

**DISTRICT : SONITPUR**

**IN THE COURT OF THE ADDL. CHIEF JUDICIAL  
MAGISTRATE, AT TEZPUR**

**M.R. Case No. 54 of 2012**

**U/S 125 Cr.P.C.**

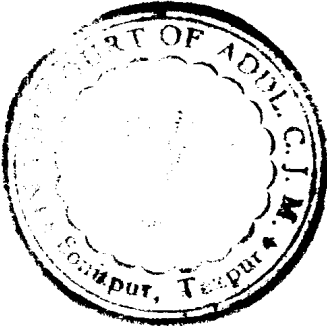
**Smti. Luckymoni Bhuyan**

.....First Party

**Vs.**

**Sri Ranjit Bhuyan**

.....Second Party



**Present :- Smti B.Kshetry, Addl. CJM, Sonitpur, Tezpur.**

**APPEARANCE**

For the First Party :- Mr. B.Barthakur, Ld. Advocate.  
For the Second Party :- Mr.A.K. Mahanta, Ld. Advocate.

Evidence Recorded on :- 23.05.13, 11.07.13, 24.12.13, and  
12.02.14

Argument Heard on :- 27.03.14, 24.04.14

Judgment Delivered on :- 8.05.14

**JUDGMENT**

1. This proceeding has arisen out of a petition filed by the First Party under Section 125 Cr.P.C. claiming maintenance for herself from the Second Party.

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2. The case of the First Party in brief is that the First Party is the married wife of the Second Party and they got married in the year 1996 as per Hindu rites and customs and thereafter the First Party lived with the Second Party as husband and wife at her matrimonial house for quite some time. Thereafter the Second Party gradually started torturing her physically and mentally on some trivial matter and he used to torture her after getting drunk very often. The First Party contended that though the Second Party is an employee of Assam Police yet he insisted her to bring money from her paternal house and when she could not fulfil his demand he used to torture her and he even disentitled her and her two minor children from any maintenance. The Second Party asked the First Party to arrange for her maintenance and survival from her parents. She further contended that even being a govt. employee the Second Party failed to provide educational expenses to his minor children thereby causing mental cruelty to them and he even very often used to deprive the First Party from her food and used to drive her out of her house. The First Party further contended that though she stayed at the house constructed by her father on his own land, yet the Second Party drove her out from that house. He locked the house and started to live at his quarter at Police Reserve at Tezpur. On 14.01.12 when the First Party failed to bring Rs.1 lakh from her parents as demanded, the Second Party badly tortured her and even threatened her to kill. He, then, forcefully drove her out keeping her children with him. Finding no way out, the First Party started to live with her parents. Since then, the Second Party never provided any maintenance to her. The First Party stated in her petition that the Second Party is a govt. employee drawing a salary of Rs. 17,000/- per month and the First Party having no source of income is to depend on her parents. The first Party has claimed maintenance amounting to Rs. 5000/- only per month for herself from the Second Party.

3. The Second Party has contested the case by filing written statement wherein the Second Party has inter alia denied each and every allegation levelled against him by the First Party. The Second Party has further stated in his pleading that he married the First Party after love affairs between them and they led a conjugal life for fifteen years and that they had a son and a daughter out of the wed-lock and that he had been maintaining the First Party and his children in all spheres of life devoid of any crisis from any corner. He pleaded that he even undertook all the expenses for his children including clothing, fooding, education, tuition etc. He further averred that it was the First Party who eloped with another man of different religion taking advantage of absence of the Second Party due to his job at Morigaon and for that the Second Party instituted Tezpur Police Station Case No. 94/12 under Section 361/366 of IPC and police recovered the First Party and the other man from Jorhat. He stated that their conjugal life went off well but it is for her elopement and subsequent co-habiting with the other man has caused breakdown to their conjugal life. He stated that out of revenge the First Party instituted criminal cases against him under section 406 and 498(A) of IPC separately and also the present case against him.

The Second Party further contended that due to his transferable job he opened joint salary account with the First Party so that during his absence the First Party can withdraw money according to her needs, but the First Party had withdrawn Rs. 2 Lakhs from the said joint salary account and fled away with the other man taking the ornaments and other articles. He stated that the First Party tried to bring her children with her but the children did not go finding fault in the character of their mother. He further stated that he purchased one Tata Sumo in the name of the First Party vide Registration No. AS-01-R/3555 which was sold by the First Party behind the back of the Second Party and the money is still lying with her. The Second Party stated that he

has constructed an Assam Type house by availing personal loan over his land allotted by Govt. and the instalments are being paid by him but the First Party has been occupying the said house driving out the Second Party and his children. The Second Party further averred that out of his meagre salary he has to maintain his two children. His daughter is studying at St. Joseph's Convent and his son is studying at Don Bosco School and he has to provide them all expenses besides maintaining his poor parents and the instalments for the said loan is also being cut from his salary. He further stated that the family members of the First Party are very rich and almost all of them are in job and further the said amount of Rs. 2 Lakhs taken by her from his salary account and the amount obtained by her in selling the Tata Sumo vehicle are still lying with her and she has been enjoying the house constructed by him with all properties there and as such she is not entitled to maintenance. The Second Party averred that the First Party is a woman of loose character and so she had left the company of the Second Party after fifteen years of marriage leaving her children and leading an immoral life with another man. As such, she is not entitled to maintenance and prays for dismissal of the petition.

