

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE :::::::::: BONGAIGAON.**

**Misc. Case No.37/2013.**  
**U/S.125 CrPC.**

**Musstt. Aklima Khatun....1<sup>st</sup> Party.**

**-Vs-**

**Md. Kasimuddin Sk.....2<sup>nd</sup> Party.**

Present: **Smt. Nirmali Talukdar, AJS.**  
**Chief Judicial Magistrate,**  
**Bongaigaon.**

**Advocates appeared:-**

For the 1<sup>st</sup> party- **Mr. J. Haque.**

For the 2<sup>nd</sup> party- **Mr. P. Baidya.**

Argument heard on: **06.06.2014.**

Judgment pronounced & delivered on: **19.06.2014.**

**J U D G M E N T**

1. This Judgment & Order arises out of a petition filed U/S.125 CrPC by the 1<sup>st</sup> party Musstt. Aklima Khatun claiming monthly maintenance of Rs.5000/- from the 2<sup>nd</sup> party Md. Kasimuddin Sk.

2. 1<sup>st</sup> party's case in brief is that, on 24.04.2009, the 1<sup>st</sup> party got married with the 2<sup>nd</sup> party by executing Kabinnama before the Kazi. After marriage 1<sup>st</sup> party started her conjugal life with the 2<sup>nd</sup> party in the house of the 2<sup>nd</sup> party. After six months of marriage, the 2<sup>nd</sup> party and his relatives started to torture the 1<sup>st</sup> party in demand of money. In this

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regard several village meetings were also held. Finally on 05.02.2013 the 2<sup>nd</sup> party severely assaulted the 1<sup>st</sup> party and drove her out from her matrimonial home. Since then, the 1<sup>st</sup> party has been taking shelter in her parental home. Since the date she was driven out from her matrimonial home, the 2<sup>nd</sup> party neither enquired about her nor provided with maintenance to her. The 2<sup>nd</sup> party is a businessman having sufficient landed property and his monthly income is about Rs. 10,000/-. On the other hand, 1<sup>st</sup> party is fully dependent upon her husband having no source of income to support herself. Hence, the 1<sup>st</sup> party has filed the instant petition claiming monthly maintenance.

3. The 2<sup>nd</sup> party has filed written statement wherein he denied the case of the 1<sup>st</sup> party. The 2<sup>nd</sup> party has stated that after expiry of his first wife he married the 1<sup>st</sup> party. The 2<sup>nd</sup> party has two daughters from his first wife who were reading in Class X and Class-VII respectively. The 1<sup>st</sup> party used to treat the elder daughter of the 2<sup>nd</sup> party as maid servant and ordered her to do all the household works. At the time of marriage, the parents of the 1<sup>st</sup> party gave ½ Bigha of land to the 2<sup>nd</sup> party but till date the said land was not transferred to the 2<sup>nd</sup> party and the 2<sup>nd</sup> party also did not claim the said land. The 1<sup>st</sup> party voluntarily went to her home to cast vote in the Gaon Panchayat Election and did not return back to the house of the 2<sup>nd</sup> party. Though the 2<sup>nd</sup> party went to get her back but the 1<sup>st</sup> party did not come with him. The 2<sup>nd</sup> party also sent legal notices to the 1<sup>st</sup> party on two occasions but the 1<sup>st</sup> party did not return back and after receiving all the legal notices she filed the instant case



PW1 is the 1<sup>st</sup> party Musstt. Aklima Khatun. In her evidence PW1 had deposed that the 2<sup>nd</sup> party asked her to bring money by selling the land which was given to her by her father. As she could not afford the money

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by selling the land, the 2<sup>nd</sup> party drove her out of from his house. Since then she has been taking shelter in her parents house. Though village meetings were held regarding their dispute but the matter was not settled. PW1 had also deposed that during her stay in her parents house, the 2<sup>nd</sup> party neither took any initiative for taking her back nor provided with maintenance to her.

In cross-examination PW1 had denied the suggestion that she intended the entire domestic works to be done by eldest daughter of the 2<sup>nd</sup> party and therefore often quarrel took place between her and the elder daughter of the 2<sup>nd</sup> party. PW1 had also denied the suggestion that she came to her parents house voluntarily to cast vote in Panchayat Election. She had denied the suggestion that the 2<sup>nd</sup> party did not drive her out from his house after assaulting her. PW1 had deposed that the 2<sup>nd</sup> party served Advocate's notice upon her on two occasions requesting her to come to his house for resuming conjugal life. On receipt of Advocate's notice she lodged a complaint U/S.498-A IPC before the Court against the 2<sup>nd</sup> party. The 2<sup>nd</sup> party was acquitted in the aforesaid criminal case.

7. PW2 Md. Badiat Jamal is the brother of the 1<sup>st</sup> party. PW2 had deposed the evidence corroborating the evidence of the 1<sup>st</sup> party.

