

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

PRESENT: MANASHI NEOG, JMFC, SONITPUR

(Date of Judgment: 21.10.2022)

M.R. CASE No. 12/2021

U/S 125, Criminal Procedure Code

Complainant:	SULTANA BEGUM
Represented By:	A. GOSWAMI
2nd Party:	1. JOINUL ABEDEEN (A1) S/O, Abdul Malik, R/O Vill. Nalbari, Silguri, P.S. Mangaldoi, Dist. Darrang, Assam.
Represented By:	NONE

Date of Offence	Not Applicable
Date of FIR/Complaint	Not Applicable
Date of Charge sheet	Not Applicable
Date of Framing of Charges	Not Applicable
Date of commencement of evidence	08.08.2022
Date on which judgment/Final order is reserved	Not Applicable
Date of Judgment/Final order	21.10.2022
Date of the Sentencing Order, if any	Not Applicable

Accused Details:

Rank of the Accused	Name of Accused	Date of Arrest	Date Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trail for purpose of Sec. 428 Cr.P.C.
Not Applicable	-	-	-	-	-	-	-

FINAL ORDER

- 1.** The present petition under section 125 Criminal Procedure Code (hereinafter called Cr.P.C.) was filed by the 1st Party, Sultana Begum against the 2nd Party, Joinul Abedeen claiming maintenance of Rs.6,000/- (Rupees Two Thousand) per month for herself and Rs.1,000/- (Rupees One Thousand) for her minor child.
- 2.** Considering the prayer made by the 1st party, the learned predecessor decided to proceed against the 2nd party and directed issuance of notice. The 2nd Party appeared but did not contest this case by filing W/S and the case proceeded ex-parte against him.
- 3.** The 1st party adduced the evidence of 3 (three) witnesses including herself in support of her claim. I have heard the learned counsel for the 1st party who has submitted that this is a fit case wherein the 1st party is entitled to monthly maintenance.
- 4.** Upon considering the arguments and on perusal of the record, I have formulated the following points for determination.
 - a. Whether the 1st party is the legally married wife of the 2nd party?
 - b. Whether the 1st party had sufficient reason for not residing with the 2nd party?
 - c. Whether the 1st party is unable to maintain herself?
 - d. Whether the 2nd party despite having sufficient means has refused or neglected to maintain the 1st party?
 - e. Whether the 1st party is entitled to get maintenance as prayed for and if so, at what rate is she entitled?

Point No. (a)

- 5.** The 1st Party, Sultana Begum has examined herself as PW-1. She has deposed to the effect that she got married to the 2nd party on 22.09.2016 as per Islamic rites and rituals. PW-2, Mamata Khatoon and PW-3, Nazima Begum has also corroborated PW-1. This claim has remained uncontroverted and there is no reason to disbelieve the same. This lends enough credence to the claim of marriage. Hence, it is held that the 1st party is the legally married wife of the 2nd party. Point No. (a) is decided in the affirmative.

Point No. (b)

- 6.** PW-1 has stated that a few months after her marriage, the 2nd Party started harassing her physically and mentally in connection with his unlawful demand for dowry. She bore all torture in order to save her marriage. In the meantime the 1st party got pregnant but due to the physical and mental torture inflicted upon her by the 2nd party, she managed to go back to her parental home in order to save herself and her unborn child. She gave birth to a boy during her stay at her parental house. After a month, the 2nd party came to her parents' and took the 1st party and the baby with him with an assurance that he would not torture her anymore. But the 2nd party could not keep his promise and continued to torture her. On 20.12.2020, the 2nd party drove her and her minor son out of his house. And since then the 1st party along with her minor son has been living in her parental house. Having regard to the prevalent

norms of our society, it can be safely said that no woman deserts her matrimonial home without sufficient cause especially when she has minor children to look after as is the case here. In the instant case, there is a clear, specific and unambiguous allegation of domestic violence on the part of PW-1. PW-2 and PW-3 have also sufficiently corroborated PW-1. There is no counter allegation of desertion from the opposite side. Hence, it can be held that the 1st party had sufficient reason for not residing with the 2nd party. After all, no woman would want to continue living in a house where she is subjected to violence and has been driven out. Situated thus, Point No. (b) is also decided in the affirmative.

Points No. (c) and (d)

- 7.** PW-1 has claimed that she has no income of her own and is facing great financial hardship to maintain herself and her minor son. On the other hand, the 2nd party is a mason with a monthly income of about Rs. 15,000/- (Rupees Fifteen Thousand). However, PW-1 has not submitted any documentary evidence in support of the financial status/income of the 2nd party. She has also not deposed anything to suggest as to how she managed to ascertain the income of the 2nd party.
- 8.** Having said that, the 2nd Party did not avail his chance to put before this court his evidence and negate the assertion of the 1st Party. He also did not contest the case to prove his own source of income and his financial status. The onus to prove the income lies with the party

in whose knowledge the actual income remains, in this case the 2nd party. Moreover, there is no evidence to suggest that the 2nd party is not an able bodied person and as such, he can be easily expected to earn a reasonable amount per month.

9. Further, there has also been no challenge to the claim of the 1st party that she has no income of her own. Someone without any income and who has been deprived of the care and protection of her husband would for sure find herself in a position where she would be unable to maintain herself. The duty cast on a husband/father to maintain his wife/minor children dependent on him is absolute and is irrespective of his present income. It is not only a legal but also a moral obligation for a person to maintain the people who are dependent on him. He cannot be allowed to push them towards vagrancy and starvation.

10. Coming back to the case in hand, it cannot be denied that the 2nd Party did not neglect the 1st Party who is his lawfully wedded wife and his minor son. On the contrary, PW-1 has made it expressly clear that the 2nd party has not been maintaining her and her minor son which has been corroborated by PW-2 and PW-3 as well. Hence, Points No. (c) and (d) are also decided in the affirmative.

Point No. (e)

11. The object of a proceeding under section 125 CrPC is to assist women and children in distress. It is a beneficial legislation whose object is to save the dependants from destitution and vagrancy.

Thus, considering this basic object behind framing of the previously mentioned welfare legislation and in the light of all the evidence adduced and the materials placed before the court and the discussions as made above, I am of the view that the 1st party is entitled to get maintenance from the 2nd party for herself and her minor son. As regards the quantum of maintenance, I have considered the increasing price rise in the basic food items and the price hike in all other articles of daily use in addition to basic medical expenses. I have also kept in mind the social status of both the parties. Considering all, I deem it fit to direct the 2nd Party to pay a monthly maintenance amount of Rs. 2000/- (Two Thousand Rupees) to the 1st Party and Rs.1000/- (Rupees One Thousand) to her minor son which should be sufficient to meet the expenses of her basic needs and to live a life of dignity.

- 12.** The payment to the 1st Party shall be made from the date of application within the first 10 (ten) days of each succeeding month.
- 13.** With this direction, the instant case is disposed of ex-parte. Furnish a free copy of this final order to the 1st Party.
- 14.** The final order is pronounced in open court and given in my hand and under the seal of this court on this the 21st day of October, 2022.

Typed by Me:

Manashi Neog
Judicial Magistrate First Class,

APPENDIX

LIST OF WITNESSES

A. Complainant:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Sultana Begum	Complainant
PW-2	Mamata Khatoon	Other witness
PW-3	Nazima Begum	Other witness

B. Defence Witness, if any: NONE

C. Court Witness, if any: NONE

LIST OF EXHIBITS

A. Complainant Exhibits: NONE

B. Defence Exhibits: NONE

C. Court Exhibits: NONE

D. Material Exhibits: NONE

**Manashi Neog
JMFC, Sonitpur**