

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE  
SONITPUR :: TEZPUR.**

**Criminal Revision No. 5(S-1) 2011.**

Sri Nagen Das ..... Revision Petitioner

- Versus -

1. Smti Ritamoni Das and ..... OP NO.1.  
2. State of Assam ..... OP NO.2.

**Present : Mrs. M. Nandi,AJS,  
Addl. Sessions Judge,  
Sonitpur, Tezpur.**

**Appearance :**

For the Revision Petitioner : Sri B.Borthakur,, Advocate.

For the Opp. Party No.1 : Sri A.K. Saikia,  
Advocate.

For the OPP. No. 2 : Sri H.P. Sedai, Addl.P.P

**Date of argument : 14-03-2012.**

**Date of judgment : 23-03-2012.**

**J U D G M E N T.**

**1.** This revision has been filed against against the order and judgment dated 30-07-2010 passed in connection with Misc. Case 37/2009 U/s. 125 of Cr.P.C by learned Sub-Divisional Judicial Magistrate, Soniptur, Tezpur directing the petitioner/Opposite party to pay an amount of Rs. 1500/- per month for his wife Ritamoni Das and Rs. 1500/- for their child from the date of passing of the order.

**2.** The brief fact of the case is that the Opp.No.1 Smti Ritamoni Das filed a maintenance case being Misc. Case No. 37/09

U/s. 125 Cr.P.C. against the petitioner Nagen Das claiming monthly maintenance for herself and her minor child. But the petitioner on receipt of the notice from the Court of learned SDJM(S), Tezpur appeared and submitted written statement. Accordingly, the case was fixed for hearing of the parties. During trial of the case, statement of the witnesses were recorded and on hearing the argument of both sides, the judgment and order dt. 30-07-10 was passed directing the present petitioner to pay monthly maintenance of Rs. 3000/- only (Rs. 1500/- for OPNo. 1 and Rs. 1500/- for their minor child) from the date of the order.

**3.** Being highly aggrieved and dissatisfied with the order and Judgment dated 30-07-2010 passed by the learned Sub-Divisional Judicial Magistrate(S), Sonitpur, Tezpur, the petitioner prefers this petition on the following grounds :

i) for that the learned trial court erred in law as well as in fact while passing the order and Judgment dated 30-07-2010 against the present petitioner U/s. 125 Cr.P.C. in Misc. Case No. 37/2009;

ii) for that the learned Judicial Magistrate has miserably failed to appreciate the evidence on record adduced by both the parties and as such the judgment and order of the learned trial Magistrate in Misc. Case No. 37/09 is liable to be set aside ;

iii) for that there are sufficient evidence on record to show that the OP NO.1, being an arrogant and ill tempered lady and always treated her husband with cruelty. The OP No.

leads her life on her own way and was always disrespectful and disobedient towards her husband but the learned trial Magistrate failed to appreciate the above facts and passed order allowing maintenance to the OP No.1 . As such the impugned order is bad in law and liable to be set aside.

iv) for that the evidence which are available in the case record revealed that OP NO. 1 at her own will left the matrimonial house and no occasion petitioner drove her out and petitioner and his family member never demanded any dowry or ill treated the OP NO.1. So, the learned SDJM ought not to pass an order of maintenance against the present petitioner;

v) for that the present petitioner has no sufficient fixed income as he earns his livelihood by working in a temple so the learned SDJM, Tezpur ought to consider the said fact and should not pass an order for payment of huge sum of maintenance in favour of the Opposite party;

vi) for that the learned trial Magistrate did not apply her mind judiciously while allowing the maintenance to the Opposite Party No.1 Hence, the impugned judgment and order is liable to be set aside.

**4.** I have perused the revision petition, evidence of the witnesses recorded in Misc. Case No. 37/09 and the judgment and

order passed by the learned Sub-Divisional Judicial Magistrate,(S), Sonitpur,Tezpur on 30-07-2010.

**4.** It is an admitted fact that the petitioner/Op No.1 i.e. Ritamoni Das is the legally married wife of the present petitioner Nagen Das. It is not disputed that out of their wedlock one female child, Lucky Das by name was born. The allegation against the present petitioner is that during their conjugal life he started to torture his wife/OP No.1 and ultimately she has driven out from her matrimonial home and finding no other alternative she took shelter in the house of her parents and filed the instant case claiming maintenance from her husband for herself and her minor daughter.

**5.** The present petitioner filed written statement wherein he admitted the fact that OP No.1 is his legally married wife and out of their wedlock a female child was born but he denied all other allegations as alleged by the petitioner in her petition. It is contended in the written statement that on 08-02-2009 the present OP No. 1 wanted to go to her parental house to attend Holy Pal Nam at her village but the present petitioner simply asked the OP No. 1 to postpone the idea as already the Holy Pal Nam was going to be held at their own village at Jengachuburi and the petitioner himself promised that on the next day i.e. 09-02-09 he himself would accompany the OP No.1 along with their only child to her parental house. But in the evening time when the petitioner came from the Pal Nam, the OP No.1 had already left to her parental house with their minor daughter Lucky Das. The actual fault is of the OP No.1 who did not want to live with her husband.

**6.** In this case the petitioner/OP No.1 adduced 3 witnesses in support of her case. On the other hand, the OP/ petitioner examined 2 witnesses including himself.

