

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
GOALPARA**

PRESENT: Sri. M. Newpane, CHIEF JUDICIAL MAGISTRATE, GOALPARA.

(DATE OF JUDGMENT :12.04.2023)

(MCR -167/2022)

u/s 125 Cr.P.C.

Petitioner/ 1 st party :	Saraswati Das D/o Late Sontu Ram Das Vill: Milanpara P.S. Mornai Dist: Goalpara, Assam
REPRESENTED BY	Ld. Advocate, Mr. Rofiqul Islam & Mr. Shahjabin Patgiri
Opposite Party/ 2 nd party	Kishor Das S/o Late Ramu Das Vill: Bapujinagar PS & Dist Goalpara, Assam
REPRESENTED BY	Ld. Advocate, Mr. H.R. Rahman

Date of Offence	Xxx
Date of FIR	Xxx
Date of Charge sheet	Xxx
Date of Framing of Charges	Xxx
Date of commencement of evidence	16.03.2023
Date on which judgment is reserved	Xxx
Date of Judgment	12.04.2023
Date of the Sentencing order, if any	Xxx

FINAL ORDER

1. The instant proceeding U/S 125 Cr.P.C has been drawn on the strength of a petition filed by a petitioner/ 1st party, **Saraswati Das** against the opposite party/ 2nd party **Kishor Das** claiming maintenance @ Rs. 15,000/- (Rupees Fifteen Thousand) for herself.
2. The case of the 1st party is that That, the 1st party entered into marriage with the 2nd party about 17 years ago. Since after the marriage they had been leading peaceful conjugal life. Both the parties blessed with two children namely Anisha Das and Jogmohan Das. That, about 1 year 5 months ago, the 2nd party solemnized his second

marriage with one Pinki Das of Bapujinagar, Goalpara and started to live with her. After the second marriage, the 2nd party has discarded relationship with the 1st party. That, the 1st party falls in a difficult condition and took shelter in her parental house. She has been trying to survive along with her children by doing labour works. Since last 5 (five) years, the 1st party has been living in miserable condition without help and support of the 2nd party.

- 3.** That, the 1st party is living with her children in a destitute condition and the 2nd party has been living a comfortable life with his second wife by doing hotel business. The 2nd party has been neglecting to maintain his wife and children despite of having well capacity to maintain them.
- 4.** That, the 2nd party is doing a Hotel at Bapujinagar, (opposite of Bharat Petrol Pump) and earning good, on the contrary the 1st party is facing very hardship to maintain themselves. The son of the 1st party is pursuing his education for which also expenditure is required.
- 5.** Therefore, it is prayed that your honour may kindly be pleased enough to accept this petition U/S- 125 CrPC and direct the 2nd party to pay a monthly maintenance of Rs. 15,000/- (Rupees Fifteen Thousand) only to the 1st party and for her children.
- 6.** Upon perusal of the case record and finding sufficient ground for proceeding against the 2nd party u/s 125 Cr.P.C., notice was issued to the 2nd party and the 2nd party

appeared and contested the case by filling written statement wherein he denied all the allegations except the marriage and paternity of their minor children.

7. The 2nd party, upon receipt of the notice sought time for entering into appearance through his engaged counsel but thereafter failed to appear and submit his written objection against the application of the 1st party and the case proceeded Ex-parte against the 2nd party.
8. In support of the case 1st party has adduced evidence of herself as PW1 and on closure of evidence of the 1st party, I heard arguments of the 1st party. Accordingly, argument of the 1st party is heard and upon hearing the following points are formulated for determination.

9. POINTS FOR DETERMINATION

- I. Whether the 2nd party having sufficient means neglected or refused to maintain the 1st party?
- II. Whether the 1st party is entitled to get maintenance from the 2nd party as prayed for?

10. DISCUSSION, DECISION AND REASONS THEREON:

PW1 Saraswati Das stated that she married to 2nd party around 17 years ago and they spent 10 years of their conjugal life peacefully. During continuance of their conjugal life, one son and one daughter were born to them. Her elder daughter Anisha Das is aged 16 years and son Jagmohan Das is aged 14 years. Around five years before the 2nd party assaulted her and drove her out of

her matrimonial house. Since then she has been taking shelter at her parental house along with her minor daughter and son. Around two three years back her husband solemnized second marriage with one Pinky Das and he totally neglected her and her minor children. Her son has been suffering from various illnesses but her husband never paid attention to him.

