

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BONGAIGAON**

PRESENT: SYEDA FARIDA AFZAL ZINNAT

CASE NO: 29(M)/2012

DIPTI DEKA

FIRST PARTY

VERSUS

ANANDA DEKA

SECOND PARTY

U/S 125 of the Code of Criminal Procedure

FOR THE FIRST PARTY: MD.M.RAHMAN, ADVOCATE

**FOR THE SECOND PARTY: MR.K. CHAKRABARTY, G.SHARMA
ADVOCATES**

EVIDENCE RECORDED ON: 26/10/12, 21/11/12, 13/12/12

ARGUMENTS HEARD ON: 13/12/12

JUDGMENT DELIVERED ON: 28.12.2012

JUDGMENT

1. This proceeding has arisen out of a petition filed by the first party under section 125 of the Code of Criminal Procedure claiming maintenance allowance @ Rs. 4,000/- per month for her and Rs. 3000/- each for her minor children from the second party.

2. The case of the first party in brief is that she is the legally married wife of the second party. The first party got married to the second party about 21 years ago and out of their wedlock they have two sons and a daughter namely, Momi Deka (17 years), Pranjal Deka (15 years) and Kaushik Deka (9 years). The first party resided in her matrimonial house with the second party after her marriage but the second party and his relatives subjected her to mental and physical torture since the date of her marriage in demand of dowry amounting to Rs. 50,000/-. As the first party could not fulfil the demand of dowry due to the financial condition of her parents the second party tortured her physically and mentally every now and then by consuming alcohol. On 20.8.2008 the second party drove the first party and his children out of the rented house at Abhayapuri and finding no other alternative, the first party took shelter at her paternal house along with her children. Since then the second party did not provide any maintenance to the first party or the minor children. After chasing his wife and children out of his house the second party married another girl named Makoni Roy of Abhayapuri. The first party has no source of income and presently she is serving as a maid servant for providing her children. As the first party is unable to provide her children, her daughter Momi Deka had to leave school. It is alleged that the second party is a Constable at 8th Battalion, A.P.Bn., Abhayapuri and draws monthly salary of about Rs.21,000/- . Hence this case for maintenance.
3. The second party entered appearance after receiving notice and sought time to file written statement but subsequently the second party remained absent without any steps and the proceeding was heard ex-parte.
4. Upon perusal of the pleading the following points are taken up for consideration:
 - 1) Whether the first party has got any just and reasonable ground for living separately from the second party?
 - 2) Whether the second party having sufficient means neglected or refused to maintain the first party?
 - 3) Whether the second party has got the ability to give maintenance to the first party?
 - 4) Whether the first party is entitled to get the maintenance as prayed for?
5. In support of her case the first party adduced the evidences of three witnesses. I have gone through the arguments put forward

by the learned counsel of the first party and gone through the Evidence on Record.

6. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

POINT NO.1:

7. The second party did not counter the pleadings of the first party by filing written statement. First party in her evidence as PW1 categorically stated that since her marriage to the second party the second party misbehaved with her and demanded dowry. Because of her inability to give him money the second party tortured her and about five years ago the second party drove her out of the matrimonial home along with two of her children by torturing her physically. Ever since she left her husband's house the second party has not provided her any maintenance. About four months after he drove her out, the second party married another woman. As the first party has no source of income her daughter had to leave her studies. She also stated that her husband is a govt. Employee and draws monthly salary of about Rs.22,000/-
8. The above testimony of the PW1 stands corroborated by the testimony of the PW2 Momi Deka who is the daughter of both the parties. She stated in her evidence that her father i.e. the second party consumes alcohol and gambles and tortures them physically. On 20th August, 2008 the second party assaulted her mother, brother and her and drove them out of the house. At that time she was a student of Class IX and after that she had to leave her studies as her mother has no source of income. Her mother serves as a maid servant to feed them. The first party tried to go back to the house of the second party on several occasions but the second party does not allow them to go back. She further stated that her father works as a constable.
9. PW3 Pranjal Deka is the son of the first party. He also corroborated the evidences of the PW1 and PW2. According to him he had to leave his studies too like his sister after their father drove them out of their house. PW3 stated that after their grand father's death they are staying in a rented house at Salbari and their mother works as a maid servant to feed them. He further stated that they tried to go back to their father but their father does not take them back and he has remarried.

Thus from the evidence adduced by the witnesses there remain no doubt that the second party drove the first party and the children out of his house and he is not willing to take them back. In such a situation it cannot be said that the first party left the matrimonial house without any reasonable and justifiable ground. It is the second party who made the first party leave her house. The first party did not leave her husband's house at her own will. So it is held that the first party has got just and reasonable ground for living separately from the second party. Accordingly this point is decided in favour of the first party.

POINT NO.2:

10. According to the first party (PW1) since she left the house of the second party he neither enquired about her nor provided her any maintenance. Her evidence is fully supported by PW2 and PW3. According to the PW1 the second party draws monthly salary of Rs. 21,000/-. In support of her claim the first party has submitted the pay slip of the second party which has been issued by the Commandant, 8 Th A.P.Bn, and Abhayapuri, Assam. It shows that the Bank Account No. of the second party is 30372957289 and his net pay is Rs. 20,140/-. So it comes out that the second party has sufficient means to maintain the first party and his children. Thus the failure of the second party to provide maintenance to the first party and his children clearly establishes that he having sufficient means neglected to maintain the first party and his children. This point is decided in favour of the first party.

POINT NO. 3:

The first party has submitted the salary slip of the second party which shows that the second party has a handsome source of income and the first party admittedly has no income of her own. The second party is an able bodied person and is of sound health. He did not deny this fact by way of filing written statement. Hence he has the ability to maintain his first wife and his minor children. This point is also decided in favour of the first party.

POINT NO. 4:

11. In view of the discussions and decisions made hereinbefore it is held that the first party and the minor children are entitled to get maintenance from the second party. It is also to be kept in mind that it is the duty of the second party to look after his married wife and children and provide for the education of the children. The children had to leave their studies because their father neglected to provide any maintenance to them. Hence in my considered opinion a monthly allowance of Rs. 2,000/- per month to the first party and Rs. 2000/- each to the minor children i.e. a total amount of Rs. 6000/- would be essential to meet the necessities of the first party and her two children.

Order

In the result, maintenance allowance is granted to the first party at the rate of Rs. 2,000/- per month and Rs. 2000/- each to the minor children Momi Deka and Pranjal Deka from the date of passing this order.

This petition is disposed off accordingly.

Given under the hand and seal of this court on this the 28th day of December, 2012.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON

