

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE, BONGAIGAON  
PRESENT: S. HANDIQUE, AJS

**Misc. Case No. 8/15**

**Smti. Dipa Das**

**Vs.**

**Sri Mukti Das**

For 1<sup>st</sup> Party: Mr. K, Raza

For 2<sup>nd</sup> Party: None

Evidence recorded on: 20-5-15

Arguments heard on: 20-5-15

Judgment delivered on: 27-5-15

### **JUDGMENT**

1. The present case u/s 125 Cr. P.C has been filed by Smti. Dipa Das against her husband Sri Mukti Das claiming maintenance from him. The 1<sup>st</sup> party has stated that her marriage was solemnised with the 2<sup>nd</sup> party on 1-3-02 at Sri Sri Janardan Devalaya Temple, Pan Bazar, Guwahati as per Hindu rites and customs and they led their conjugal life in her matrimonial house in North Guwahati. However, the 2<sup>nd</sup> party started torturing her mentally and physically after some time of their marriage on imaginary and fictitious grounds. 1<sup>st</sup> party stated that although the 2<sup>nd</sup> party had an allotted official quarter but she was forced to live separately in a rented house and the 2<sup>nd</sup> party used to visit her sometimes to satisfy his biological needs. It is also stated that she was harassed for dowry on

the instigation of the family members of the 2<sup>nd</sup> party. Meanwhile, a daughter was born to her on 12-1-03 who is now studying in the eighth standard. According to the 1<sup>st</sup> party, she passed her days in great hardship till Nov' 2003 and ultimately she was driven out from the matrimonial house after retaining all her stuff. She was therefore forced to take shelter in her father's house at New Bongaigaon and started earning her livelihood by working as a maid in the neighbourhood. She however, availed of medical facilities from the Railways on the basis of the family medical card issued by the department. But to her misfortune, she was diagnosed with liver cancer in the last part of August' 2012 and with the help of the family medical card she got operated in November' 2012 at Mumbai. Now, after her operation she and her daughter are totally dependent on her younger brother who has to look after his family too. According to her, the 2<sup>nd</sup> party has severed all relations with her and her daughter and has not provided any maintenance to her since Nov' 2003. She stated that the 2<sup>nd</sup> party is a Railway employee posted as Technician-3 in the Mechanical Department in the office of the Sr. CDO, Guwahati, N.F. Railway, Paltan Bazar, having monthly income of Rs 25,945/- per month, on the other hand she has no means to support herself and her child. Hence she claimed maintenance @ Rs 10,000/- in total per month for herself and her daughter or 50% of his salary from the 2<sup>nd</sup> party.

2. In response to the notice, the 2<sup>nd</sup> party neither appeared and nor contested the case. Hence the case proceeded ex-parte.
3. As the case proceeded ex-parte, I deem it fit to frame the following points for determination in this case:

### **POINTS FOR DETERMINATION**

- I. Whether the 2<sup>nd</sup> party drove out his legally wedded wife/ 1<sup>st</sup> party from the matrimonial home and neglected 1<sup>st</sup> party and his child in spite of having means?

II. Whether the 2<sup>nd</sup> party is liable to pay maintenance to the 1<sup>st</sup> party and his child as prayed for?

4. Heard 1<sup>st</sup> party. Perused the materials on record.

### **DECISIONS AND REASONS THEREOF**

#### **DECISION ON POINT NO. I & II:**

5. Both the points are taken up together for convenience of discussion.

**PW1 Dipa Das** deposed that she got married with the 2<sup>nd</sup> party on 1-3-02 and started her conjugal life in his Railway Quarter, Paltan Bazar. She stated that a daughter was born to them after one year of their marriage. She alleged that the 2<sup>nd</sup> party used to scold her and assault her on frivolous grounds. According to her, she was kept in a rented house after two months of their marriage and her husband used to visit her occasionally. She alleged that sometimes he used to drink. She also alleged that the 2<sup>nd</sup> party sometimes demanded Rs 50,000/- or Rs 1,00,000/- from her. According to her, she came to her parents' house as she fell ill and since then she is staying in her parents' house. She stated that the 2<sup>nd</sup> party has neither come to see her and her daughter nor paid any maintenance to them since then. She stated that she is earning her livelihood by working as a maid; however, off late she is suffering from colorectal cancer since Nov'2012. According to her, the 2<sup>nd</sup> party is a railway employee, posted as Technician and earns about Rs 26,000/- per month. Thus she claimed Rs 10,000/- per month as maintenance for herself and her daughter. She stated that her husband has no other liability and he can very well maintain her and her daughter. She also deposed that she is undergoing treatment for cancer which is in stage III and her husband is well aware of her ailment. She exhibited the following documents in support of her claim :

- a. Ext. 1.. salary slip of 2<sup>nd</sup> party for the month of Feb'2015-05-21
- b. Ext. 2..School certificate of her daughter Lipi Das
- c. Ext. 3..Birth certificate of her daughter Lipi Das

- d. Ext. 4..Marriage certificate*
- e. Ext. 5..Colonoscopy report of the 1<sup>st</sup> party*
- f. Ext. 6..Family identity card*
- g. Ext. 7..Dicharge certificate issued by Jagjivan Ram Hospital.*

6. Though there appears to be some exaggerations made during trial as regards the alleged demand of cash and articles, I consider it to be minor contradictions. Further, there appears to be some deviation as to in what circumstances she left the matrimonial home. As the he case proceeded ex-parte and the evidence adduced by the 1<sup>st</sup> party remained uncontroverted, the evidence of PW1 inspires confidence. She has been able to prove that she was ill treated by the 2<sup>nd</sup> party during their conjugal life. It is apparent that the parties are not leading conjugal life for a long time. She has been staying in her parents' house since 2003. The 1<sup>st</sup> party used to work as a maid for her survival, but due to her ailment she is now dependent on her younger brother and she has a minor daughter to look after. She is suffering from cancer which is in stage III. Thus she requires regular medication and her health is frail. The evidence of 1<sup>st</sup> party substantiates the plea that the 2<sup>nd</sup> party has a regular source of income and earns about Rs 26,000/- per months as salary, though his net pay is Rs 15,437/- per month after certain deductions. It is also to be noted that the 2<sup>nd</sup> party is an able bodied person. PW1 has testified that the 2<sup>nd</sup> party has not paid any maintenance allowance to her and her child since 2003. So, negligence is apparent. Hence, both the points are decided accordingly.

#### **ORDER**

7. In view of the above discussions, I allow the maintenance prayer made by the 1<sup>st</sup> party. The 2<sup>nd</sup> party is directed to pay Rs. 5000/- to the 1<sup>st</sup> party and Rs 2000/- to his minor daughter, i.e. Rs 7000/- in total per month, w.e.f. the date of passing of this order. The case is disposed of ex -parte. Given under my hand and seal of the court on 27-5-15.

## **APPENDIX**

### EVIDENCE OF 1<sup>ST</sup> PARTY

PW1..DIPA DAS

*Ext. 1.. salary slip of 2<sup>nd</sup> party for the month of Feb'2015-05-21*

*Ext. 2..School certificate of her daughter Lipi Das*

*Ext. 3..Birth certificate of her daughter Lipi Das*

*Ext. 4..Marriage certificate*

*Ext. 5..Colonoscopy report of the 1<sup>st</sup> party*

*Ext. 6..Family identity card*

*Ext. 7..Discharge certificate issued by Jagjivan Ram Hospital.*

*EVIDENCE OF 2<sup>ND</sup> PARTY..NONE*