

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

M.R. CASE NO. 21/2018

**Smti Aimoni Das
W/O- Sri Aditya Das,
D/O- Late Jogen Das.
Village- Ahatguri
P.S.- Dharamtul,
Dist- Morigaon, Assam**

..... First party

Vs.

**Sri Aditya Das
S/O- Sri Lakheswar Das
Village- Ahatguri
P.S.- Dharamtul,
Dist- Morigaon , Assam**

.....Second party

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon

For the first party: Mr. N.K. Bora, Ms. P. Deka, Advocates
For the second party: Mr. P. Bora, Smti. L. Das, Advocates

Application u/s 125 CrPC filed on: 17-3-2018
Written Statement filed on: 10-4-2018
Evidence recorded on: 8-5-2018, 9-5-2019, 26-8-2019 and 29-8-2019
Argument heard on: 27-9-2019 & 11-10-2019
Judgment delivered on: 25-10-2019

FINAL ORDER

1. This final order goes to dispose of an application filed by the first party above named under section 125 CrPC seeking maintenance amount of Rs.10,000/- (Rupees ten thousand) per month, for her and Rs.5000/- (Rupees five thousand),

per month, for her minor daughter, from the second party above named, who is her husband.

2. In her application, the first party has stated that on 21-11-2010, her marriage was solemnized with the second party, above named, by executing an affidavit. Thereafter, the necessary rites of marriage as per Hindu social rites, were performed and both of them started residing as husband and wife. Out of the wedlock a daughter was born. She was named as Miss Pranami Das and was aged about 7 (seven) years at the time of filing of the application. After birth of the daughter, her husband and her parents-in-law, in connection with demand of wooden furniture, clothes, utensils and money as dowry, subjected her to physical and mental harassment. On her failure to bring such dowry from her poor parents, the second party, without rhyme or reason, used to inflict slaps, kicks etc. on her. The second party had illicit relation with a married woman of the same village and he stayed in the house of the said woman. When the first party prevented the second party from doing so, the second party inflicted slaps, kicks on her, pulled her hair, threatened to kill her and also threatened to drive her out of the house. Considering her own future, the first party went on tolerating all such harassment and performed all her duties as his wife. On 14-3-2018 at about 8.00 p.m., the second party, without any reason, inflicted slaps, fist blows on her, pulled her hair and drove her out of the matrimonial house along with her daughter. Having no other alternative, she took shelter in the house of her widowed mother. As her mother is a poor woman, the first party has been facing severe financial hardship in her day to day life. According to her, the second party is a rich man and work as a service man in Central Reserve Police Force (CRPF). Therefore, she has prayed for the maintenance, as aforementioned.

3. On receipt of notice of the application, the second party appeared and contested the application by filing his written statement. In his written statement the second party has admitted the marriage with the first party as well as the parentage of the daughter of the first party but he denied the allegations leveled against him. He denied having any illicit affair with another woman and denied having demanded any dowry from her. According to him, because of his duty, he has to stay outside Assam and by taking advantage of the absence of the second

party, the first party frequently went somewhere and spent a night and it was not known to the parents of the second party and others. This fact was informed to the second party by his parents over telephone. It is also alleged by the second party that without any reasonable ground, the first party refused to live with the parents of the second party while the second party was staying at Nalbari in connection with his duty. When she was asked by the second party over telephone, she expressed her desire not to return to the house of the second party to resume their conjugal life. According to the second party, he has been in a joint family with his old infirm parents and he has to bear all the expenses of their maintenance and medical treatments. Therefore, she is not entitled to any maintenance from the second party. Hence, he has prayer for dismissal of the application filed by the first party.

4. In support of her application the first party has adduced written evidence on affidavit of 3 (three) witnesses namely Smti. Aimoni Das i.e. the first party herself, Smti. Minoti Das and Smti. Minu Das, as PW-1, PW-2 and PW-3, respectively. PW-1 and PW-3 were cross-examined and discharged. However, the first party closed her evidence without producing PW-2 for cross-examination. Therefore, as the evidence of PW-2 is not tested by cross-examination, the written evidence on affidavit of the said PW-2 is excluded from consideration.

5. The second party has also adduced written evidence on affidavit of his own as DW-1. He was also cross-examined and discharged.

