

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (S)  
DARRANG :: MANGALDAI

Present: Pronab Kr Nath, AJS, SDJM(S), Darrang

Date of Final Order: 11/01/2024

**Case No: Misc 301/2022**  
(u/s 125 CrPC)

|                                     |                                                                                                                          |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Petitioner/1 <sup>st</sup> Party    | JONALI KALITA<br>D/O: Daneswar Bania<br>W/O: Pulak Kalita<br>R/O: Vill: Mahaliapara<br>PS: Sipajhar<br>District: Darrang |
| REPRESENTED BY                      | Era Moni Nath, Learned advocate                                                                                          |
| Respondent/OP/2 <sup>nd</sup> Party | PULAK KALITA<br>S/O: Biren Kalita<br>Resident of:<br>Vill: Lathapara<br>PS: Sipajhar<br>Dist: Darrang                    |
| REPRESENTED BY                      | None                                                                                                                     |

|                                                |            |
|------------------------------------------------|------------|
| Date of Application                            | 30.09.2022 |
| Date of Appearance of respondent               | NIL        |
| Date of filing WS                              | NIL        |
| Date of commencement of evidence               | 15.05.2023 |
| Date on which Final/Order Judgment is reserved | 22.11.2023 |
| Date of Final Order/Judgment                   | 11.01.2024 |
|                                                |            |

**FINAL ORDER**

1. This instant case for maintenance has arose out of an application dated 30.09.2022 filed by Smti Jonali Kalita (hereinafter to be referred as the Petitioner/1st Party) against Pulak Kalita (hereinafter to be referred as the Respondent/OP/2nd Party) under section 125 of the CrPC claiming monthly maintenance allowance of Rs 10,000/=( Ten thousand) only.

2. The prosecution story in brief is that the 1st party was married to the 2nd party about eight years ago in the year 2014 as per religious customs. After marriage both of them lived together as husband and wife at the residence. That the relationship went well for about one year.

That the 1<sup>st</sup> party has no child. The 2<sup>nd</sup> party as well as his mother started abusing her. Although attempts were made to settle the matter, the 2<sup>nd</sup> party continued the same. That she had to leave the matrimonial home under compelling circumstances on 10.08.2021 and since then she has been staying with her parents. That the 2<sup>nd</sup> party has remarried another woman.

That the 1st party has no income. The 2nd party is a driver by profession and earns Rs 20,000/= (Twenty thousand). Apart from that he has agricultural

income, fishery etc. That from all sources he earns about Rs 30,000/= (Thirty thousand) per month.

Hence, the 1st party prayed for allowing Rs 10000/= (Ten thousand) only to her as maintenance per month from the 2nd party. Hence this case.

3. Notice was issued to the 2nd party. Notice was served properly, but the respondent refrained from filing WS and hence the case was proceeded ex-parte against him.

4. The 1st party adduced evidence of two witnesses.

PW 1 (Smti Jonali Kalita), in her evidence, which has been adduced in the form of affidavit, reiterated all the material particulars which have been pleaded in her main application. Since this case has been proceeded ex-parte against the 2<sup>nd</sup> party, for the sake of brevity, the contents of the PW affidavit has not been repeated herein. At this juncture, it is evident that the evidence adduced by the 1<sup>st</sup> party has remained un-rebutted.

PW 2 (Smti Damayanti Kalita) is the mother of the 1<sup>st</sup> party. She too supported the version of the PW 1 on all material points.

5. Form the evidence of the PW 1 and PW 2, it appears that the petitioner Smti Jonali Kalita is the wife of the 2nd party and she has been thrown out of the matrimonial home by committing cruelty, she has been living with her parents and she is unable to maintain herself. The 2nd party has neglected to maintain the 1<sup>st</sup> party in spite of his having means to maintain; and as such, the 1st party is entitled to maintenance as prayed for.

6. Now coming to the financial capacity of the respondent, the PW 1 herself deposed that the income of the 2nd party is Rs 30,000/= (Thirty thousand) only per month. As per her affidavit, the respondent is a driver and also has agricultural income. But except the mere statements of PW 1 and PW 2, the 1st party has not been able to establish the monthly earning amount of the 2nd party clearly. Neither any document regarding having land nor income through other source has been produced. No corroborative evidence of whatsoever nature has been adduced to establish the claim of the monthly income. Although the testimony of the 1<sup>st</sup> party has remained un-rebutted, it will not be prudent to treat her version as gospel truth.

It is also considered that the 1st party may also supplement something to her needs with her own earning by working. Hence, considering the entire aspects of this case, an amount of Rs 4,000/= (Four thousand) only is granted to the 1<sup>st</sup> party as monthly maintenance allowance per month.

7. In terms of the mandates of the Hon'ble Supreme Court of India in the matter of ***Rajnish - Vs- Neha & another*** [Criminal Appeal No 730/2020 (Arising out of SLP (Crl) No 9503 of 2018)], it is directed that this order shall be effective from the date of filing the application. The respondent is directed to clear the arrear monthly maintenance allowance amount within six months from the date of this instant final order.

8. A free copy of this order shall be provided to the 1st party immediately.

9. With the above direction(s), this instant case stands disposed of.

Given under my hand and seal of this Court on this the 11<sup>th</sup> day of January, 2024.

**(Pronab Kr Nath, AJS)**

SDJM(S) :: Darrang :: Mangaldai

APPENDIX

LIST OF PROSECUTION/ DEFENCE/COURT WITNESSES

A. Prosecution

| RANK | NAME                  | NATURE OF EVIDENCE               |
|------|-----------------------|----------------------------------|
| PW 1 | Smti Jonali Kalita    | Petitioner/1 <sup>st</sup> party |
| PW 2 | Smti Damayanti Kalita | Other witness                    |

B. Defence Witness: NIL

C. Court Witness: NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution: NIL

B. Defence: NIL

C. Court Exhibits: NIL

D. Material Objects: NIL

***(Pronab Kr Nath, AJS)***

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