

IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE (M)
AT GOHPUR, SONITPUR

M.R. Case No. 01/2019

Smt. Mitali Sahu.....First Party

-Versus-

Sri Santosh Sahu.....Second Party

PRESENT: Smt. Pooja Sinha, AJS
Sub Divisional Judicial Magistrate (M)
Gohpur, Sonitpur

Advocate for the 1st Party : Sri Tapas Chatterjee
Advocate for the 2nd Party : None
Evidence Recorded on : None (Evidence on affidavit)
Argument heard on : 06.05.2019
Final Order passed on : 06.05.2019

FINAL ORDER

- 1.** This order goes to dispose of case under section 125 Cr.P.C brought by a wife against her husband claiming monthly maintenance of Rs. 8,000/- (Rupees Eight thousand) per month for herself and her minor child.
- 2. The case of the 1st Party/Petitioner in brief is that-** The First Party Smt. Mitali Sahu was married to Second Party Sri Santosh Sahu about 6 years ago. After their marriage, they started their conjugal life at the house of the Second Party at Bagor pathar. That, Second Party used to physically torture upon First Party and verbally abused her. That, out of their wedlock a girl child was born on 14.02.15. The Second Party drover her out along with their infant in the year 2015 (date not mentioned). That, Second Party has also assaulted her father. Hence, she filed a criminal case against the Second Party at Gohpur P.S. and the

chargesheet is filed against the Second Party in that case. That, First Party is taking shelter at her paternal house since 2015.

3. That, Second Party has not come forward to provide maintenance in any form to the First Party and their child till date. The First Party has no source of income of her own. However, Second Party is a mason. He has his own landed property with a monthly earning of Rs.20,000/-. Therefore, as the Second Party has neglected his duties towards his wife. Hence, the First Party has prayed for monthly allowance of Rs.8,000/- to be paid by the Second Party to herself and her minor child.
4. **On receipt of the notice on 08.02.2019, the 2nd Party/Petitioner did not appear before the Court. Hence, case proceeded ex parte.**
5. During the trial the 1st Party/Petitioner has examined 1 (one) witness the First Party herself.
6. **: POINTS FOR DETERMINATION :**
 - a) ***Whether the 1st Party/Petitioner legally married wife of the 2nd party/Opp. Party?***
 - b) ***Whether the 1st Party/Petitioner unable to maintain herself?***
 - c) ***Whether the 1st Party/ Petitioner has refused to live with the 2nd Party/Opposite Party without just ground?***
 - d) ***Whether the 2nd Party/Opp. Party having sufficient means has refused or neglected to provide maintenance to the 1st Party/Petitioner and their minor child?***
 - e) ***Whether the 1st Party/Petitioner is entitled to monthly maintenance allowance from the 2nd Party/Opp. Party, if so, what will be the proper per month allowance?***

7. **: DISCUSSION, DECISION AND REASONS THEREOF :**

On careful perusal of the materials and evidence on record and by hearing the arguments duly advanced by the Learned Counsel for 1st Party sides, I come forward with the following discussion and decision thereof, which is in a point wise manner.

Point (a), (b) & (c):

8. That, the First Party has forwarded herself as P.W.1. She has deposed in the same lines as stated in the Plaint.
9. **Now, there is no adverse claim against the plea taken by the First Party on record. Hence, it is held that First Party is the legally married wife of the Second Party, who had just ground not to reside with Second Party due to torture inflicted upon her and that she does not have sufficient means to maintain herself and their minor child.**

10.Point (d) & (e)

The First Party stated that Second Party is a mason with landed property in his name. As regard to how much monthly allowance is to be received by 1st Party from 2nd Party, it is to be kept in mind that quantum of maintenance depends on earning of the person who is ordered to pay maintenance and the requirement of the person to whom maintenance ordered to be paid. Here, First Party has not brought any documentary evidence to prove the monthly income of the Second Party.

11. Hence, considering all aspects like status, social background, cost of living and capability of 2nd Party/Opp. Party, I am of the opinion that a person who is able bodied and who works as a mason at present times can comfortably afford Rs.1800/- as monthly maintenance allowance towards the First Party and Rs.1,000/- as monthly maintenance allowance towards the daughter until she is married off.

12. Accordingly, the Second Party/Opp. Party is directed to pay a sum of Rs.1800/- (Rupees Eighteen hundred) to the First Party and Rs.1,000/- (Rupees One thousand) to the daughter until she is married off from the date of this order. Let a copy of this order be furnished to the 1st Party at free of cost.

13. Accordingly, this case is disposed of ex parte.

The final order is pronounced and delivered in the open Court on this **06th day of May, 2019** under my hand and seal of this Court.

(Pooja Sinha)
Sub Divisional Judicial Magistrate, (M),
Gohpur, Sonitpur

Dictated and corrected by me.

(Pooja Sinha)
Sub Divisional Judicial Magistrate, (M),
Gohpur, Sonitpur

SONITPUR DISTRICT JUDICIARY

APPENDIX

First Party Witnesses-

1. Mitali Sahu

Second Party Witnesses/Opposite Party

NIL

First Party Exhibits-

Ext.1- Birth Certificate of Pinky Sahu

Second Party Exhibits-

NIL

(Pooja Sinha)
Sub- Divisional Judicial Magistrate (M),
Gohpur, Sonitpur