

MISC 04/2017  
JOINAB KHATUN VS INAMUL HAQUE



**In the Court of Munsiff cum Judicial Magistrate  
1st Class, Bongaigaon, Assam.**

**MISC. CASE NO. 04/2017**

**Under Section 125 Criminal Procedure Code**

**Joinab Khatun,  
Wife of Inamul Haque,  
Resident of Village: Hapasara,  
Police Station & District: Bongaigaon, Assam**

.....1<sup>st</sup> party

-VS-

**Inamul Haque,  
Son of Idrish Ali,  
Resident of Village: Hapasara,  
Police Station & District: Bongaigaon, Assam**

.....2<sup>nd</sup> party

*Present: Uttam Chetri, Munsiff cum Judicial Magistrate 1<sup>st</sup> Class,  
Bongaigaon*

<b>Advocate for 1<sup>st</sup> party :</b>	Advocate Swahida Khatun
<b>Advocate for 2<sup>nd</sup> Party:</b>	Advocate Mohidul Islam
Date of Evidence:	05.08.2017, 19.12.2017
Date of Argument:	21.12.2017
Date of Judgment:	21.12.2017

**JUDGMENT**

1. The fact of the case as pleaded by the 1<sup>st</sup> party is that she entered into marriage with the 2<sup>nd</sup> party on 05.04.2007 as per Muslim Shariat law by registering a Kabinnama and both of them started living together as husband and wife in the house of the 2<sup>nd</sup> party; that at the time of her marriage, the 2<sup>nd</sup> party had a wife and 2 (two) children with him; that about 2/3 months after her marriage with the 2<sup>nd</sup> party, the 2<sup>nd</sup> party demanded money from the 1<sup>st</sup> party and on her inability to provide the same, the 2<sup>nd</sup> party tortured her physically and mentally; that during the subsistence of her marriage with the 2<sup>nd</sup> party, 2 (two) girl child were born to her who are presently 8

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(eight) years and 6 (six) years respectively; that after the birth of her 2 (two) girl child, the 2<sup>nd</sup> party again tortured her on the pretext that she had given birth to 2 (two) girl children and drove her and her 2 (two) minor girl out of her matrimonial home about 2 (two) years back; that after being driven out of her matrimonial home, the 1<sup>st</sup> party and her 2 (two) minor children are living in her father's house; that the 2<sup>nd</sup> party has not provided any maintenance to the 1<sup>st</sup> party or her 2 (two) minor children and has not taken care of her and her 2 (two) minor children; that the 1<sup>st</sup> party and her 2 (two) minor children are dependent on her father's income for their livelihood; that the 2<sup>nd</sup> party is a businessman and earns about 50,000 - 60,000 only per month.

2. The 1<sup>st</sup> party, therefore, prays for directing the 2<sup>nd</sup> party to pay her maintenance @ Rs. 5,000/- (Rupees five thousand) only per month and a sum of Rs. 5000/- (Rupees five thousand) only each per month to her 2 (two) minor children.

3. The 2<sup>nd</sup> party filed his written statement wherein he had stated that the allegations made by the 1<sup>st</sup> party are totally false, baseless, imaginary and concocted; that the 2<sup>nd</sup> party neither demanded any dowry from the 1<sup>st</sup> party nor tortured her physically or mentally as alleged; that on 18.07.2016, the 2<sup>nd</sup> party caught hold of the 1<sup>st</sup> party in compromising position with a person named Giasuddin after which the 1<sup>st</sup> party left her matrimonial home and took shelter in her parent's house; that although the 2<sup>nd</sup> party and his family members went to the house of the 1<sup>st</sup> party asking her to return back to her matrimonial home but she refused to return back due to which the 2<sup>nd</sup> party was force to file a suit under Section 281 of the Mohamadin Law for Restitution of Conjugal Rights. The 2<sup>nd</sup> party, therefore, prays for dismissing the petition of the 1<sup>st</sup> party with costs.

4. In order to establish their respective cases, the 1<sup>st</sup> party had adduced evidence of herself as PW1 and Jahar Ali as PW2 while the 2<sup>nd</sup> party had adduced evidence of himself as DW1.

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**Points for determination**

- (a) Whether the 1<sup>st</sup> party is the legally married wife of the 2<sup>nd</sup> party and whether 2 (two) girl children were born out of their legal wedlock?
- (b) Whether the 2<sup>nd</sup> party having sufficient means neglected or refused to maintain the 1<sup>st</sup> party and her 2 (two) minor children who are unable to maintain themselves?
- (c) Whether the 1<sup>st</sup> party and her 2 (two) minor children are entitled to get any maintenance, and if so what should be the quantum?

