

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, GOALPARA

Present : Elizabeth Hazarika, AJS, JMFC, Goalpara
(DATE OF FINAL ORDER : 15/05/2024)

(MCR 163/22)



PETITIONER	Jahanara Bibi
REPRESENTED BY	Rahul Amin Learned Advocate
OPPOSITE PARTY	Samer Ali
REPRESENTED BY	None Learned Counsel.

Date of Offence	
Date of FIR	
Date of Charge-Sheet	
Date of Framing of Charges	
Date of Commencement of Evidence	02/03/2024
Date on which Judgment is reserved	
Date of Final Order	15/05/2024
Date of Sentencing Order, if any	

Chief Judge (Jr. Division) No-1
Cum JMFC, Goalpara

Accused Details :

Rank of the accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences Charged With	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during trial for purpose of Section 428 Cr.P.C.

FINAL ORDER

1. The case of the petitioner in brief is that she is blind from her birth and by begging she somehow managed to save Rs.1,00,000/-. It is stated that the opposite party, despite having a wife already, married the petitioner on 03.01.2010 as per Muslim Shariah Law, for her money by making false promises. Out of wedlock, they have two children namely Samida Khatun and Sabina Easmin. It is stated that in addition to demanding dowry of Rs.80,000/-, opposite party took away her aforementioned saved money and has also not provided any sort of maintenance to her. It is furthermore stated that about 06 months ago, from the date of filing the instant petition, she was driven out from her matrimonial home along with her children, after being inflicted with physical tortures. Finding no alternative, petitioner and her two minor children took shelter in her parental home. Since then, she has been living with her parents facing financial hardship as she has no income of her own.
2. The petitioner further goes on to state that opposite party is a head mason of tiles and has sufficient agricultural land. It is submitted that from all sources, opposite party earns about Rs. 25,000/- to Rs. 30,000/- per month. In spite of having sufficient means, opposite party has been willfully neglecting in maintaining the petitioner and her minor children.



Civil Judge (J.M.)
 Cum JMFC, Goalpara
 Division No-1



3. In due course, notice was issued to the opposite party to show cause as to why the petitioner is not entitled to the reliefs prayed for. But despite receiving notice, opposite party failed to enter appearance and hence, the matter proceeded ex-parte against him vide order dated 02/03/2023.
4. The petitioner in support of her case had examined herself as PW.1 and one other as PW.2. As the opposite party remained absent, the cross examination of the PW.1 and PW.2 were dispensed with.
5. Upon hearing and on perusal of the case record I have framed the following points for determination-
 - i. Whether the petitioner is living separately from opposite party without sufficient cause?
 - ii. Whether the opposite party having sufficient means refused and neglected to maintain the petitioner and her children?
 - iii. Whether petitioner is entitled to the relief/reliefs as prayed for against opposite party?
6. I have heard the argument forwarded by the engaged counsel for the petitioner.

DISCUSSION, DECISIONS AND REASONS
THEREOF:

7. For the sake of brevity, all the points for determinations are taken up together.

Civil Judge (Jr. Division) No-1
Cum JMFC. Goalpara

8. Petitioner as PW.1 has deposed in her evidence that she got married to the opposite party on 03/01/2010. She had saved an amount of Rs.1,00,000/- and the opposite party, out of greed, married her for the said amount. She also stated that after spending the said amount, the opposite party started torturing her and also demanded Rs. 80,000/- from her. As she was unable to fulfill the said demand, about 1 ½ years ago, from 02/03/2024, she was driven out of her matrimonial house. PW.1 further stated she has two daughters namely Sabina Yesmin and Samida Khatun born out of wedlock and both of them live with her. PW.1 stated she has no source of income and at present, she is living at her parental home. PW.1 furthermore deposed that opposite party is a tiles mason by profession and earns approximately Rs.20,000/- to Rs.25,000/- per month. PW.1 also deposed that she has filed the instant case seeking maintenance of Rs. 9,000/- per month for her and her children.

9. PW.2, Nur Bhanu Bibi has deposed in her evidence that petitioner is her daughter and has filed the instant case against her husband namely Samer Ali. PW.2 also deposed that her daughter is blind, who somehow managed to save Rs.1,00,000/- by begging. She further stated that opposite party married her daughter with an ill intention of taking away the money saved by her daughter. She furthermore



Civil Judge (r. Division) No-1
Cum JMFC, Goalpara

stated that after marriage, opposite party started beating up her daughter accusing her of not doing the household chores and then drove her out from her matrimonial house. Since then, her daughter is living with her along with her two minor children. PW.2 further deposed that her daughter has filed the instant case seeking maintenance of Rs. 9,000/- per month from opposite party.



