

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, MORIGAON

M.R. CASE NO: 104/2017

**SMTI. ANAMIKA DAS, W/O.:- MR. RUPOM DAS, D/O.:- MR. BENUDHAR MEDHI.
R/O.:- KATAHGURI, P.S. AND DIST. MORIGAON, ASSAM**

..... FIRST PARTY

VS

**MR. RUPOM DAS, S/O.:- MR. HIDOY DAS,
R/O.:- HATISUNG (MEDHI CHUK),
P.S.:- JAJORI, DIST.:- NAGAON, ASSAM**

.....SECOND PARTY

PRESENT: SMTI. ANAMIKA BARMAN, LL.M., AJS.

JUDICIAL MAGISTRATE FIRST CLASS, MORIGAON, ASSAM

ADVOCATE FOR THE FIRST PARTY: MR. P. K. BORA AND SMTI. R. SAIKIA

ADVOCATE FOR THE SECOND PARTY: MR. R. M. BARUAH

DATES OF RECORDING EVIDENCE: 01.08.2018, 28.08.2018,

DATE OF HEARING: 28.06.2019, 07.09.2019,

DATE OF DELIVERING FINAL ORDER: 14.11.2019,

SECTION OF LAW: U/S 125 OF CrPC.

FINALORDER

1. This proceeding has arisen out of a petition filed u/s 125 Cr.P.C. on 06.10.2017 by one Smt. Anamika Das, hereinafter referred to as the 1st party, thereby claiming monthly maintenance allowance of Rs. 20,000/- (Rupees Twenty Thousand only) for her and her two sons from her husband Sri Rupom Das, hereinafter referred to as the 2nd party. The 1st party has alleged that the marriage between the 1st party and the 2nd party was solemnized in the year 2008 as per Hindu social rites and rituals. As a result of their marriage two boys were born to them, namely, Sri Rahul Das aged 6 (six) years and Sri Dhrubajyoti Das aged about

2 (two) years at the time of the filing of the complaint petition. It is further stated in the complaint petition that the second party works at the "Office of the Dy. Commandant/CASO, Imphal Airport" as CISF No. 062305514 CT/GD. After their marriage, the second party took the first party to his then work place, i.e., Jharkhand, Chhatisgarh. In this way, the second party also took the first party to his various work places all over India and kept her along with him. On 10.07.2016, when the second party was working at Bombay, he brought the first party and both their sons to the paternal house of the first party and asked her to stay there for some days stating that he would return and take her back with him after arranging a house to stay at Bombay. However, he used to provide maintenance to the first party. On 21.09.2016, the second party, without the knowledge of the first party, got converted to Islam from Hinduism by executing an affidavit in the office of the Notary Public, Morigaon. On 31.12.2016, the second party by executing another affidavit in the office of the Notary Public, Morigaon entered into marriage with one Musstt. Najima Sultana, D/O Md. Janoika Ali, R/O:- Sapmari under Dandua Mouja. Thereafter, since the month of January 2017, the second party has not been providing maintenance to the first party and whenever the first party used to call the second party over the phone he used to give various excuses. In the meantime, the second wife of the second party Musstt. Najmin Sultana spread the news that the second party was involved in a human-organ smuggling racket and she also filed case against the second party. Thereafter, the first party came to know about conversion and second marriage of the second party. The first party belongs to a poor family and she is presently leading her life in hardship along with her minor sons. The first party works as day laborer in other peoples' house to earn her livelihood. On the other hand, the second party has a job and his monthly salary is around Rs.40,000/- to Rs.42,000/- (Rupees Forty to Forty Two Thousand only) and he is leading a luxurious life. Therefore, the first party has filed the application seeking the maintenance, as aforementioned.

2. On receipt of the application, notice was issued to the 2nd party requiring him to show cause as to why order for payment of the maintenance amount by the 2nd party, as prayed for by the 1st party, should not be passed.

3. On receipt of the notice, the second party initially appeared before the court and took various steps for filling the written statement but subsequently remained absent and hence the case proceeded ex parte against the second party vide order dated 19.06.2018.

4. During the trial the 1st Party adduced the evidences of 2 (two) witnesses. The first party adduced the evidence of herself as PW-1 and the evidence of one Smt. Swarna Prava Deka Medhi as PW-2 in support of her case.