He had also deposed that the 1<sup>st</sup> party has been living in his house for the last 7/8 months. The 2<sup>nd</sup> party did not take her back to his house nor he provided with maintenance to her.

In cross-examination PW2 had deposed that at the time of marriage the 2<sup>nd</sup> party was shown a plot of land measuring ½ Bigha

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which they intended to give to the 2<sup>nd</sup> party. The land was not given to the 2<sup>nd</sup> party till date. In cross-examination, the 2<sup>nd</sup> party also deposed that he never came forward to take possession of the said land. PW2 had deposed that the 1<sup>st</sup> party came to his house one day before the Panchayat Poll. The name of the 1<sup>st</sup> party is enrolled in the voters' list of her village. PW2 had denied the suggestion that the 1<sup>st</sup> party came to his house for casting vote in the Panchayat Poll.

8. PW3 is Md. Eskar Ali Moulabi. In his evidence PW3 had deposed that after marriage dispute arose between both the parties regarding sell of the land. With regard to this many meetings were held in the village where PW3 was also present. In the meeting convened by the father of the 1<sup>st</sup> party, the 1<sup>st</sup> party informed the villagers that she was driven out from her matrimonial home by the 2<sup>nd</sup> party as she denied to sell a plot of land. PW3 also had deposed that since then the 1<sup>st</sup> party living in her parents house.

In cross-examination PW3 had deposed that he could not recollect the dates and days of the meetings. The proceeding of the meeting were not written down.

**9.** The 2<sup>nd</sup> party has also adduced evidence of three witnesses in support of his contention. DW1 is the 2<sup>nd</sup> party Md. Kasimuddin Sheikh. In his evidence DW1 had deposed that the 1<sup>st</sup> party was not tortured by him in demand of money. The 1<sup>st</sup> party voluntarily left for her village to cast vote in the Panchayat Election. Since then she has not returned back to the house of the 2<sup>nd</sup> party. On three occasions the 2<sup>nd</sup> party went

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to the house of the 1<sup>st</sup> party to get her back but the 1<sup>st</sup> party informed him that she would not continue conjugal life with him. He also sent Mantaz Ali Sarkar and his sister Mustt. Mariyam Bibi to get the 1<sup>st</sup> party back. DW1 had also deposed that on two occasions he sent Advocate's notice to the 1<sup>st</sup> party, but despite receiving the notices the 1<sup>st</sup> party did not come to his house.

In cross-examination DW1 had denied the suggestion that he forced the 1<sup>st</sup> party to sell the land given to her by her father. He had also denied the suggestion that he assaulted the 1<sup>st</sup> party and drove her out from the house during the time of Panchayat Election.

**10.** DW2 Md. Mantaz Ali Sarkar. In his evidence DW2 has also deposed the 1<sup>st</sup> party voluntarily left for her house in order to cast vote in Panchayat Election though the 2<sup>nd</sup> party went to get the 1<sup>st</sup> party back she did not come with him.

In cross-examination DW2 had deposed that he never went to get the 1<sup>st</sup> party back to the house of the 2<sup>nd</sup> party. He do not know about the quarrel between the 1<sup>st</sup> party and the 2<sup>nd</sup> party.

11. DW3 Mustt. Mariyam Bibi who is the sister of the 2<sup>nd</sup> party. DW3 has adduced the evidence corroborating the evidence of the 2<sup>nd</sup> party. In her cross-examination she denied the suggestion that she adduced false evidence for the sake of her brother.

12. On careful scrutiny of evidence on record, it is found that there is no dispute with regard to the fact that presently the 1<sup>st</sup> party has

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been living in her parents home. PW3 Md. Eskar Ali Moulabi who is the independent witness of the case has fairly deposed in his evidence that several village meetings were held with regard to the dispute between the 1<sup>st</sup> party and the 2<sup>nd</sup> party and in the meeting 1<sup>st</sup> party divulged that she was driven out from her matrimonial home by the 2<sup>nd</sup> party as she denied to sell a plot of land. All the three witnesses of the 1<sup>st</sup> party have clearly deposed that the 1<sup>st</sup> party was tortured by the 2<sup>nd</sup> party and finally she was driven out from her matrimonial home. Though the 2<sup>nd</sup> party has adduced evidence that the 1<sup>st</sup> party voluntarily left her parental home to cast vote in the Panchayat Election and did not return back to her matrimonial home, but the 2<sup>nd</sup> party has failed to show any sufficient reason as to why the 1<sup>st</sup> party has not returned back to her matrimonial home. In his evidence DW1, the 2<sup>nd</sup> party has adduced that he had sent Md. Mantaz Ali Sarkar and his sister to get the 1<sup>st</sup> party back, but DW2 Md. Mantaz Ali Sarkar revealed in his cross-examination

that he never went to the house of the 1<sup>st</sup> party to get her back. Thus, there is room for doubt with regard to the credibility of the evidence of the 2<sup>nd</sup> party. On the other hand, the evidence of the 1<sup>st</sup> party clearly established that the 2<sup>nd</sup> party used to quarrel with the 1<sup>st</sup> party with regard to sell of a plot of land given to her by her father and finally he drove her out from her matrimonial home.