PW 1 Ritamoni Das deposed in her evidence that after 4/5 months of their marriage her husband demanded one pair of cows, one colour TV and Rs. 1,00,000/- and used to beat her. In spite of that she continued her conjugal life. In the mean time she gave birth to a child. But ultimately she has been driven out from her matrimonial home and at the time of leaving her matrimonial home she was compelled to put her signature on some blank papers and she took shelter in the house of her parents along with her child.

PW 2 Robiram Koch and PW 3 Raju Das reiterated the same fact of demand of money and physical torture towards the OP No.1 and ultimately she has been driven out from her matrimonial home and she took shelter in the house of her parents along with her child.

**7.** On the other hand, the present petitioner who was examined as DW 1 in Misc. Case No. 37/09 alleged that his wife Ritamoni Das had left his house according to her own will. He deposed in his evidence that his wife went to the house of her parents on the day of Satya Narayan Puja in the house of her parents but did not return back. Though he stated in his deposition that when his wife asked for his permission to allow her to go her parent's home, he accorded his permission and his wife went to the house of her parents but in written statement PW 2 stated that when his wife on 08-02-09 wanted to go to her parental house to attend the Holy Pal Nam at her village but the present petitioner requested his wife to postpone the idea as already the Pal Nam was going to be held at their village. According to the present petitioner when he came from Pal Name his wife had already left for her parental house with their daughter. But DW 1 replied in his cross-examination that his wife and their child are staying in the house of her parents for last one year. During her stay in her parent's house he did not provide any maintenance allowance to her.

It is noticed that though the OP No.1 made allegation against her husband that he demanded money and used to torture her but she did not file any criminal case against her husband. On the other hand, the present petitioner alleged that his wife voluntarily left his house according to her own will. He also did not give any proper explanation why his wife left his house but it is an admitted fact that the OP No.1 is the legally married wife of the present petitioner and out of their wedlock one female child was born namely Lucky Das. It is also admitted by the present petitioner that for last one year his wife and their child are staying in the house of the parents of the OP No.1 and he did not provide any maintenance allowance to his wife and child. The parents of the OP No.1 are maintaining his wife and their child. It is the duty of the husband to take care of his wife and child and provide sufficient food and other articles necessary to lead a comfortable life.

As per Section of 125 Cr.P.C. - the object is to compel a man to perform the moral obligation which he owes to society in respect of his wife and children so that they are not left beggared and destituted on the scrap heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence.

For getting an order of maintenance U/s. 125 Cr.P.C. neglect or refusal to maintain must be proved. Neglect or refusal can be inferred from words and conduct of the husband. In the instant case, the oral evidence showed that the OP No.1/wife had been ill-treated in the house of her husband. The statement of the OP No. 1, her brother and other witness showed that she was maltreated in the house of her husband. The husband denied the fact in his written statement and in his evidence. But it appears that during the period the OP No.1 and her daughter stayed at his father's place, the husband did not offer or send any maintenance allowance for her and

her minor daughter. These circumstances are sufficient to lead to the conclusion that there are neglect and refusal on the part of the husband to maintain his wife and child.

**8.** Regarding quantum of maintenance, according to the present petitioner he has one and half bighas of land and a pair of buffalo by which he earns his livelihood for whole year. But from the evidence of DW 1 (present petitioner), it can not be ascertained what is his monthly income. No particular question is put to him at the time of cross-examination. It is not found from the evidence on record whether the petitioner possesses a good health. The present OP No. 1 deposed in her evidence that the income of her husband is Rs. 10,000/- per month. Though the present petitioner denied the fact but it appears from the evidence on record that he has sufficient landed property from which he earns his livelihood. It transpires that he has capacity to maintain his wife and child.

In this case, learned trial court awarded Rs. 1500/- each to the wife and child i.e. Rs. 3000/- per month but the present petitioner is not a salaried person and he did not pay any income tax. So, his present earning can not be ascertained from the fact that that husband has one and half bighas of land and one pair of Buffalo. It can not be presumed that he is capable of earning sufficient means and is in a position to pay Rs. 3000/- per month to his wife and child. That would be against the provisions of Section 125 Cr.P.C which saddles the husband with the burden of paying maintenance to his wife and child. Therefore, in order to saddle the husband with the burden of paying maintenance to his wife, it may be established first that the husband has sufficient means to pay the same. So, in my considered view, as OP No. 1 is the legally married wife of the present petitioner and out of their wedlock one female child was born, they are entitled to get maintenance allowance from the

present petitioner. But the maintenance allowance should be reduced to Rs. 1000/- each to the OP No.1 and her child.

**O R D E R.**

**9.** In the result, the revision petition is party allowed with the aforesaid modification. The present petitioner is directed to pay Rs. 1000/- each to the OP NO.1 and their child i.e. Rs. 2000/- per month as their maintenance allowance from the date of passing of the order of the trial court.

This Revision is disposed of accordingly.

**10.** Send back the LCR with a copy of this Judgment.

**11.** Given under my hand and seal of this Court on this 23rd day of March, 2012.

( M. Nandi )  
Addl. Sessions Judge ,  
Sonitpur ,Tezpur.

Dictated and  
corrected by me.

( M. Nandi)  
Addl. Sessions Judge ,  
Sonitpur ,Tezpur.

Typed by me.

(R. Hazarika)  
Steno.