

IN THE COURT OF JUDICIAL MAGISTRATE 1<sup>ST</sup> CLASS, GOALPARA

PRESENT: S. HANDIQUE, AJS

**Misc. Case No. 58/14**

**(u/s 125 Cr. P.C. )**

**Mstt. Basaton Nessa**

**Vs.**

**Md. Majid Ali**

For 1<sup>st</sup> Party: Ms. Ranima Ahmed

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

Evidence recorded on: 4-12-14

Arguments heard on: 30-12-14

Judgment delivered on: 31-12-14

### **JUDGMENT**

1. The present case u/s 125 Cr. P.C has been filed by Msstt. Basaton Nessa against Md. Majid Ali claiming maintenance from him. The 1<sup>st</sup> party has stated that her marriage was solemnised with the 2<sup>nd</sup> party seven years ago and they led their conjugal life. However, the 2<sup>nd</sup> party started torturing her since about 1 ½ years of their marriage demanding Rs 5000/- and when she could not satisfy his demands, he drove her out while she was six months pregnant with their first issue. According to her, she is taking shelter in her parents' home where she gave birth to a son. She alleged that the 2<sup>nd</sup> party has neither visited her nor paid any maintenance to her and her son since then. According to her the 2<sup>nd</sup> party is a contractor of masons and earns about Rs 15,000 to 20,000/- per month and also has landed property, on the other hand she has no means to support herself and her kid. Hence she claimed maintenance @ Rs 6000/- per month for herself and Rs 2000/- each for her son from the 2<sup>nd</sup> party.

2. In response to the notice, the 2<sup>nd</sup> party appeared and contested the case by filing his written statement. He admitted that the 1<sup>st</sup> party was married to him, but stated that at the time of marriage the 1<sup>st</sup> party concealed the fact that was previously married and having three children. He denied to have demanded money from her and also denied to have driven her out. He on the other hand stated that his son was born in a rented house and he provided money and bare necessities to his wife and the child. According to him, the 1<sup>st</sup> party is staying at a rented house on her own and he made several visits accompanied by neighbours to bring her back. But the 1<sup>st</sup> party refused to resume conjugal life with him. He denied that he is a mason. Rather he stated that he assists the mason and barely earns Rs 200/- per day. He also contended that he has no house in his name and that he is living in a khass land. He further contended that it is the 1<sup>st</sup> party who left the matrimonial home willingly and is refusing to cohabit with him without any valid reason. He stated that he is ready to resume conjugal life with the 1<sup>st</sup> party and but the 1<sup>st</sup> party developed intimacy with another person and openly refused to cohabit with him. Hence he prayed to dismiss the petition of the 1<sup>st</sup> party.
3. In view of the pleadings of the parties, 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 has neglected 1<sup>st</sup> party and his minor child in spite of having sufficient means?*
  - II. *Whether the 2<sup>nd</sup> party is liable to pay maintenance to the 1<sup>st</sup> party and his child @ Rs 8,000/- per month as prayed for?*
4. During trial the first party led evidence of two witnesses including herself. The 2<sup>nd</sup> party neither adduced any defence evidence nor took part in the argument. Heard arguments from the 1<sup>st</sup> party. Perused the materials on record. Let me take up the points for discussion.

#### **DECISIONS AND REASONS THEREOF**

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

5. Both the points are taken up together for convenience of discussion. **PWI Basaton Nessa** deposed that she got married with the 2<sup>nd</sup> party 7 years ago and led her conjugal life. She stated that she gave birth to one son who is 10 months old now. She alleged that the 2<sup>nd</sup> party started torturing her after 1 ½ years of their marriage demanding Rs 5000/-. According to her, she brought Rs 5000/- from her father and gave it to her husband 3 ½ years ago. However, the 2<sup>nd</sup> party

again demanded Rs 5000/- after 1 ½ years. As she did not fulfil his demand this time, he drove her out while she was six months pregnant. She stated that she has been living in a rented house with her child for the last one year. She stated that her child was born in her parents' house where she stayed for six months. According to her, the 2<sup>nd</sup> party has not paid any maintenance to her alleging that the child is not his. According to her, the 2<sup>nd</sup> party is a contractor of masons and he has landed property and party earns about Rs 15,000/ 20,000/-- per month. She further alleged that the 2<sup>nd</sup> party did not pay her the interim maintenance as ordered by the court. During her cross examination, PW1 denied that her husband bore the expenses at the time of child birth. She testified that he came to take her back once and to see the child. She denied that the 2<sup>nd</sup> party is a wage labourer or that he does not earn Rs 15,000/-. She however testified that he has to maintain his 1<sup>st</sup> wife, three children and his mother. She denied that he never tortured her or that she left the matrimonial home on her own. She however stated that she is ready to go with him if he comes to take her back.

