENTLY RESIDING AT HOUSE NO. 88, THAHEKHU VILLAGE, DISTRICT DIMAPUR, NAGALAND

VERSUS

SHRI HAILUNGNING ZELIANG
AGED ABOUT 36 YEARS, S/O KELEI ZELIANG, R/O H APARTMENTS BUILDING, PURANA BAZAAR, NEAR ZION HOSPITAL, DIMAPUR, NAGALAND, ALSO RESIDENT AT HOUSE NO. 1494, DIVERSE STREET, PADUMPHUKHURI, DIMAPUR

Advocate for the Petitioner : A. ZHIMOMI, ESTHER,LHOUSINO,G KAMEI,VITO K SHOHE,MEGOVOU PESEYIE,LELIMTHONG P YIMCHUNGER,KUPUTOLI SEMA

Advocate for the Respondent : TONGPOK PONGENER (R-1), MERENWATI,,,,KETI IMCHEN,,,,,,,,ACHIBA OZUKUM,HADASHA RUANGMEI,OZUNGLILA,,M. DIVINA THERIE,VIKEHIENUO VIMERHA,ASENLA S LKR,LAKNYEI PHOM,AKUM JAMIR

BEFORE :

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates for the Petitioner(s) : Mr. A. Zhimomi

Advocate for the Respondent(s) : Mr. Tongpok Pongener

Date on which judgment is reserved : **01.09.2026**

Date of pronouncement of judgment : **07.09.2026**

Whether the pronouncement is of the operative part of the judgment : Full judgment.

Whether the full judgment has been Pronounced? : Yes.

JUDGEMENT AND ORDER (CAV)

The instant application under Section 442 read with Section 528 of the BNSS has been preferred by the petitioner invoking the revisional jurisdiction of this Court with a prayer to quashed and set aside the order dated 15.12.2025 passed by the learned Sessions Judge, Dimapur in I.A No. 812/2024 arising out of Criminal Appeal No. 09/2024; to condone the delay in filing the Criminal Appeal No. 09/2024; and to direct the respondent to clear and pay all the pending arrears of maintenance awarded to the petitioner and her children w.e.f 04.03.2024 within a specific period.

2. Heard learned counsel for the petitioner, Mr. A. Zhimomi. Also heard

learned counsel, Mr. Tongpok Pongener, for the sole respondent.

3. The case of the petitioner herein is that the petitioner had filed a Domestic Violence Case No. 01/2023 before the learned Judicial Magistrate First Class, Dimapur (JMFC for short). The learned Judicial Magistrate First Class, Dimapur by order dated 04.03.2024 in the DV Case No. 01/2024 directed the respondent to pay a monthly rent of Rs. 1,00,000/- (Rupees One Lakh) to the petitioner for alternate accommodation. The learned JMFC also directed the respondent to pay a sum of Rs. 1,00,000/-(rupees one lakh) to the petitioner as maintenance for her and her minor daughters. However, by order dated 31.05.2024 the learned JMFC modified the initial order dated 04.03.2024 and directed the respondent to pay only a monthly maintenance of Rs. 1,00,000/-(rupees one lakh) inclusive of rent. Subsequently by another order dated 07.08.2024, the learned JMFC again modified the maintenance amount and the amount of Rs. 1,00,000/- was altered to Rs. 60,000/- as monthly maintenance to the petitioner inclusive of rent. Direction was also given to the respondent to comply with the orders and to make all the pending payments till date on before 31.08.2024.

4. Being aggrieved by the orders dated 31.05.2024 and 07.08.2024 passed in Domestic Violence Case No. 01/2023 by the learned JMFC, the petitioner filed the Criminal Appeal No. 09/2024 before the learned Sessions Judge, Dimapur. The Criminal Appeal No. 09/2024 was accompanied by an I.A No. 812/2024 praying for condonation of delay of 123 days and 55 days against the orders dated 31.05.2024 and 07.08.2024 respectively.

5. The learned Sessions Judge, Dimapur dismissed the I.A. No.

812/2024 on the ground that the petitioner had not shown sufficient cause for the delay in filing the appeal and the time lapse between the change of counsels. The learned Sessions Judge, Dimapur also held that the plea of seeking additional documents by the petitioner's counsel and the time taken for the same is not factually correct inasmuch as there were no additional documents annexed in the appeal.

6. The said impugned order dated 15.12.2025 passed in I.A No. 812/2024 has been assailed by the petitioner herein mainly on the ground that the learned Sessions Judge, Dimapur failed to appreciate that the change of counsel and the time taken for the same is not a straight jacket formula. Issues arising in such cases are delicate and require time to research and to resolve.

