

APPENDIX -12**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS****Present:** Smt. Darshana Nath, JMFC, SONITPUR, TEZPUR**[Date of the Final Order]**

14.10.2022

[MR Case No. 18 of 2019]

Petitioner :	Milan Sarkar D/o- Bhasan Sarkar R/o- Vill- No. 2 Sitalmaril , PS- Dhekiajuli, Dist.- Sonitpur, Assam.
REPRESENTED BY	Basanta Sarmah, Ld. Counsels.
Opposite Party	Surjya Mohan Biswas S/o- Taralal Biswas R/o- Vill- No. 2. Sitalmaril , PS- Dhekiajuli, Dist.- Sonitpur, Assam.
REPRESENTED BY	Bhanu B. Biswas, Anjali Das, Rimo Das , Ld. Counsels.

APPENDIX -13

Date of Offence	-
Date of FIR.	-
Date of Charge-sheet	-
Date of Offence Explained	-
Date of commencement of evidence	07-02-2020
Date on which judgment is reserved	20-09-2022, 07-10-2022
Date of the Judgment	14-10-2022
Date of the Sentencing Order, if any	-

ACCUSED DETAILS:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offence charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 438, Cr.P.C.
2 nd party	Surjya Mohan Biswas	Nil	Nil	U/S 125 of CrPC.	Nil	Nil	Nil

FINAL ORDER

1. The instant case has been filed by the first party/petitioner against the second party/opposite party claiming maintenance of Rs. 8,000/- (Rupees Eight thousand) for herself and for her child per month u/s 125 CrPC.
2. The case of the first party/petitioner in brief is that she was married to the second party on 11/02/2004 as per Hindu Rites and Laws. After solemnisation of their marriage, the first party went to the house of second party and both started to live together as husband and wife. After a few days of marriage, second party started to torture first party mentally and physically. At the time of marriage, second party had a Homeo Pharmacy at Nagaon, but due to some reasons, the business of the shop was not well and hence, the second party took a loan of Rs. 7000/- from his friend and first party repaid all loan. But the second party beat the first party on silly matters. Finding no way out, the first party left his house and came to her parental house. After that two persons named Musiram Biswas and Patit Mondol tried to make understand the first party and sent her to the second party's house. After that on 21/01/2010, first party gave birth to a child. The father of first party paid all bills of Rs. 29,000/- in the hospital. The father of the first party gave some land and constructed a house for both parties to live in and the father of the first party helped the second party financially. Since 19/03/2011, they started to live in the house constructed by the father of the first party. But the second party continued to torture the first party and compelled first party to leave the house. She came to her parental house and could not move physically due to physical torture. At present her father is looking after her and the second party does not give any money for her treatment. Finding no way out, she took shelter at her father's home and filed a case for maintenance. She has been staying

with her father since last one year. The first party stated that second party is rich and able bodied person. On the other hand, first party has no source of income and her father is somehow maintaining her as he is poor man. Court issued notice and the second party filed written statement on his behalf.

3. During the trial the first party examined two witnesses including her in support of her claim and the second party examined three witnesses. The court issued notice one witness and examined him as court witness .

POINTS FOR DETERMINATION

Point No a: Whether the 1st party had sufficient reason for not residing with the 2nd party?

Point No b: Whether the second party has neglected or refused to maintain his wife after having sufficient means?

Point No c: Whether first party is unable to maintain herself?

Point No d: Whether the first party is entitled to the relief (s) as prayed for?

DISCUSSION, DECISIONS AND REASONS THEREOF:

Point no. (a)

4. The petitioner/first party as PW1 stated that she married to the second party in 2004 and after that started their married life. After a few days of marriage, second party started to torture her

physically by alleging that the first party did not want to work. She claimed that the second party demanded money from her. She left her matrimonial house and came to her parental house. After some days, she returned back to her matrimonial house, but second party did not allow her to enter. Since then she is living with her father.

5. PW1 in her cross-examination stated that she lived with second party for 6-7 years. She admitted that her father constructed a house for the second party in his land and second party has been staying in that house. She stated that second party is running a Homeo Pharmacy at that land.
6. PW2 stated that first party is his daughter. He stated that second party used to inflict physical torture upon the first party after some days of marriage. The first party was compelled to leave her matrimonial house and came to PW2's house. Consequently second party came to his house and started to live with first party. He stated that due to physical tortures, first party cannot walk properly and he has to look after his daughter, i.e., first party.
7. As per the rules of the society, no woman deserts her matrimonial home without sufficient cause. In the instant case, there is a clear, specific and unambiguous allegation of domestic violence on the part of second party. PW-2 has also substantiated the allegations.
8. DW-1, i.e., second party stated that he married to first party on 11/02/2004. He stated that first party without any reason left him and wanted to live with apart from his family. Second party did not accept her proposal and left him. He admitted that he has a homeopathic pharmacy at Nagaon District. He stated that he gave Rs. 3,00,000/- to PW2 and started to

live at the house of PW2. He stated that first party filed a false case against him as PR C/N 916/2018 in which he was acquitted. He stated that he sold all his ancestral property and gave all money to PW2.