4. The First Party, in support of her case, has examined as many as 2 witnesses including herself . While the Second Party has examined three witnesses including himself .
5. I have heard the arguments put forward by the Ld. Advocates of both sides and perused the pleadings as well as the evidences of both the sides.

6. Upon perusal of the pleadings of both the parties and upon hearing the arguments, the following issues have been framed -:

1. Whether there is just and reasonable ground for the First Party to live separately from the Second Party ?

2. Whether the First Party is living in adultery and therefore disentitled to maintenance?

3. Whether the First Party is incapable to maintain herself and whether the Second Party having sufficient means neglected or refused to maintain the first party?

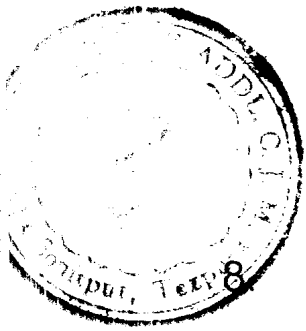
4. Whether the first party is entitled for any maintenance and if so, what quantum?

7. **DISCUSSION, DECISION and REASON THEREOF:**

**POINT NO. 1:**

The First Party in her evidence as PW 1 has deposed that after about four years of their marriage she had been subjected to mental and physical torture by the Second Party under the grasp of alcohol and he often asked her to bring money from her parent's house. She further deposed that on the day of Magh Bihu Uruka of 2012 she was tortured physically by the Second Party after he got drunk. And as such, she came to her paternal house alongwith her 8 years old son namely, Manash Jyoti Bhuyan. She stated that her 14 years old daughter namely, Ritumoni Bhuyan was also left by the second party in her company. She further stated that on the very next day the Second Party took the two

children with him to his quarter at Police Reserve at Tezpur and while the First Party went to bring them back, she was threatened to kill by the Second Party. She stated that presently she has been staying at their house at Balichapori jointly constructed by both the parties.




In support of First Party's case Pw-2, Smti. Kunu Borgohain deposed that both the parties got married about 15-16 years back and presently First Party has been living with her mother as the Second Party drove her out of his house and the Second Party has not been maintaining her and even has not come to take her back. She stated that two children of the First Party has been living with their father, the Second Party.

9. In order to rebut First Party's evidence the Second Party examined his daughter and son as DW 1 and DW 2 and himself as DW 3. DW 1 and DW 2 corroborated to the point that the First Party eloped with another man named Jewel Ahmed and she was later caught by police and since then they have no relation with her mother. The evidence of the Second Party has been recorded as DW 3 who supported his pleading and stated that the First Party went missing on 21.01.12 and he later lodged FIR and later recovered the First Party alongwith another Muslim man named Jewel Ahmed from Jorhat on 23.01.12. He stated that the First Party told him in police station that as she loved Jewel so she eloped with him. He further stated that since 23.01.12 the First Party has been living separately in his newly constructed house under Govt. allotted land which is constructed by him out of bank loan and that the children are staying with him. He stated that the kidnapping case against said Jewel is pending in the Ld. Sessions Court where he deposed as witness. He further stated that the Second Party opened bank accounts in the name of First Party at SBI Mission Chariali Branch, UCO bank, and Mahabhairab Samabay Samiti Bank and that as she eloped with another

man withdrawing all the deposits the Second Party and his children are not willing to take her back.

10. From the evidence of the Second Party it has become clear that the Second Party is not willing to take the First Party back to his company and the crucial point at hand now is to determine whether for this reason the First Party is living separately from the Second Party.



The Second Party in his pleading and in his evidence as dw-3 alleged that the First Party eloped with another Muslim man named Jewel Ahmed and DW 1 and 2 corroborated this point. The First Party even suggested DW 1 Smti. Ritumoni Bhuyan that she was forcibly taken by Jewel Ahmed which DW 1 denied. The Second Party has contended that he lodged FIR and later police recovered them and the case is pending in the Ld. Sessions Court where he adduced evidence. But no evidence pertaining to this has been brought on record by the Second Party. Now, it is clear from the evidences on record that the first party is living separately from the second party as he is not willing to keep her with him in the Govt Quarter.