POINTS FOR DETERMINATION:

- (i) *Whether the 1st party has sufficient reason to live separately from her husband?*
- (ii) *Whether the 2nd party having sufficient means neglects or refuses to maintain the 1st party?*
- (iii) *Whether the 1st party is entitled to any relief as prayed for and if so, the quantum thereof?*

DECISION, DISCUSSION AND REASONS THEREOF:

5. *In her examination-in-chief* PW-1/first party, Smt. Anamika Das deposed that the name of her husband is Sri Rupam Das and she has filed the instant case against her husband. She has two sons, namely, Sri Rahul Das aged about 7 (seven) years and Sri Dhruvajyoti Das aged about 3 (three) years. She further deposed that her marriage was solemnized with Sri Rupam Das in the year 2008 as per social rites and rituals. After their marriage, she lived in house of her husband and also at Chattisgarh and Mumbai along with her husband/second party. In the month of July 2016 her husband got transferred to Imphal after which her husband kept her in her paternal house along with her two sons stating that he would take the first party along with him to his work place after getting the official quarter there. Since then her husband has not inquired about the whereabouts of her and her sons. She later got to know that her husband entered into another marriage in the month of January, 2017. The second wife of the second party also filed a case against the second party that he is involved in human trafficking and human organ smuggling business. PW-1 got to know about that case and about the second marriage of the second party through news published in a newspaper. PW-1 further stated that whenever she used to call her husband/second party over the phone the second party threatened to kill her and also told her that he would not take her back. The second party has also filed a divorce case against her bearing Divorce Case No. 33/171. The second party has not provided

maintenance to the PW-1 and her sons after leaving her in her paternal house. Now, PW-1 works as a day laborer to earn her livelihood. Her husband/second party works as a constable in CISF and his monthly salary is around Rs.40,000/- to Rs.42,000/- (Rupees Forty to Forty Two Thousand only). The second party has landed properties, house and ancestral properties as well. She further stated that she has claimed Rs.10,000/- (Rupees Ten Thousand only) for herself and Rs.5,000/- (Rupees Five Thousand only) for each of her two sons per month as maintenance. Ext.-1 is the Xerox copy of identity card of CISF Jawan of the second party which was issued in the year 2015.

6. *In her examination-in-chief* PW-2 Smt. Swarna Prava Deka Medhi deposed that the first party is her daughter and the second party is her son-in-law. She further deposed that her daughter had entered into marriage with the second marriage in the year 2008 after which she lived with her husband till the year 2016. The first party and the second party have two sons together, namely, Sri Rahul Das aged 7 (seven) years and Sri Dhruvajyoti Das aged 3 (three) years. PW-2 further stated that the first party is presently living in her house. In the year 2016 her son-in-law got transferred from Mumbai to Imphal and he brought the first party along with him to the house of PW-2 and kept the first party there stating that he would take the first party with him after getting a quarter. However, since then the second party has never inquired about the first party. She further stated that they got to know about the second party and his second marriage from a newspaper. PW-2 knows that the second party has also filed a case against her daughter/first party. When her daughter/first party told her husband/second party that she would go to him, the second party threatened to kill the first party and he also told her that he has left his children as well. Since the year 2016 the second party has neither inquired about the first party and her son's whereabouts nor paid any maintenance to them. The second party works in CISF and his monthly salary is around Rs.45,000/- to Rs.50,000/- (Rupees Forty Five Thousand to Fifty Thousand only). Now the first party and her two sons are dependent upon PW-2 and her family and the first party has no source of income of her own. As such, the first party has filed the instant case claiming monthly maintenance from the second party. The second party used to torture the first party when the first party used to live with the second party. The first party has claimed Rs.20,000/- to Rs.25,000/- (Rupees Twenty to Twenty Five Thousand only) as monthly maintenance from the second party.