9. In cross-examination, second party stated that he is unemployed at present, but he has licence of Homeopathic medicine. He admitted that 1st party is his legally married wife and he has a son aged 12 years. He admitted that his wife, i.e., first party and his child are staying at her father's house at present. He admitted that he failed to produce any document which could prove that he has sold his ancestral property. He also failed to prove that he has given Rs. 3,00,000/- to PW2.
10. DW2 and DW3 stated that first party got married to the second party in 2004 as per Hindu Rites and Rituals. They stated that the second party is running a Homeopathic pharmacy. They stated that PW2 gave some land to second party and the latter constructed the house at the land. As the first party possessed some disease, she started to live at her father's house.
11. In cross examination, DW2 and DW3 stated that second party is living at the land of PW2. DW3 stated that second party works at another person's house.
12. Learned counsel of the second party stated second party is unable to move and bedridden. He is not presently running the Homeopathic pharmacy and hence he is not earning and prayed to release him from paying maintenance to the first party.
13. The court to ascertain the present condition of second party, issued notice to the Gaoburha of the village of second party in exercise of section 311 of

CrPC. The Gaonburha was appeared on receiving notice and the court examined him as court witness.

14. He stated in his evidence that the second party is a physically able person and is still living at the land of PW2.
15. Ext.1 (2) to 1(7) is the Judgment of PR Case no. 916/2018 filed by the first party against the second party u/s 498A IPC in which Hon'ble Court of Judicial Magistrate of First Class, Tezpur acquitted the second party. Ext.2(1) to 2(13) are the documents of CR 252/2019 which was filed by the second party against the first party which is still pending in the court.
16. Learned counsel on behalf of the 2nd party stated that as the 2nd party is already acquitted in PR Case no. 916/2018 u/s 498A IPC, hence it is proved that there was no allegation of cruelty on the part of 2nd party. And if, 2nd party did not torture 1st party, the latter does not deserve maintenance from the 2nd party.
17. It is not mandatory that if an accused is acquitted in one case must be acquitted in another case. In the instant case, the first party stated both in her evidence and complaint petition that she was tortured by the second party after marriage. In a country like India, where marriage is considered as sacred institution, a woman does not want to dissolve her marriage without any reason. Here, first party tried to keep alive her marriage till 2017, i.e., almost 11 years. If she has grudges against her husband, she would have raised it at early days of marriage. But she waited and tried to continue her marriage. Finding no way out, she left house of second party.

18. After considering all evidence and exhibits, it can be held that the 1st party had sufficient reason for not residing with the 2nd party. No woman wants to continue to stay at such place where she is subjected to violence. Situated this, point no. (a) is decided in the affirmative.

Point no. (b) and (c):

19. Learned counsel of the first party stated that she is bedridden and submitted some medical documents. Moreover, the witnesses admitted that first party can walk only with the help of lathi. The second party admitted in his evidence that he is Homeopathic advisor. Considering the physical condition of the first party and present status of second party, I deemed it fit to disregard the filing of affidavit on assets and liabilities and to pronounce final order.

20. There is no doubt that the 1st party has no income of her own. Moreover, there is no evidence to suggest that the 2nd party is not able bodied person. Hence, it is expected that the 2nd party can earn like a reasonable person. It is the moral duty of the husband to maintain his wife irrespective of his present income as he is an able bodied person. Hence, both point no. (b) and (c) have been decided in affirmative.

Point No.(d)

21. The main object of the Section 125 CrPC is to assist women, children and aged parents in distress and help them if they are unable to maintain themselves. Considering the basic object and in the light of all the evidence adduced, I am of the opinion that the 1st party is entitled to get maintenance from the 2nd party.

22. Keeping social status of the both parties and medical expenses of the sister of the 2nd party, I deem it fit to direct the 2nd party to pay a monthly maintenance of Rs. 4,000/- (Four Thousand Rupees) to the 1st party and Rs. 2,000/- to his child which shall be sufficient to meet the expenses of their basic needs and to live a life of dignity.
23. The payment to the 1st party shall be made from the date of application within first 7 days of each succeeding month.
24. The final court is pronounced in open court and given in my hand and under the seal of this court on this 14/10/2022.

Typed by me:

Darshana Nath
JMFC, Tezpur

APPENDIX -14**LIST OF PROSECUTION / DEFENCE / COURT
WITNESSES****A. Prosecution/Petitioner:**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Milan Sarkar	Petitioner
PW2	Bhasan Ch. Sarkar	Other Witness

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER
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		WITNESS)
DW1	Surjya Mohan Sarkar	Opposite Party
DW2	Musiram Biswas	Other Witness
DW3	Gunamoni Mandal	Other Witness

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
CW1	Chabilal Bohora	Other witness

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution/Petitioner:

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

B. Defence:

Sr. No	Exhibit Number	Description
1	Exhibit 1(1) to 1(7)	Order and Judgment copies of P.R. Case No.916 of 18
2	Exhibit 2(1) to 2(18)	Copy of C.R. Case No.252/2019

C. Court Exhibits:

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

D. Material Objects

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

Darshana Nath
JMFC, Tezpur