6. **PW2 Subahan Ali Akand** is the landlord of the 1<sup>st</sup> party. He deposed that Basaton stays in his tenanted premises with the child. According to him, she has been staying in his house for the last 2 years. He deposed that Mazid has not been paying maintenance to the 1<sup>st</sup> party. He testified that Mazid used to visit her often and as a result she gave birth to a child. He however testified that Mazid and Basaton quarrelled over money and since then he has not visited her. According to him, Mazid doubts the paternity of the child. PW2 testified that Mazid is a contractor and earns about Rs. 20/ 30,000/- per month. He stated that Basaton's parents are maintaining her. During cross examination he stood firm to his statement that Basaton has been staying in his house for the last two years and the child was born in his house. He stated that Mazid stays with his other wife. He denied that Mazid is a labourer.
7. From the above evidence it is apparent that the parties are not leading conjugal life at present. It is also seen that PW1 and PW2 are contradicting each other as far as the period of her stay in the present abode is concerned. Moreover, I find that the 1<sup>st</sup> party has deviated from her pleadings. In her petition she stated that she has been taking shelter in her parents' home since she was driven out. During trial she however stated that she is staying in a rented house for the last one year. Her son is 10 months old. According to her, she was driven out when she was six months pregnant. She spent six months with her parents and then moved to the rented house. But her landlord stated that she has been staying in his house for the last two years. She stated that her son was born in her parents' house but her landlord (PW2) stated that the child was born in his tenanted premises.
8. Though PW1 and PW2 have contradicted each other as to the length of her stay in the rented house, it is clear that some dispute arose between the parties. The 2<sup>nd</sup> party did not deny that they got married about 7 years ago. She started to stay in a rented house one or two years ago. That shows that they led conjugal life together

for about five years. So it can fairly be presumed that something had happened between them which forced her to stay in the rented house. PW1 has alleged that the 2<sup>nd</sup> party demanded money from her and she gave him Rs 5000/- once but when she could not satisfy his demands second time, she was tortured and turned out of the matrimonial home. The defence could not break her testimony as far as the allegation of demand and harassment is concerned. She has categorically denied the suggestion that the 2<sup>nd</sup> party never made any demand or tortured her. PW2 also testified that the parties fought over money in his house. The defence did not cross examine him on this aspect. PW1 and PW2 have alleged that the 2<sup>nd</sup> party suspects the paternity of the child. But if we peruse his written statement and the manner of the cross examination we find that he has never questioned the paternity of the child. I thus feel that this allegation is baseless. Although the 2<sup>nd</sup> party had taken a plea that the 1<sup>st</sup> party developed intimacy with another man and left him willingly, but he has not proved this allegation.

9. On over all analysis, I find that the evidence of PWs do substantiate the fact of ill treatment meted out to the 1<sup>st</sup> party by the 2<sup>nd</sup> party. Both the PWs have testified that the second party is not maintaining her and her kid. According to PW1 the 2<sup>nd</sup> party has not maintained her since the time she was driven out. PW2 testified that the 2<sup>nd</sup> party has not maintained her since he stopped visiting her. Although the 2<sup>nd</sup> party took the plea that he bore the expenses at the time of childbirth and also provided them bare necessities of life, but he has not led any evidence to prove it. So the allegation of neglect is proved against him. Both the PWs have testified that the 2<sup>nd</sup> party is a mason and has landed property. PW1 stated that he earns about 15000/- to 20000/- per month, on the other hand PW2 stated that he earns about 20,000/- to 30,000/- per month. The exact income of the 2<sup>nd</sup> party is not proved, however, it is proved otherwise that he is an able bodied person having a regular source of income. The details of his landed property are not on record. Thus calculating his income at a notional basis also, it can safely be held that he has means to maintain the 1<sup>st</sup> party and her son. But it is also to be noted that he has another wife and three more children and aged mother to look after.
10. 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. 1000/- per month to the 1<sup>st</sup> party and Rs 500/- to the child, w.e.f the date of passing of this order. The case is disposed of on contest. Given under my hand and seal of the court on 31-12-14.