7. The learned Sessions Judge, Dimapur also failed to appreciate that there was a new document annexed to the appeal i.e., the registration of the respondent as a First-Class Contractor. It should had been appreciated by the learned court below that some time had to be taken to obtain this document. Additionally, the other documents required, apart from those filed were in the custody of the petitioner's previous counsel. The documents were necessary for preparing the appeal as well as for filing petitions in the Family Court.

8. It is the petitioner's case that only after the change of counsel, the petitioner filed the divorce petition, the custody petition and the maintenance petition before the Family Court. As such, the conclusion of the learned court below that no new document has been annexed to the Appeal is erroneous in facts and in law and can be termed as an untenable conclusion.

9. Learned counsel for the petitioner, Mr. A. Zhimomi, submits that the petitioner had stated clear and cogent reasons for the delay, however, adopting a pedantic approach, the learned Sessions Judge, Dimapur perfunctorily dismissed the I.A 812/2024 on the above stated reasons and the rationale for the same are *ex-facie* untenable in law.

10. It is the submission of the learned counsel that the learned court below completely ignored the fact that the present counsel of the petitioner was engaged only on 05.10.2024 and he had advised her to file the appeal against the orders dated 31.05.2024 and 07.08.2024. As such, some time was taken in the preparation of the appeal, and the same was filed on 01.11.2024. In the facts and circumstances, the conclusion that the petitioner has not shown sufficient cause for the delay in filing the appeal is bad in law.

11. It is the submission of the learned counsel that procedural laws are meant to advance the cause of justice and not to defeat substantive right, specially, in proceedings like the Domestic Violence Act where maintenance and protection are matters of sustenance and survival. The Domestic Violence Act, 2005 is a beneficial legislation and therefore, by not condoning the delay in filing the appeal, the object of the Domestic Violence Act has been defeated.

12. Learned counsel for the petitioner has also taken this Court to the order dated 07.08.2024 passed by the learned JMFC, Dimapur in DV Case No. 01/2024 wherein the learned court below has entertained a review application under Section 114 of the CPC and by entertaining the same, the Court has altered the maintenance amount of Rs. 1,00,000/- to Rs.

60,000/-. In this regard, learned counsel has referred to the case of ***S. VIJIKUMARI Vs. MOWNESHWARACHARI C*** reported in ***2024 INSC 732*** wherein the Supreme Court has specifically held that the only statutory remedy to modify/reduce an order of maintenance awarded under the Domestic Violence Act is Section 25(2) of the Domestic Violence Act. The Supreme Court held that Section 25(2) of the Domestic Violence Act is broad enough to cover orders of maintenance, residence and protection. It was held that an order under the Domestic Violence Act remains operative until either set aside in an appeal under Section 29 or altered/modified/revoked under Section 25(2). However, it was also held that the modification, if any, can only operate prospectively, it cannot be used to re-open the original maintenance order retrospectively and seek recovery/refund of amounts already paid. Learned counsel further submits that proceedings under Domestic Violence Act are governed by the special statutory scheme of that Act, and therefore, a Review Petition under Section 114 of the CPC is not maintainable and the learned JMFC could not have entertained the said review application under Section 114 of the CPC.

13. *Per contra*, Mr. Tongpok Pongener, learned counsel appearing for the sole respondent submits that the instant revision petition has challenged the validity of an order of dismissal of an interlocutory application for condonation of delay in filing an appeal against the interim order of maintenance. Therefore, the only issue before this Court is limited to the consideration as to whether the refusal of the learned court below to condone the delay was just and reasonable, since, the power of the court in a condonation application under the limitation act is discretionary.

14. Learned counsel submits that the impugned order dated 15.12.2025 is a speaking order and it is apparent that the learned Sessions Judge, Dimapur has clearly applied his mind to the matter and has clearly concluded that the petitioner has failed to satisfactorily explain the delay in preferring the appeal.

15. Learned counsel further submits that since the legality and validity of the orders dated 31.05.2024 and 07.08.2024 passed by the JMFC, Dimapur is already the subject matter of the Criminal Appeal No. 09/2024, and the petitioner herein has only come before this court against the order dated 15.12.2025 passed in I.A. No. 812/2024, this Court has to confine itself to the legality of the order dated 15.12.2025 only.

16. The learned counsel for the respondent has mainly confined his submissions to the ground that the impugned order dated 15.12.2025 is passed in an interlocutory application and in view of the provisions of Section 438(2) of the BNSS, the powers of revision of this court cannot be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings. He submits that the impugned order dated 15.12.2025 being an interlocutory order, the instant revision petition is not maintainable.

