

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

12.10.2022

[MR Case No. 67 of 2021]

Petitioner :	Musstt. Jamila Khatun W/o- Noor Mohammad @ Babul Ali R/o- Vill- Dangabasti(Medhisuburi) , PS- Dhekiajuli, Dist.- Sonitpur, Assam.
REPRESENTED BY	S.Baruah,M.D.Baruah, Ld. Counsels.
Opposite Party	Noor Mohammad @ Babul Ali S/o- Kuddush Ali R/o- 1 No. Bilatia, PS- Dhing, Dist.- Nagaon,Assam.
REPRESENTED BY	None appeared and the case proceeded ex-parte.

APPENDIX -13

Date of Offence	-
Date of FIR.	-
Date of Charge-sheet	-
Date of Offence Explained	-
Date of commencement of evidence	24/08/2022
Date on which judgment is reserved	-
Date of the Judgment	12-10-2022
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	Noor Mohammad @ Babul Ali	Nil	Nil	U/S 125 of CrPC.	Nil	Nil	Nil

**IN THE COURT OF JUDICIAL MAGISTRATE
FIRST CLASS, TEZPUR, SONITPUR**

Present: Darshana Nath, AJS, Tezpur

M.R. CASE No. 67/2021

U/S 125, Criminal Procedure Code

Musstt. Jamila Khatoon

W/o- Noor Mohammad @ Babul Ali

Vill- Dangabasti(Medhisuburi)

P.S. : Dhekiajuli

Dist. :Sonitpur (Assam)

1st Party

Versus

Noor Mohammad @ Babul Ali

S/o- Kuddush Ali

R/o- 1 No. Bilatia, PS- Dhing,

Dist.- Nagaon,Assam.

2nd Party

Ex-parte evidence recorded on : 24/08/2022

Affidavit filed : 24/08/2022

Ex-parte final Hearing Made on : 28/09/2022

Final Order passed on : 12/10/2022

Advocate for First party: S.Baruah,M.D. Baruah,
Ld.Counsels.

Advocate for Second party: None appeared and the
case proceeded ex-parte

EX-PARTE FINAL ORDER

1. The instant case has been filed by the first party/petitioner against the second party/opposite party claiming maintenance of Rs. 30,000/- (Rupees Thirty thousand) for herself 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 one year ago as per Islamic rites and rituals. 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. When first party went to the house of second party, she came to know that the second party is already married and had three children. She gave birth to a girl child on 25/08/2021. After a few days of marriage, first wife of second party started to torture her physically and mentally. The daughters also tortured her physically. Finding no way out she took shelter at her father's home. She has been staying with her father since then. The first party stated that her child is living with her. The first party stated that second party is rich and able bodied person and his monthly income is Rs. 80,000. On the other hand, first party has no source of income and her father is somehow maintaining her as he is poor man. Notice issued to the second party returned after proper service. However, the second party avoided appearing before the court and hence, the case proceeded ex-parte against him.
3. During the trial the first party examined two witnesses including her in support of her claim.

POINTS FOR DETERMINATION

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

Point No 2: Whether the second party has neglected or refused to maintain his wife after having sufficient means?

Point No 3: Whether first party is unable to maintain herself?

Point No 4: Whether the first party is entitled to the relief (s) as prayed for?

DISCUSSION, DECISIONS AND REASONS THEREOF:

4. **Point No 1:** The learned counsel for the first party submitted that the petitioner is legally entitled to the relief as prayed for under section 125 CrPC. PW-1 (first party) in her deposition stated the facts contained in her petition under 125 CrPC. However, owing to ex-parte proceedings against the second party, the evidence adduced on behalf of the petitioner/first party remained unrebutted and unchallenged. I have considered the evidence adduced on behalf of the first party. Both PW-1 and PW-2 in their evidence stated that the first party had to leave the house of second party due to mental and physical tortures. It is well known that in a society like India, a woman never wants to break her marriage without any reason. From evidence recorded in this case, it is seen that she faced unbearable tortures at her matrimonial house and finding no way out she had to leave that house.

Hence, it can be presumed that the first party has sufficient reason for not residing with the second party. Point No 1 is decided in affirmative.

5. **Point No 2 & 3:** Though the evidence of the first party remained unrebutted due to ex-parte proceedings, it can be presumed that the second party is an able bodied person. If not, the second party would contest the case. Moreover, a person who has fishery business earns minimum Rs. 40,000/- (Rupees Forty Thousand) per month.

“Sufficient means” does not imply that one should have enough money. An able-bodied person has enough opportunities to earn money. Moreover, it is the moral responsibility of a person to maintain his wife and children.

The learned counsel on behalf of the first party submitted affidavit of assets and liabilities which shows that she has no income source. Hence, it is presumed that the first party is unable to maintain herself. Point 2 & 3 are decided in affirmative.

6. **Point No 4:** 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 first party is entitled to get maintenance from the second party. Point No 4 is decided in affirmative.

7. Keeping social status of the both parties, I deem it fit to direct the second party to pay a monthly maintenance of Rs. 4000/- (Four Thousand Rupees) to the first party and Rs.2000/- (Two Thousand Rupees) to their child which shall be sufficient in my

view to meet the expenses of her basic needs and to live a life of dignity.

8. The payment to the first party shall be made from the date of application within first 7 days of each succeeding month.

The final order is pronounced in open court and given in my hand and under the seal of this court on this 12/10/2022.

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	Musstt. Jamila Khatun	Petitioner
PW2	Khulesa Khatun	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)
Nil	Nil	Nil

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
Nil	Nil	Nil

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**A. Prosecution/Petitioner:**

Sr. No	Exhibit Number	Description
1	Exhibit No.1	Certificate (In the certificate mentioned that PW1(Petitioner) married with 2 nd party is true). The certificate is issued by Lat Gaonburah.

2	Exhibit No.2	Birth Certificate of Child of both parties.
3	Exhibit No.3	Mother and Child Protection Card of PW1(Petitioner) and Child of both parties.

B. Defence:

Sr. No	Exhibit Number	Description
Nil	Nil	Nil

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