**Discussion, decision and reason thereof**

**Point no. (a) Whether the 1<sup>st</sup> party is the legally married wife of the 2<sup>nd</sup> party and whether 2 (two) girl child were born out of their legal wedlock?**

5. The 1<sup>st</sup> party had pleaded in her petition that she is the legally married wife of the 2<sup>nd</sup> party and their marriage was solemnized as per Muslim Shariat law on 05.04.2007. The 1<sup>st</sup> party had also pleaded that 2 (two) girl child were born out of their legal wedlock. The 2<sup>nd</sup> party had not denied the aforesaid facts either in his written statement or in his examination in chief. In fact the 2<sup>nd</sup> party has admitted in his written statement and his examination in chief that he had entered into marriage with the 1<sup>st</sup> party and 2 (two) girl child were born out of their legal wedlock. Accordingly, point no. (a) is decided in affirmative in favour of the 1<sup>st</sup> party.

6. The 1<sup>st</sup> party is the legally married wife of the 2<sup>nd</sup> party and 2 (two) girl child were born out of their legal wedlock.

**Point No. b: Whether the 2<sup>nd</sup> party having sufficient means neglected or refused to maintain the 1<sup>st</sup> party and her 2 (two) minor child who are unable to maintain themselves?**

7. The learned counsel for the 2<sup>nd</sup> party during the course of the argument had submitted that the 1<sup>st</sup> party has not been able to prove with any cogent evidence the fact that the 2<sup>nd</sup> party earns about

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50,000 - 60,000 only per month and, as such, she is not entitled to get the maintenance as claimed by her.

8. In this instant case so far as the income of the 2<sup>nd</sup> party is concerned, the 2<sup>nd</sup> party has admitted that he works as a labour. In **Kandasamy Chetty, In re, AIR 1926 Mad 326**, it was held that the 'means' contemplated in Section 125 (1) are not confined only to visible means such as lands and other property or employment. If a person is healthy and able bodied, he must be held to have means to support his wife, children and parents. The court have gone to the extent of laying down that the husband may be insolvent or a professional beggar or a minor or a monk, but he must support his wife so long as he is able bodied and can eke out his livelihood. (**Basanta Kumari v Sarat Kumar 1982 Cri LJ 485**). In **Pradip Das vs. Joba Rani Das 1999 (1) GLT 168**, the Hon'ble Gauhati High Court held that even an able-bodied husband having no income cannot be divested of the responsibility to maintain his wife.

9. Thus what transpires from the above observations is that as per Section 125 Criminal Procedure Code, a husband is bound to maintain his wife even if he has no express permanent way of income. The only requirement is that he should be an able bodied person.

10. In the present case it has been admitted by the 2<sup>nd</sup> party that he is an able bodied person and he earns his livelihood as daily labour. Further the 2<sup>nd</sup> party had also not denied the fact that he has not provided maintenance to the 1<sup>st</sup> party or her 2 (two) minor children. Moreover there is no evidence on record to show that the 2<sup>nd</sup> party suffers from any physical infirmity to hold that he is not an able bodied person.

11. Thus from the above discussion, it transpires that the 2<sup>nd</sup> party has sufficient means within the meaning of Section 125(1) Criminal Procedure Code. As such, I am of the considered view that the 2<sup>nd</sup> party has sufficient means to maintain his wife and his 2 (two) minor child.

12. The 1<sup>st</sup> party has also categorically stated in her petition and her evidence that she has no independent source of income, and is dependent on her parents for her and her 2 (two) minor child's

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expenses. The 1<sup>st</sup> party had further stated that the 2<sup>nd</sup> party has neglected to maintain her and her 2 (two) minor children and has not provided any maintenance to them.

**13.** The 2<sup>nd</sup> party has not been able to produce any oral or documentary evidence to counter the aforesaid claims of the 1<sup>st</sup> party or to discharge his burden that he has not refused or neglected to maintain the 1<sup>st</sup> party and her 2 (two) minor children.

**14.** In **Rajathi vs. C. Ganesan, (1999 (6) SCC, 326)** the Honb'le Supreme Court has held that under Section 125 Criminal Procedure Code the expression "**unable to maintain herself**" covers means available to the wife, while she was living with her husband and not after her desertion and burden lies on the husband to prove that he has no sufficient means to discharge his obligation or that he did not neglect or refuse to maintain her and statement by wife that she was unable to maintain herself would be enough –It would be for the husband to prove otherwise.

**15.** Therefore, taking into consideration the law laid down in the aforesaid case laws and the inability of the 2<sup>nd</sup> party to prove that he has not neglected or refused to maintain his wife and her minor daughter, it becomes abundantly clear that the 2<sup>nd</sup> party has neglected or refused to maintain his wife and his 2 (two) minor children who are unable to maintain themselves without any cogent reasons. Accordingly, point no. (b) is decided in affirmative in favour of the 1<sup>st</sup> party.

**16.** The 2<sup>nd</sup> party having sufficient means has neglected and refused to maintain the 1<sup>st</sup> party and his 2 (two) minor children who are unable to maintain themselves.