12. The separate living of the First Party from the Second Party is thus ascertained from these facts and it can be presumed that in such a neglected situation no Hindu wife would like to stay with her husband where such allegation is from the side of her husband himself.
13. Therefore, I hold that there is reasonable and sufficient ground for the First Party to live separately from the Second Party. Thus, this issue is decided in affirmative and in favour of the First Party.

**POINT NO 2-**

14. The second party has alleged that the first party is living in adultery and upon this allegation only, he is not ready to take the first party to his house. Section 125(4) of Cr.P.C. provides that "no wife shall be entitled to receive any maintenance from her husband if she is living in adultery." The term 'living in adultery' has engaged the attention of many courts. In Ramsaran Vs. Soman Wati [1964] 1 Cr.L.J. 483 [Punj.], it has been observed [at p.486]:-

" 'Living in Adultery' is living together as husband and wife and exercising sexual rights and duties implied by such relation when legally created. Proof of occasional acts of illicit intercourse may fall short of what is intended by the expressions 'living in adultery'. It suggests a man and the wife of another, living continually as husband and wife. An adulterous intercourse is a condition contemplating repetition of extra marital relationship when opportunity offers itself. It is a condition of cohabitation in contradistinction to occasional acts. The wife forfeits her right to be maintained on proof of repeated adulterous meetings."

15. In Kista Piljai Vs. Amirthammal AIR 1938 MAD 833 : [39 Cri.L.J.951], the words 'living in adultery' are indicative of the principle that occasional lapses from virtue, are not sufficient and it must be shown that the wife was actually living in adultery with someone else, at or about the time of the application, which disentitles her to receive maintenance. It is observed therein that :- "Continued adulterous conduct is what is meant by living in adultery".

16. Therefore, the term 'living in adultery' has now been consistently held to mean an outright adulterous conduct where the wife lives in a quasi-permanent union with the man with whom she is committing adultery. It is crystal clear that the continuous adulterous conduct is what is meant by "living in adultery".



17. The Orissa High Court in BASISHNAB's case [cited supra] 1993 Cri.L.J.238 has held that :-

" As held in the case of Smt.Rachita Rout [Supra] merely proving one or more instances of lapses in the character of the wife is not sufficient to absolve the husband from his liability to pay maintenance to her. Therefore, even assuming that the instances alleged by the petitioner are held to have been established still he will not be entitled to succeed to deny his liability for payment of maintenance. The entitlement of the opposite party to maintenance which flows from the marital relationship, which is admitted in this case, subsists."

18. The Bombay High Court in PANDURANG NARKU NATHE's case [cited supra] 1997 Cri.L.J.3976 has held in paragraph 8 that :-

"8.In my view the expression "living in adultery" in the sense in which it is used in section 125 Cr.P.C., connotes a wife living perpetually or semi perpetually as a wife with a male; other than her husband and having sexual relations with him. Sporadic instances of sexual relationship between a wife and a person other than her husband, would not fall within the ambit of the expression "living in adultery". It is only a wife living in adultery who is not entitled for maintenance u/s.125[4] Cr.P.C.; a wife who is occasionally guilty of committing adultery would not forfeit her claim for maintenance under the said section."

19. The Andhra Pradesh High Court, by placing reliance on the Division Bench decision of the Karnataka High court in P.Subramaniam Vs. T.T.Ponnakshiammal AIR 1958 Mys.41 : [1958 Cri.L.J. 397], in Aleti Jagadishwari V. Aleti Bikshapathy reported in 1998 Cri.L.J.2503 has held that :- "after careful consideration of the law on the point, we are of the opinion that it is not a stray act or two of adultery that disentitles a wife from claiming the maintenance from her husband; but it is a course of continuous conduct on her part by which it can be called that she is living an adulterous life that takes away her right to claim the said maintenance. "

20. The settled positions of law as emerged from the decisions cited supra are to effect that -:


(i) "Continued adulterous conducts is what is meant by 'living in adultery' " and "proof of occasional acts of illicit intercourse may fall short of what is intended by the expressions 'living in adultery'. (ii) 'living in adultery' held to mean an outright adulterous conduct where the wife lives in a quasi-permanent union with the man with whom she is committing adultery. (iii) "living in adultery" as per Section 125 (4) Cr.P.C. connotes a wife living perpetually or semi perpetually as a wife with a male other than her husband and having sexual relations with him and sporadic instances of sexual relationship between a wife and a person other than her husband, would not fall within the ambit of the expression "living in adultery".

21. If the materials available on record in the instant case is tested in the light of the above well settled principles of law laid down in the decisions cited supra, then this Court has no hesitation to hold that the second party has miserably failed to prove that the first party was "living in adultery" as contemplated under Section 125 (4) Cr.P.C. The allegation of adultery has not been proved by the Second Party with cogent evidence and also by eliciting answers from the cross-examination of the first party. It is the burden of the second party to prove the allegation of adultery by producing acceptable evidence. It has to be proved that the first party was leading an adulterous life. As, there is no iota of proof that the first party is living in adultery, so she is entitled get the maintenance. This point is , thus, decided in favour of the first party.