6. I have heard the argument of Mr. Newton Kr. Bora, assisted by Ms. Purabi Deka, learned counsels for the first party as well as the argument of Mr. Punaram Bora, assisted by Smti. Lovely Das, learned counsels for the second party. The learned counsel for the second party by drawing attention of the court to the written evidence of the PWs have submitted that the written evidence were not sworn before Notary public or before the court and hence they are not evidence at all. The learned counsel for the first party submitted that there is an affirmation in each of the written evidence and hence they are very much evidence. It is found that the written evidence were not sworn before any Notary public or court nor the requisite amount of court fee stamps, required for swearing an affidavit, are also affixed. But there are affirmations by the PWs in the written evidence. Hence, though the PWs failed to affix requisite court fee stamps in the written affidavit,

however, the said omission alone is insufficient to discard the same. The omission is an inadvertent irregularity insufficient to discard the whole evidence. Hence, they are considered at par with a written evidence on affidavit and admissible.

7. I have perused the case record and considered the same. The following points for determination are formulated:

- (a) Whether the first party is the legally married wife of the second party?
- (b) Whether the second party, in spite of having sufficient means, has refused or neglected to maintain the first party and her minor daughter, without sufficient cause?
- (c) Whether the first party has any income of her own?
- (d) Whether the first party is unable to maintain herself and her minor daughter?
- (e) Whether the first party and her minor daughter are entitled to any maintenance and if so, how much maintenance amount they are entitled to?

Discussion, decisions and reasons therefor:

8. Point for determination No. 7(a): The second party in his written statement, written evidence on affidavit and in his cross-examination has admitted the marriage with the first party as well as parentage of the daughter of the first party. Therefore, this point for determination is answer in favour of the first party.

9. Point for determination No. 7(b): In her application, the first party stated that she was driven out of the house of the second party on 14-3-2018 at about 8.00 p.m. and since then, she has been residing in the house of her widowed mother and as her mother is a poor woman; therefore, she has been facing severe financial hardship. This fact that the first party has resided since 14-3-2018 in the house of her mother and that neither she nor her daughter has been paid any maintenance is admitted by DW-1 Sri Aditya Das i.e. second party in his cross-examination, when he revealed that since 14-3-2018 till filing of the present case, he has not paid any educational expenses for his daughter as well as for maintenance of the first party. Therefore, non-payment of maintenance to the first party and his daughter is admitted by the second party himself. This, therefore, in turn support

the contentions of the first party as PW-1 and the evidence of PW-3 when both of them stated that the first party and her daughter has been facing severe financial hardship in their livelihood. Therefore, so far as these aspects of evidence of PW-1 and PW-3 are concerned they are found to be true and both of them supported and corroborated the statements made in the application.

10. In view of the aforementioned finding of non-payment of any maintenance, the question which needs to be answered whether such non-payment is without any sufficient cause. The first party in her application alleged physical and mental harassment at the hands of the second party and her parents-in-laws. She has also stated in her application that as she prevented the second party from maintaining illicit relation with another woman, he beat her and in connection with the same, he allegedly drove her out of the matrimonial house on 14-3-2018. These allegations were supported by the PW-1 and PW-3 in their written evidence on affidavit. Though it has not been conclusively proved as to whether the second party has been maintaining any illicit relation with any other woman, as the applicant, in her application as well as in her written evidence on affidavit as PW-1 and in the written evidence on affidavit of PW-3, failed to name the woman with whom the second party has maintained illicit relations. Therefore, the allegation itself appears to be vague and superficial.

11. However, the allegation of beating by the second party is reiterated by both the PWs. It has also been revealed, that too in her cross-examination, that after about one month of her marriage, the second party demanded dowry from her. Though this demand was made after about one month of the marriage i.e. around eight years prior to filing of this application; however, the fact still remained that the second party demanded dowry from her. Her allegations in her evidence on affidavit as well as in the evidence of PW-3 could not be demolished in their cross-examinations. Therefore, the allegation of beating by the second party remained un-rebutted. Therefore, the reasons as given by the applicant in her application, as well as in the evidence of the two PWs that the second party drove her out of the matrimonial house along with her daughter appears to be more believable. Further, the date on which she was driven out of the matrimonial house by the second party

is the same date from which the second party stopped maintaining the first party and her daughter.