As the 2nd party did not contest the case, and the evidence adduced by the 1st party as Pw-1 remained undisputed and there appears n ground at all to disbelieve her testimony.

The 1st party stated that the 2nd party had married another woman and the explanation to Sub-section 3 of Section 125 CrP.C. clearly states .- *"If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife' s refusal to live with him."*

The factum of marriage between the 1st party and the respondent and the factum of 2nd marriage has remained undisputed.

The Supreme Court in Chaturbhuj v. Sita Bai (2008) 2 SCC 316, *has stated that the object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to*

support.

In view of the clear provision of law governing the proceeding and the facts which has been established or which could be inferred from the established facts, I have no hesitation to hold that the 1st has clearly established that she has sufficient cause to live separately from her husband.

Now coming to the 2nd point for determination, the 1st party reiterated the same facts as to her application u/s 125 Cr.P.C. and stated that her husband is a mason by profession and he earns around Rs. 20,000/- to Rs. 30,000/- per month through his profession. He never paid any maintenance to her or her children. She used to work as domestic helper in different household and somehow managing to feed her children. As her earning is not sufficient to maintain herself and her minor children who are growing young and her son is suffering from various illnesses she urgently require monetary assistance from her husband and she filed this case claiming maintenance of Rs. 15,000/- per month from her husband for maintenance of herself and her minor daughter and son.

It is clear from the evidence led by the parties that the 1st party has no sufficient income of her own and she had the responsibility of maintain her young daughter and son. The Son is also suffering from illnesses as stated. There is against nothing to disbelieve the 1st party.

Keeping above in mind and in view of discussion made while deciding point no. 1 taken for determination and the decision arrived therein I have no hesitation to hold that the 1st party is entitled to get maintenance from her husband 2nd party for herself and her minor daughter and son.

Accordingly point no. 2 taken for affirmation is decided in affirmative and in favour of the 1st party.

Now, coming to the quantum of maintenance 1st party during her evidence stated that the 2nd party earns around Rs. 20,000/- to Rs. 30,000/- per month through his profession. The 1st party has submitted affidavit of assets and liabilities and it appears that she has no income of her own so as to maintain herself and her minor daughter and son. Furthermore, the 2nd party has re-married as such it can well be inferred that the 2nd party is capable of maintaining two wives along with their children. The statement of the 1st party during her evidence remained undisputed and being a mason by profession it is natural that the 2nd party earns around Rs. 20,000/- to 30,000/- per month.

In view of discussions made above, I have no hesitation to hold that the 1st party is entitled to Rs. 4000/- per month for herself and Rs. 2500/- per month for her each minor child.

Accordingly the application filed by the 1st party

praying for maintenance from the 2nd party u/s 125 Cr.P.C. is hereby allowed with direction to the 2nd party to pay an amount of **Rs. 3,000/-** per month towards the 1st party and **Rs 2,500/- each** per month towards the maintenance of his minor daughter and son, in total **Rs 8,000/-** per month from the date of application in this instant proceeding.

Furnish a free copy of this order to the 1st party.

The case is disposed on uncontested.

Given under my hand and seal of this Court, this
12th April, 2023.

(M. Newpane, AJS)
Chief Judicial Magistrate,
Goalpara.

APPENDIX

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE
PW1	Saraswati Das	1st party

B. Defence witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE

C. Court witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. NO.	Exhibit Number	Description

B. Defence:

Sr. NO.	Exhibit Number	Description
1		

C. Court Exhibits:

Sr. NO.	Exhibit Number	Description
1		

D. Material Objects:

Sr. NO.	Exhibit Number	Description
1		

(M. Newpane, AJS)
Chief Judicial Magistrate,
Goalpara.

ORDER
MCR - 167/2022

12.04.2023:

1st party is present along with her Ld. Counsel.

2nd party is absent..

Judgment is prepared in separate sheets and appended to the case record and pronounced in the open Court.

In view of discussions and decision, 2nd party to pay an amount of **Rs. 3,000/-** per month towards the 1st party and **Rs 2,500/- each** per month towards the maintenance of his minor daughter and son, in total **Rs 8,000/-** per month from the date of application in this instant proceeding.

Furnish a free copy of this order to the 1st party.

The case is disposed on contest.

Send the Case Record to the Execution Branch.

CJM, Goalpara