POINT FOR DETERMINATION NO. 1

7. After their marriage, she lived in house of her husband and also at Chattisgarh and Mumbai along with her husband/second party. In the month of July 2016 her husband got transferred to Imphal after which her husband kept her in her paternal house along with her two sons stating that he would take the first party along with him to his work place after getting the official quarter there. Since then her husband has not inquired about the whereabouts of her and her sons. She later got to know that her husband entered into another marriage in the month of January, 2017. The second wife of the second party also filed a case against the second party that he is involved in human trafficking and human organ smuggling business. PW-1 got to know about that case and about the second marriage of the second party through news published in a newspaper. PW-1 further stated that whenever she used to call her husband/second party over the phone the second party threatened to kill her. The second party has not provided maintenance to the PW-1 and her sons after leaving her in her paternal house. I have also considered the fact that even after giving sufficient opportunity to the 2nd party to raise objection to the claims of the 1st party and to establish the fact that the 1st party has left the house of the 2nd party without sufficient cause, he did not appear to contest the case. In such circumstance, I have no reasons to disbelief the version of the 1st party as no married woman would jeopardize her marital life without any reasonable cause.

8. Hence, this point is decided in affirmative and in favour of the 1st party.

POINT FOR DETERMINATION NO. 2

9. The 1st party stated that the second party works as a constable in CISF and his monthly salary is around Rs.40,000/- to Rs.42,000/- (Rupees Forty to Forty Two Thousand only). The second party has landed properties, house and ancestral properties as well. However, the 2nd party did not appear before the Court even after receiving the notice and raise objection as to the claims of the 1st with regard to his income. Evidence shows that both the 1st party and the 2nd party had cohabited after their marriage but the 2nd party shrugged off his legal and moral obligation towards the 1st party. The provision of Sec.125 Cr.P.C. is a measure for social justice and

specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) and reinforced by Article 39 of the Constitution of India. In view of the facts discussed above and in the absence of any objection from the 2nd party, it is presumed that the 2nd party has wilfully neglected to maintain the 1st party even after having sufficient means.

10. Hence, this point is also decided in affirmative and in favour of the 1st party.

POINT FOR DETERMINATION NO. 3

11. In the backdrop of the discussions made above and the conclusion held in point Nos. 1 and 2, I am of considered opinion that the 1st party is entitled to claim maintenance from the 2nd party. The 1st party stated in her petition as well as in her evidence that the second party works as a constable in CISF and his monthly salary is around Rs.40,000/- to Rs.42,000/- (Rupees Forty to Forty Two Thousand only). The second party has landed properties, house and ancestral properties as well. Though the first party has exhibited the identity proof of the second party issued in the year 2015 as being CISF Constable, his monthly salary has not been substantiated by any documentary evidence or evidence of any other witness who has seen the economic activities of the 2nd party or is aware of the same.

12. In view of the above discussions, the facts of the case and also the present cost of living and the standard of living, I am of the opinion that an amount of Rs.3000 (Rupees Three Thousand only) monthly to the first party and Rs.1000/- (Rupees One Thousand only) monthly to each of the two sons of the first party will be a reasonable amount of maintenance.

O R D E R

13. In result, the second party is directed to pay Rs. 5,000/- (Rupees five thousand) monthly to the first party and her sons [Rs.3,000/- (Rupees three thousand only) per month to the first party and Rs. 1,000/- (Rupees one thousand) each to both of her sons] with effect from the date of this order as maintenance to them.

14. This case is accordingly disposed of. Furnish a free copy of this final order to the first party.

15. This final order is signed, sealed and pronounced in open court on this 14th day of November, 2019 at Morigaon, Assam.

Dictated and corrected by me

(Miss. Anamika Barman)

JMFC, Morigaon

(ANAMIKA BARMAN)

Judicial Magistrate First Class

Morigaon, Assam

APPENDIX

- (A) **PROSECUTION EXHIBITS:**
EXT.-1 XEROX COPY OF AN IDENTITY CARD OF CISF JAWAN OF THE
SECOND PARTY ISSUED IN THE YEAR 2015.
- (B) **DEFENCE EXHIBITS:**
NONE
- (C) **EXHIBITS PRODUCED BY WITNESSES:**
NONE
- (D) **COURT EXHIBITS:**
NONE
- (E) **PROSECUTION WITNESSES:**
1. PW-1 SMTI. ANAMIKA DAS,
2. PW-2 SWARNA PRAVA DEKA MEDHI.
- (F) **DEFENCE WITNESSES:**
NONE
- (G) **COURT WITNESSES:**
NONE

(ANAMIKA BARMAN)
JMFC, Morigaon
Assam