10. At this juncture it is apposite to mention herein that in **2008 (2) SCC 316 Chaturbhuji vs Sita Bai**, it was observed that the object in maintenance proceeding under Section 125 CrPC is not to punish a person but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and have a moral claim to support.
11. Also in **Rajathi vs C. Ganesan, 1999 (6) SCC 326**, the Hon'ble Supreme Court held that under Section 125 CrPC the expression "unable to maintain herself" covers means available to the wife while she was living with her husband and not after her desertion. The burden lies on the husband to prove that he has no sufficient means to discharge his obligation or that he did not neglect or refused to maintain her. It was held that the statement of the wife that she was unable to maintain herself would be enough; the husband has to prove otherwise.

Civil Judge (Jr. Division) No-1
Cum JMFC. Goalpara



12. Now in the instant case, the evidence and contention of the petitioner stand un-rebutted by any explanation or evidence on behalf of the opposite party as he remained absent during the trial in spite of notice being duly served upon him. It is also apparent from the pleadings of the petitioner that she is the wife of opposite party. From the fact and circumstance as well as the evidence put forward by the petitioner it is evident that opposite party is responsible for the present state of affairs between the parties. Furthermore, the petitioner has categorically stated that she is unable to maintain herself and her children and that opposite party despite having sufficient means refused and neglected to maintain them.
13. Therefore, due to lack of any evidence to the contrary and on perusal of the requisite affidavit submitted by the petitioner in support of her claim, it is only prudent to draw presumption in favour of the petitioner as per Section 114(g) of Indian Evidence Act and that the allegations cast upon opposite party are true to their word. Thus, ***all the points for determination are decided in affirmative and in favour of the petitioner.*** Accordingly, the petitioner and her children are entitled to get monthly maintenance amount from the opposite party under Section 125 CrPC.
14. So far as the quantum of maintenance is concerned, it is pertinent to mention that the petitioner has not

*Civil Judge (Jr. Division) No-1
Crim JMFC, Goalpara*



been able to produce any evidence regarding the income of opposite party and as such, in the absence of opposite party, his income could not be determined to decide the maintenance allowance. Therefore, keeping in mind the increasing price of essential commodities as well as the requirements of an adult single woman and two minor children, I have arrived at a conclusion that maintenance allowance of Rs. 6000/- per month to the petitioner shall meet the ends of justice.

ORDER

15. ***In view of the above discussion, the petition of the petitioner is allowed. Accordingly, opposite party is directed to pay Rs. 3,000/- to the petitioner and Rs. 1,500/- each to both the children i.e. in total Rs. 6,000/- per month to be paid to the petitioner as maintenance allowance with effect from the date of making the application.***
16. Let a copy of this judgment/final order be provided free of cost to the petitioner.
17. The final order/judgment is pronounced in the open court and given under my hand and seal on this 15th day of May, 2024 at Goalpara, Assam.

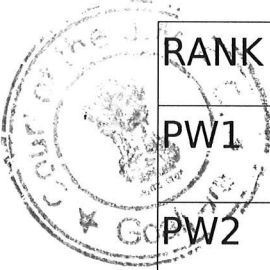

 Civil Judge (Jr. Division) No-1
 Cum JMEC, Goalpara
 (Smt. Elizabeth Hazarika)

Judicial Magistrate First Class, Goalpara

APPENDIX

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution



RANK	NAME	NATURE OF EVIDENCE
PW1	Jahanara Bibi	1 st party/ Ocular evidence
PW2	Nur Bhanu Bibi	Ocular evidence

B. Defence witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
NIL	NIL	NIL

C. Court witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
NIL	NIL	NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. NO.	Exhibit Number	Description
NIL	NIL	NIL

A. Defence:

Sr. NO.	Exhibit Number	Description
NIL	NIL	NIL

Civil Judge (Jr. Division) No-1
 Cum JMFO Goalpara

A. Court Exhibits:

Sr. NO.	Exhibit Number	Description
NIL	NIL	NIL

A. Material Objects:

Sr. NO.	Exhibit Number	Description
NIL	NIL	NIL


Civil Judge (Jr. Division) No-1
Cum JMFC, Goalpara
(Smt. Elizabeth Hazarika)

Judicial Magistrate First Class, Goalpara