**Point No. (c):- Whether the 1<sup>st</sup> party and her 2 (two) minor child are entitled to get any maintenance, and if so what should be the quantum?**

**17.** The learned counsel for the 2<sup>nd</sup> party during the course of the argument had submitted that as the 1<sup>st</sup> party is not entitled to get maintenance as per provision of Section 125 (4) Criminal Procedure Code as she is having illicit relationship with a person named

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Giasuddin, and as she has committed adultery, she is not entitled to get the maintenance as per provision of Section 125 (4) Criminal Procedure Code.

**18.** Section 125 (4) Criminal Procedure Code provides that **"No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be from her husband under this Section if she is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent....."**

**19.** Let me analyze the evidence on record to see whether Section 125 (4) Criminal Procedure Code is applicable in the present case so as to disentitle the 1<sup>st</sup> party from getting maintenance from the 2<sup>nd</sup> party. PW1 (petitioner) had stated in her examination in chief that she married the 2<sup>nd</sup> party in the year 2007 as per Muslim rites and started living in her matrimonial home situated at Hapasara. PW1 had further stated that after 3 (three) months of her marriage, the 2<sup>nd</sup> party demanded money from her and when she was unable to provide him the same, the 2<sup>nd</sup> party tortured her physically and mentally.

**20.** PW1 had further stated in her examination in chief that during the subsistence of their marriage, she gave birth 2 (two) girl child. PW1 had further stated that for the last 2 - 2 1/2 years, she is living with his 2 (two) girl child in her parent's house but the 2<sup>nd</sup> party has neither taken care of them nor provided any maintenance to them.

**21.** Although cross-examined, her veracity could not be impeached by the 2<sup>nd</sup> party and her evidence in respect of the alleged physical and mental torture meted out on her by the 2<sup>nd</sup> party has remained intact.

**22.** The evidence of PW1 in respect of the alleged torture meted out on her by the 2<sup>nd</sup> party has been corroborated by PW2. Although cross-examined, the evidence of PW2 in respect of the alleged torture on the 1<sup>st</sup> party by the 2<sup>nd</sup> party has remained intact as the veracity of PW2 could not be impeached by the 2<sup>nd</sup> party.

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23. Thus any self respecting married woman who is continuously tortured physically and mentally by her husband cannot be expected to live in her matrimonial home, and if she refuses to live with her husband in her matrimonial home after being driven out of the same, out of fear of recurrence of physical and mental torture on her, it cannot be, according, to my considered view, said to be refusal on the part of the 1<sup>st</sup> party (wife) to live with her husband without any sufficient reason.

24. Thus continuous physical and mental torture on the 1<sup>st</sup> party by her husband is sufficient reason for the 1<sup>st</sup> party to refuse to live with her husband. Therefore, the 1<sup>st</sup> party has sufficient reason to live separately from the 2<sup>nd</sup> party and the provision of Section 125 (4) Criminal Procedure Code is not attracted in the present case.

25. In pursuance of the discussion aforesaid, it appears that the 2<sup>nd</sup> party having sufficient means has neglected and refused to maintain the 1<sup>st</sup> party and her 2 (two) minor children who are unable to maintain themselves. Accordingly, point no. (c) is decided in affirmative in favour of the 1<sup>st</sup> party.

26. As regards the quantum of maintenance is concerned, taking into consideration the fact that the 2<sup>nd</sup> party is a daily wage earner, the ever increasing price index of the essential commodities and the requirement of an adult single women, maintenance amount of a sum of Rs. 2,000/- (Rupees two thousand) only per month to the 1<sup>st</sup> party and Rs. 1500/- (Rupees fifteen hundred) only each per month to her 2 (two) minor child would be, according, to my considered view proper in the present case.

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### ORDER

In view of the discussion made above, it is established that the 1<sup>st</sup> party and her minor daughter are entitled to get maintenance from the 2<sup>nd</sup> party as prayed for. Accordingly, the 2<sup>nd</sup> party is directed to pay maintenance amount of a sum of Rs. 2,000/- (Rupees two thousand) only per month to the 1<sup>st</sup> party and Rs. 1500/- (Rupees fifteen hundred) only each per month to her 2 (two) minor child from


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the date of filing of the present case in total a sum of Rs. 5,000/- (Rupees five thousand) only to the 1<sup>st</sup> party and her 2 (two) minor children.

Furnish a free copy of the judgment to the 1<sup>st</sup> party.

Given under my hand and seal of this Court on this 21<sup>st</sup> day of December, 2017 at Bongaigaon.

  
J.M. 1st Class Judicial  
Magistrate 1st Class,  
Bongaigaon



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## **APPENDIX**

### **List of Witnesses**

1. PW1:- Joinab Khatun (1<sup>st</sup> party)
2. PW2:- Jahar Ali
3. DW1:- Inamul Haque (2<sup>nd</sup> party)

### **Documents Exhibited**

None

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