12. In view of the fact that the second party himself, as DW-1, admitted in his cross-examination that since 14-3-2018 he and the first party have not been staying together, therefore, the allegations of being driven out found to be true. Hence, the reason, as indicated by DW-1 in his evidence on affidavit that the first party has been residing separately from him without any reasonable ground, does not appear to be believable. Admittedly, the first party returned to the house of her widowed mother. It is not for nothing that she left the matrimonial house to face uncertain future in the house of her widowed mother. Therefore, the reason for which the first party has been residing in the house of her mother is also justified and the ground shown by the second party for refusal of maintenance to the first party and her daughter is insufficient. The fact that the second party has sufficient means is clear from the application as well as in the evidence of PW-1 and PW-3 that the second party works as service man in Central Reserve Police Force (CRPF). This fact is also admitted by the second party in his written statement, in his written evidence on affidavit as well as in his cross-examination. Though the first party has stated that the second party earns Rs.50,000/- to Rs.60,000/- per month as salary; however, the same has not been conclusively proved by any documentary evidence. Therefore, the said amount appears to be a guess work on the part of the first party. The second party also reveals in his cross-examination that he earns Rs.28,400/- per month as salary. Therefore, the second party has sufficient means to maintain the first party and her daughter.

Therefore, this point for determination is answered in favour of the first party.

13. Points for determination no. 7(c) and 7(d): The first party has reiterated as PW-1 the fact that she has no source of income of her own. The DW-1 has also admitted that he has not paid any maintenance to her and her daughter. There is also no statement by the second party in his written evidence on affidavit that the first party has any income source of her own. Therefore, it is found that the first party has no income source of her own and is unable to maintain herself and

her daughter. The primary duty to maintain the wife and the child falls on the husband and father as long as he is able to earn.

14. The provisions of Chapter IX of CrPC is a measure of social justice. The provisions are to be liberally construed as the primary object is to give social justice to women and children and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves. These provisions provide a speedy remedy to those who are in distress. These sections give effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves.

15. A person 'having sufficient means' does not signify only visible means such as real property or definite employment. If a man is healthy and able-bodied he must be held to possess the means to support his wife, children and parents. The second party is a government service holder in the CRPF drawing salary of Rs.28,400/-, per month. Therefore, he has sufficient means to provide for the first party as well as her daughter.

Hence, these two points are determined in favour of the first party and her daughter.

16. Point for determination no. 7(e): The first party has been able to prove that she is the legally married wife of the second party and the second party, in spite of having sufficient means, refused or neglected to maintain her and her daughter, that she has no source of income of her own, that she is unable to maintain herself and her daughter and that she is entitled to maintenance from her husband for herself and her daughter. Now the only question is how much maintenance the first party is entitled to?

17. We have already found that the second party earns Rs.28,400/-, per month, as salary. The first party has prayed for Rs.10,000/- for her and Rs.5000/- for her daughter, as maintenance, per month, from the second party. The first party as PW-1 revealed in her cross-examination that she filed a CR (DV) Case No.349/2018 against the second party wherein the second party was directed to pay Rs.12,000/- as maintenance and also for residence. This fact is also reiterated by the second party in his written evidence on affidavit wherein also he has stated that in CR(DV) Case No. 268/2018 (sic), this court granted Rs.12,000/-, per month, as her

maintenance. Therefore, he has stated in his written evidence on affidavit that since maintenance was granted in the CR (DV) Case No.268/2018 (sic) so, in this case, first party is not entitled to get any maintenance from him.

18. In view of the admission by the first party that an order has already been passed in CR (DV) Case No.349/2018 allowing her Rs.12,000/, per month, it is required to be determined whether she is entitled to another amount as maintenance under section 125 CrPC, and if so, how much, as the prayer in this case is also for maintenance of Rs.15,000/-, per month, at the rate of Rs.10,000/- for the first party and Rs.5000/- for her daughter.

19. In view of this court, the prayer of maintenance being similar in nature and by following the spirit of 127 (2) of CrPC, it appears to this court that considering the amount of salary received by the second party, the amount of Rs.12,000/-, per month, which has already been allowed to her, is a reasonable amount of maintenance and hence no more maintenance amount needs be allowed in favour of the first party and her daughter.

Therefore, so far as this point for determination is concerned, same is answered in part. Though the first party and her daughter Miss Pranami Das are found entitled to maintenance, however, in view of maintenance allowance of Rs.12000/- already allowed in CR(DV) case no.349/2018, no more maintenance amount needs be allowed to them.

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

21. This final order is signed, sealed and pronounced in open court on this 25th day of October, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

(A) PROSECUTION EXHIBITS:

None

(B) DEFENCE EXHIBITS:

None

(C) EXHIBITS PRODUCED BY WITNESSES:

None

(D) COURT EXHIBITS:

None

(E) PROSECUTION WITNESSES:

P.W.-1: Smti. Aimoni Das

P.W.-2: Smti. Minoti Das

P.W.-3: Smti. Binu Das

(F) DEFENCE WITNESSES:

D.W.-1: Sri Aditya Das

(G) COURT WITNESSES:

None

Chief Judicial Magistrate, Morigaon