



**In the Court of Munsiff cum Judicial Magistrate**  
**1st Class, Bongaigaon, Assam.**  
**MISC. CASE NO. 47/2016**  
**Under Section 125 Criminal Procedure Code**

**Mosida Begum,**  
**Wife of Amir Hussain,**  
**Resident of Village: 2 No. Jaraguri,**  
**Police Station: Manikpur,**  
**District: Bongaigaon, Assam**

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

-VS-

**Amir Hussain,**  
**Son of Omar Ali,**  
**Resident of Village: Silghagri,**  
**Police Station: Manikpur,**  
**District: Bongaigaon, Assam**

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

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

**Advocate for 1<sup>st</sup> party :** Advocate Pankaj Baidya  
**Advocate for 2<sup>nd</sup> Party:** Advocate Pranjal Kr. Ray  
Date of Evidence: 18.02.2017, 15.11.2017  
Date of Argument: 18.11.2017  
Date of Judgment: 04.12.2017

**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 31.12.2004 as per Muslim Shariat law by executing a Kabinnama; that during the subsistence of her marriage with the 2<sup>nd</sup> party, 2 (two) children were born to them and presently they are 8 (eight) years and 4 (four) years old respectively; that about 5 (five) years after her marriage, the 2<sup>nd</sup> party entered into second marriage with a woman named Mafida Begum; that after the second marriage, the 2<sup>nd</sup> party demanded a sum of Rs. 10,000/-

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(Rupees ten thousand) only from her and when she expressed her inability to fulfill his demand, the 2<sup>nd</sup> party tortured her physically and mentally; that on 06.11.2013 at about 12 PM, the 2<sup>nd</sup> party demanded money from the 1<sup>st</sup> party, assaulted her and drove her out of her matrimonial home; that the 2<sup>nd</sup> party also threatened the 1<sup>st</sup> party with dire consequences if she ever tried to return back to her matrimonial home; that the 2<sup>nd</sup> party also kept her children with him; that after being driven out of her matrimonial home, the 1<sup>st</sup> party took shelter in the house of Saripuddin and went to her father's house on the next day; that from that day onwards, the 1<sup>st</sup> party is living in her father's house; that the 1<sup>st</sup> party has no source of income and the 2<sup>nd</sup> party is a home guard and earns about Rs. 15,000/- (Rupees fifteen thousand) only per month.

2. The 1<sup>st</sup> party, therefore, prayed for directing the 2<sup>nd</sup> party to pay her maintenance @ Rs 5,000/- (Rupees five thousand) only per month and to her minor daughter @ Rs 3000/- (Rupees three thousand) only per month.

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 the 2<sup>nd</sup> party entered into second marriage as the 1<sup>st</sup> party could not do her household work after the birth of their 2<sup>nd</sup> child; that although the 2<sup>nd</sup> party treated his both wives equally but the 1<sup>st</sup> party left her matrimonial home without any cogent reasons and without informing the 2<sup>nd</sup> party on 06.11.2013; that the 1<sup>st</sup> party also left her 2 (two) children in her matrimonial home; that although the 2<sup>nd</sup> party went to the house of the 1<sup>st</sup> party and requested her to return back to her matrimonial home but the 1<sup>st</sup> party refused to return back and filed a case under Section 12 of the Protection of Women against Domestic Violence Act, 2005 against the 2<sup>nd</sup> party, his 2<sup>nd</sup> wife and his father in the Court of SDJM, Bijni which was transferred to JMFC, Bongaigaon and the same was dismissed on 24.06.2016; that the 2<sup>nd</sup> party is not entitled to any maintenance as claimed for as she had voluntarily left her matrimonial home; that the 2<sup>nd</sup> party working as a labour and not as a home guard as claimed by the 1<sup>st</sup> party. The 2<sup>nd</sup> party, therefore, prayed for dismissing the petition of the 1<sup>st</sup> party with costs.

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4. In order to establish their respective cases, the 1<sup>st</sup> party had adduced the evidence of herself as PW1 and Moksed Ali as PW2 while the 2<sup>nd</sup> party adduced evidence of himself as DW1 and Abzal Hussain as DW2.

**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 a girl child was 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 minor daughter who are unable to maintain themselves?
- (c) Whether the 1<sup>st</sup> party and her minor daughter 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 a girl child was 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 31.12.2004. The 1<sup>st</sup> party had also pleaded that a girl child was 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 that he had entered into marriage with the 1<sup>st</sup> party. 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 a girl child was 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 minor daughter who are unable to maintain themselves?**

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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 Rs. 15,000/- (Rupees fifteen thousand) 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. 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 minor daughter.

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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 minor daughter's expenses. The 1<sup>st</sup> party had further stated that the 2<sup>nd</sup> party has neglected to maintain her and her minor daughter 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 minor daughter.

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 her minor daughter 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 her minor daughter who are unable to maintain themselves.

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

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**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 living separately from the 2<sup>nd</sup> party without sufficient reason, she is not entitled to get 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 that she married the 2<sup>nd</sup> party about 12 (twelve) years back and during the subsistence of their marriage, 2 (two) children were born out of their legal wedlock. PW1 had further stated that about 5 (five) years after their marriage, 2<sup>nd</sup> party entered into second marriage with another woman named Mafida Begum and after the aforesaid marriage, 2<sup>nd</sup> party began to torture her physically and mentally.

**20.** PW1 had further stated that the 2<sup>nd</sup> party demanded a sum of Rs. 10,000/- (Rupees ten thousand) only from her and when she could not fulfill his demands, the 2<sup>nd</sup> party assaulted her. PW1 had further stated that about 3 (three) years back, her husband assaulted her and drove her out of her matrimonial home at about 12:00 AM. PW1 had further stated that after being driven out of her matrimonial home, 1<sup>st</sup> party began to live in her father's house. PW1 had further stated that the 2<sup>nd</sup> party had not taken care of her and had not provided any maintenance to her till date.

**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 and her being driven out of her matrimonial house on 06.11.2013 has remained intact.

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**22.** The evidence of PW1 in respect of the alleged torture meted out on her by the 2<sup>nd</sup> party and her being driven out of her matrimonial home by the 2<sup>nd</sup> party on 06.11.2013 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.

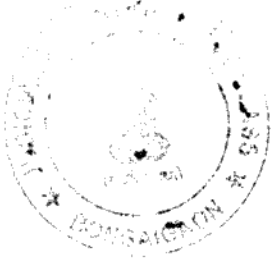
**23.** Thus any self respecting married woman who is continuously tortured physically and mentally by her husband cannot be expected to live in her matrimonial home, and if she refuses to live with her husband in her matrimonial home after being driven out of the same, out of fear of recurrence of physical 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 minor daughter 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. 1500/- (Rupees fifteen hundred) only per month to the 1<sup>st</sup> party and Rs 1000/- (Rupees one thousand) only per month to her minor daughter would be, according, to my considered view proper in the present case.

*J.M.*  
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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 1500/- (Rupees fifteen hundred) only per month to the 1<sup>st</sup> party and Rs 1000/- (Rupees one thousand) only per month to her minor daughter from the date of filing of the present case.

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 4<sup>th</sup> day of December, 2017 at Bongaigaon.

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## **APPENDIX**

### **List of Witnesses**

1. PW1:- Mosida Begum (1<sup>st</sup> party)
2. PW2:- Moksed Ali
3. DW1:- Amir Hussain (2<sup>nd</sup> party)
4. DW2:- Abzal Hussain

### **Documents Exhibited**

None

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