17. I have duly considered the submissions of the learned counsel for the parties and perused the pleadings.

18. With regard to the maintainability of the instant petition, this Court is of the view that an interlocutory order can be challenged in a revision, if despite being interlocutory in form, it has finally determined a valuable right or substantially affect the rights of the parties. The expression

"interlocutory order" is not determined merely by the label given to the order. This Court has to examine the nature and effect of the impugned order. An order may be interlocutory procedurally, but may have a final determination of a particular right. That does not automatically make it a final order for every statutory purpose, but it can be relevant to determine whether a revision would lie and whether an order would be amenable to the revisional jurisdiction of this Court. In this petition, it is a fact that the impugned order was passed in an interlocutory application. However, the I.A seeking condonation of delay in filing an appeal under Section 29 of the DV Act is materially different from a normal interlocutory order passed in a DV proceeding. The rejection of the condonation application effectively terminates the statutory appeal without adjudication on merits. The rejection of the I.A is final in effect and can be subjected to revisional scrutiny as the rejection has effectively shut out the statutory appellate remedy. It is, therefore, held that the instant petition is maintainable.

19. Upon going through the instant application, it is seen that the petitioner has assailed only the order dated 15.12.2025 passed by the learned Sessions Judge, Dimapur in I.A No. 812/2024 arising out of Criminal Appeal No. 09/2024. Even in the prayer, in the instant petition, the petitioner has prayed for quashing and setting aside of the impugned order dated 15.12.2025 passed by the learned Sessions Judge, Dimapur in I.A No. 812/2024. This Court has to confine itself to the relief sought in the appeal and should not ordinarily grant a relief which was neither prayed for, nor put in issue. The fundamental principal of law is that a court cannot ordinarily grant relief in a case, which the parties have not been pleaded or which was not the subject matter of the controversy. This

Court would therefore confine itself to the validity of the order dated 15.12.2025 passed in I.A No. 812/2024.

20. The Criminal Appeal No. 09/2024 under Section 29 of the Domestic Violence Act was filed before the learned Sessions Judge, Dimapur along with the I.A No. 812/2024 praying for condonation of 123 days and 55 days delay in filing the Criminal Appeal Petition.

21. The appeal is filed by the petitioner who is the wife of the respondent against 2 (two) orders dated 31.05.2024 and 07.08.2024 reducing the maintenance payable to her. The welfare character of the Domestic Violence Act cannot be denied and considering the nature of proceedings under the domestic violence act, the courts should ordinarily prefer adjudication of the challenge on merits rather than shutting out the appeal on limitation. Since, the Domestic Violence Act is a beneficial and welfare legislation, procedural technicalities should not come in the way of substantial justice and it is important that courts should adopt a liberal justice oriented approach to condonation of delay.

22. In the instant case, it is seen that the main reason for the delay put forth by the petitioner was that she had changed her counsel and the file was handed over to the new counsel only on 05.10.2024. Another reason given for the delay was that the petitioner had to procure some new documents. This Court has observed that besides the change of counsel, the petitioner had to obtain some new documents and moreover, the documents required were in the custody of her previous counsel. It is seen that the delay occurred during the transition between counsels and that the petitioner was *bonafide* pursuing her remedy. There was no deliberate or intentional delay, and immediately upon obtaining the

effective legal assistance, she had taken steps to institute the appeal. It is a known fact that a new engaged counsel cannot immediately take up the matter from the point where the previous counsel had left the case. A new counsel would invariably take time to study the case afresh and to examine whether additional documents would be required to further pursue the matter. Change of counsel is not, by itself, an automatic ground for condonation of delay. However, where the delay is attributable to omission or negligence of the earlier counsel because of which the petitioner upon becoming aware of such default had to change the counsel, such circumstances can constitute sufficient cause.

23. This Court is of the view that the delay was occasioned on account of *bonafide* circumstances arising from the change of counsel and the consequential time taken in obtaining the case records, instructions and additional necessary documents for preferring the appeal. The petitioner had not been negligent, the delay was not willful or intentional, and no *malafide* conduct on the part of the petitioner is noticed.

24. Further in any view of the matter, the appeal concerns maintenance which has a continuing and welfare-oriented character and refusal to condone the delay would result in the petitioner losing the opportunity to have the matter examined on merits.

25. In view of the observations made herein above, the impugned order dated 15.12.2025 passed in I.A No. 182/2024 is quashed and set aside. The delay of 123 days and 55 days in filing the Criminal Appeal No. 09/2024 is condoned.

26. The learned Sessions Judge, Dimapur is directed to admit the

Criminal Appeal No. 09/2024 being a statutory appeal under Section 29 of the DV Act and decide the same on merits.

27. The Revision Application stands disposed of accordingly.

JUDGE

Comparing Assistant