- 13.** It also appears from the evidence on record that the 1<sup>st</sup> party has no source of income. DW1, the 2<sup>nd</sup> party had admitted in his cross-examination that the 1<sup>st</sup> party has no source of income. On the other hand, DW1 has also deposed that he is a businessman. He earns

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Rs.35,000'00-40,000'00 per annum. Thus, it is found that the 2<sup>nd</sup> party has sufficient source of income. It is apparent from the evidence on record that during her stay in the house of her parental home the 1<sup>st</sup> party was not provided with maintenance by the 2<sup>nd</sup> party. The 2<sup>nd</sup> party despite having sufficient source of income neglected or refused to provide with maintenance to the 1<sup>st</sup> party. Hence, the second point for determination is decided in affirmative and in favour of the 1<sup>st</sup> party.

- 14.** With regard to the third point for determination, it appears that the 1<sup>st</sup> party is the legally married wife of the 2<sup>nd</sup> party. The 2<sup>nd</sup> party had driven out the 1<sup>st</sup> party from her matrimonial home by assaulting her. Therefore, the 1<sup>st</sup> party has reasonable ground to live separately from the 2<sup>nd</sup> party. PW1 has deposed in her evidence that

the 2<sup>nd</sup> party is a businessman who deals in business of gunny bags. The 2<sup>nd</sup> party has also landed property. On the other hand, the 2<sup>nd</sup> party has deposed that he has no landed property. He used to sell gunny bags in the market by collecting it from the villagers. His daily income is about Rs.100'00-150'00. He earns Rs.35,000'00-40,000'00 per annum. Though there is no clear evidence as to the actual income of the 2<sup>nd</sup> party, it appears that the 2<sup>nd</sup> party is an able bodied person and he has source of income. On the other hand, the 1<sup>st</sup> party has no source of income. The 2<sup>nd</sup> party despite having sufficient source of income refused to maintain the 1<sup>st</sup> party. The 2<sup>nd</sup> party being an able-bodied person and being husband of the 1<sup>st</sup> party is under statutory obligation to provide with maintenance to the 1<sup>st</sup> party who is unable to maintain herself. Hence, I am of the

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considered view that the 1<sup>st</sup> party is entitled to get maintenance from the 2<sup>nd</sup> party. Accordingly, the third point for determination is decided in affirmative and in favour of the 1<sup>st</sup> party.

- 15.** In view of the above discussion, considering the economic condition, cost of living and status of both parties, I am of the considered view that monthly maintenance of Rs.1000/- to the 1<sup>st</sup> party would meet the ends of justice. Further, the 2<sup>nd</sup> party has not made any arrangements for the maintenance of the 1<sup>st</sup> party since the date she was driven out from the house of the 2<sup>nd</sup> party. Hence, considering plight of the 1<sup>st</sup> party, I am of the considered view that the 1<sup>st</sup> party is entitled to get maintenance from the date of filing of the petition.

Accordingly, the 2<sup>nd</sup> party is directed to pay monthly maintenance of Rs.1000/- (Rupees One thousand) to the 1<sup>st</sup> party from the date of filing of the instant petition.

16. Let a copy of the judgment be supplied to the 1<sup>st</sup> party at free of cost.

Given under my hand and seal of this Court on this **19<sup>th</sup> day of June, 2014.**

Sd/-  
(Smt. N. Talukdar)  
**Chief Judicial Magistrate**  
**BONGAIGAON.**

*Dictated and corrected by me.....*

Sd/-  
**Smt. N. Talukdar**  
**Chief Judicial Magistrate**  
**BONGAIGAON.**

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**: A N N E X T U R E :**

The 1<sup>st</sup> Party examined:

- a) **PW1** - Mustt. Aklima Khatun @ Bibi.
- b) **PW2** - Md. Bodiya Jamal.
- c) **PW3** - Eskar Ali Moulabi.

The 1<sup>st</sup> Party exhibited: Nil.

The 2<sup>nd</sup> Party examined:

- a) **DW1** - Md. Kasimuddin Seikh.
- b) **DW2** - Md. Mantaz Ali Sarkar.
- c) **DW3** - Mustt. Mariyam Bibi.

The 2<sup>nd</sup> Party exhibited: Nil.

**Sd/-**  
Smt. N. Talukdar  
**Chief Judicial Magistrate**  
**BONGAIGAON.**

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