**POINT NO. 3:**

22. The First Party in her pleading and evidence stated that the Second Party has not given any maintenance to the First Party till date though he has been maintaining her two children living with him. The First Party stated that she has no source of income on her own and the Second Party is an employee of Assam Police drawing salary of Rs. 18000-

19000/- per month besides having cultivable land and from these other sources including his salary he has an income of Rs. 30000-40000/- per month.



23. The Second Party in his pleading and evidence admitted that he is an employee of Assam Police and drawing a salary of Rs. 17000/- per month. Though the Second Party through the evidence of DW 1 stated that the First Party is having temporary job in the chamber of Dr. T.P Haldar but he failed to adduce any evidence in support of this contention. The stand of the second party is that the first party is living in the house constructed by him at Mara-Bharali by availing loan from the bank, that she has let out one part of the house on rent. No tenants have been examined to prove the same. Moreover, there are no other evidence on record which shows that the First Party is having income of her own sufficient to maintain herself. Therefore, it has come out clearly that the second party did not provide the first party with any maintenance after she left his house. Furthermore, allegations of sale of Tata Sumo vehicle by the First Party and withdrawing of Rs. 2,00,000/- from joint bank account by the First Party, there is no cogent evidence on record which proves this. Hence, burden of adducing evidence to prove these aspects have not been discharged by the Second Party. The burden of proving the contention of the First Party that the Second Party is having cultivable land and thereby making extra income therefrom has not been duly discharged by her.

24. The principle underlying in Section 125 Cr.P.C. is to diminish vagrancy and destitution to a neglected woman and child, etc. unable to maintain herself and themselves who have right to live like a human being having all the basic amenities of life. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. So, it is well proved that the

second party having sufficient means neglected or refused to maintain the first party and the first party has no income of her own. This point is thus decided in favour of the first party.

**POINT NO 4 :-**

25. Since it is proved that the Second Party is having good salary per month being employee of Assam Police he must afford maintaining his married wife. Maintaining his children and parents is also his fundamental duty who are unable to maintain themselves, but this itself does not absolve him from his equal fundamental duty to maintain his wife who is unable to maintain herself. Thus, I hold that the First Party is entitled to maintenance from her husband, the Second Party and this issue is decided in favour of the First Party.

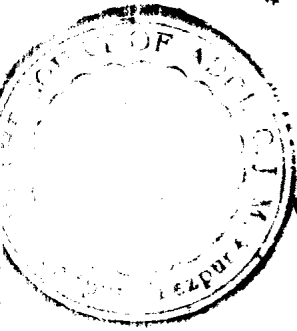
26. Regarding the quantum of Maintenance, as admittedly the salary of the Second Party is Rs. 17,000/- per month. Regarding contention of the Second Party that he availed personal loan from bank to construct his house at Balichapori, there is no cogent evidence on record substantiating this aspect. The first party has claimed that the Second Party is having cultivable land and thereby making extra income therefrom but the burden of proving the same has not been duly discharged by her. Therefore, after considering the aspect of maintaining the two minor children by the Second Party, I am of the opinion that the First Party is entitled to maintenance amounting to Rs. 2,000/- only per month.

**ORDER**

In the facts and circumstances of the case, the Second Party is directed to pay a sum of Rs. 2,000/- (Rupees Two Thousand) only per month to the First Party with effect from the date of passing this order.

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The misc case is disposed of, on contest.

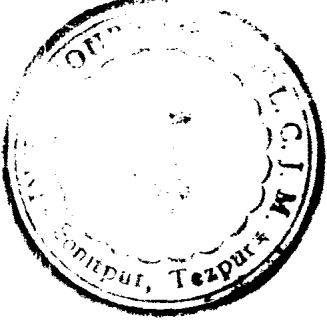


Given under the hand and the seal of this Court on the day of 8th May, 2014.

8.5.14

Addl. CJM, Sonitpur, Tezpur

ADDL. CHIEF JUDICIAL MAGISTRATE  
SONITPUR, TEZPUR



(MR Case No. 54 of 2012)

## APPENDIX

### First Party's Witnesses:

P.W.1 : Smti. Luckymoni Bhuyan  
P.W.2 : Smti. Kunu Borgohain

### Second Party's Witnesses:

D.W.1 : Smti. Ritumoni Bhuyan  
D.W.2 : Sri Manash Jyoti Bhuyan  
D.W.3 : Sri Ranjit Bhuyan

### First Party's Exhibits:

NIL

### Second Party's Exhibits:

NIL

8.5.14.  
Smt.B.Kshetry  
Addl. CJM, Sonitpur, Tezpur  
Smt. B. Kshetry  
Sonitpur, Tezpur