

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. 94 of 2019]

Petitioner :	Rupsanara Begum W/o- Imran Hussain R/o- Vill- Rajbharal , PS- Tezpur, Dist.- Sonitpur, Assam.
REPRESENTED BY	Babul Borthkur, C. Choudhury, Ld. Counsels.
Opposite Party	Imran Hussain S/o- Abdul Kasim R/o- Vill- Bhojkhuwa Saponi, PS- Tezpur, Dist.- Sonitpur, 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	11-04-2022
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	Imran Hussain	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. 94/2019

U/S 125, Criminal Procedure Code

Rupsanara Begum

W/o Imran Hussain

Vill- Rajbharal

P.S. Tezpur

Dist. Sonitpur (Assam)
1st Party

Versus

Imran Hussain

S/o Abdul Kasim

Vill- Bhojkhuwa Sapori

P.S.- Tezpur

Dist.- Sonitpur(Assam)
2nd Party

Ex-parte evidence recorded on : 11-04-2022

Affidavit filed : 11-04-2022

Ex-parte final Hearing made on : 29-09-2022

Final Order passed on : 12-10-2022

Advocate for First party : Babul Borthkur, C.
Choudhury,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. 15,000/- (Rupees Fifteen 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 15/01/2014 as per Islamic Rites and Laws at Rs. 70,000/- Kabin nama. 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 abuse first party mentally and physically. After giving birth to the first child, the first party was tortured more by the second party. After that the first party found that second party had illicit affair with another woman. When she asked him about it, he abused her verbally by using slang words. The second party constructed a house for the first party and compelled her to live there alone. Finding no way out, she took money from her father and filed a case for maintenance. At present, she has been staying with her father since last one year. The first party stated that second party is rich and able bodied person and his monthly income is Rs. 35,000/-40,000/-. 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 appeared in the court and filed written statement. After that the second party remained absent in the court and failed to cross examine PWs. Hence, the court has to proceed with the case ex parte.
3. During the trial the first party examined four 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 i.e., first party in her deposition stated the facts contained in her petition under 125 CrPC. In written statement, second party does not deny that first party is his legally married wife. But he claimed that first party without any reason left his house and denied all allegations regarding mental and physical tortures. However, owing to ex-parte proceedings against the second party, the evidence adduced on behalf of the petitioner/first party remained un rebutted and unchallenged. I have considered the evidence adduced on behalf of the first party. All witnesses, i.e., PW-1, PW-2, PW-3 and PW-4 in their evidence stated that the first party had to leave the house of second party due to mental and physical tortures. Moreover, all witnesses alleged that the second party had extra-marital affair with another woman. 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. In written statement, he stated that he is daily wage earner and is earning Rs. 4,000/- per month. Considering the ground of absence of the second party, the income of the second party remained unchallenged and it is presumed that the second party earns minimum Rs.35,000/- 40,000/- 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 and she is just class VIII passed woman. It is well known that an uneducated woman has very little opportunities to earn income. 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 and financial condition of the both parties, I deem it fit to direct the second party to pay a monthly maintenance of Rs. 3000/- (Three Thousand Rupees) to the first party and of Rs. 1500/- (Fifteen Hundred Rupees) each to her children, total Rs. 6,000/- 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	Rupsanara Begum	Petitioner
PW2	Abdul Kasim	Other Witness
PW3	Sirajul Islam	Other Witness
PW4	Usman Goni	Other Witness

B. Defence Witnesses, if any :

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

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