

**DIST. : SONITPUR**

**IN THE COURT OF THE JUDICIAL MAGISTRATE, 1<sup>ST</sup> LASS,  
AT TEZPUR.**

**Misc. Case No. 262/2010**

**U/S 125 Cr. P. C.**

Musstt. Fazila Khatoon

**.....Petitioner**

V.

Md. Siddique Ali

**.....Respondent**

**PRESENT:** Kiran Lal Baishnab, A.J.S.

Judicial Magistrate, 1<sup>st</sup> Class,  
Tezpur.

For the Petitioner: Md. A. Aziz, Advocate.

For the Respodent: Md. F. Zaman, Advocate.

Evidence recorded on: 30.09.2011 & 16.12.2011.

Argument Heard on: 05.03.2012.

Judgment delivered on: 16.03.2012.

### **JUDGMENT**

1. The Petitioner's Case in brief as reflected from her petition is that her marriage was solemnized with the respondent about 9 (Nine) years back from the date of filing the petition according to the Mohammedan rites and rituals. The petitioner resided with the respondent for two years after the marriage. It is averred that during that period of two years the respondent beat up the petitioner at the instigation of his first wife, regularly and at last she was thrown out of her maternal home by the respondent after beating her mercilessly about 7 (Seven) years back

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from the date of filing the petition while she was pregnant of seven months. Thereafter, the respondent let the petitioner to live separately alongwith her son. It is further averred that the respondent did neither give sufficient maintenance to the petitioner or her child nor did even come to look them for a moment. She further averred in her petition that the respondent is still a able-bodied and healthy person earning about Rs. 30,000/- per month from his Restaurant and also possesses landed properties. Thus, she claimed Rs. 3000/- (Rupees Three Thousand) only per month each for herself and her monir son, from the respondent as maintenance for both of them.

2. The respondent filed the Written Statement and denied all the allegations levelled against him. The respondent further stated that he has never married the petitioner and had never lived together as husband and wife. The respondent also denied the parentage of the child as alleged by the petitioner. He also stated that he never subjected the petitioner to any cruelty and as they never lived together hence, did never deserted petitioner or her son. The respondent also denied that he has landed properties and earns Rs. 30000/- permont. Instead he stated that he works in a Restaurant and earns Rs. 2000/- per month.
4. Evidence has been led by both the petitioner and the opposite party to prove their respective pleadings. The proceedings under Section 125 Cr. P. C are quasi criminal and extent of proof required is not of 'proof beyond reasonable doubt' but the parties are required to prove their respective cases by 'preponderance of probabilities'.

In order to establish that the petitioner is entitled to maintenance u/s 125 Cr. P. C the following four ingredients had to be established:

a. Relationship with the respondent as wife/ Child/father / mother, as the case may be;

b. The ground for her residing separately, which should be reasonable and sufficient to make her entitled for the relief;

c. Incapability of petitioner to survive on her own; and

d. Capability of respondent to make provision for the maintenance.

5. My issue wise findings are as below:

**A. Relationship with the respondent as wife child/father/ mother, as the case may be:**

**A.1** As regards the relationship between the parties, the petitioner has duly testified about her marriage being solemnized with the respondent about nine (9) years ago and she was very well corroborated by P.W.2, Anowar Hussain, who stated that the parties are husband and wife in relation and he conducted their marriage about nine (9) years back in Rangagora as per the Muslim rites. P.W.2, further deposed that one Raisuddin was the Vakil of the said marriage and Nur Amin and Akthar Hussain were the witnesses. His statement was fully corroborated by P.W.3, Raisuddin and P.W.4 Nur Amin. P.W.3, Raisuddin also deposed that he was the Vakil in the marriage between the petitioner and the respondent and the marriage was conducted by Imam, Anowar Hussain (P.W.2) and Nur Amin (P.W.4) and one Aktar Hussain was the witnesses of the marriage. P.W.4 also deposed in the similar line and corroborated all the witnesses to the effect that the respondent married the petitioner about nine years ago as per the Muslim rites. The respondent deposing as D.W.1 stated that he never married the petitioner but the witness adduced by the respondent did not deny the

marriage but only deposed that they had never seen the petitioner in the house of the respondent. Both the defence witnesses further stated that they know that the respondent has only one wife and do not have any knowledge of his second marriage. D.W.2, Jogesh Boro in his cross-examination admitted that after coming to the Court he gave money to the petitioner to have tea and also gave Rs. 100/- to her Child. Hence, considering this I find force in the submission of the learned Advocate for the petitioner that if he does not know the petitioner and her son why he should help them. He further submitted that he helped the petitioner only because he knows that she is the wife of the respondent and the boy is his (respondent's) son.

On minute scrutiny of the evidences put forward by both the sides I am of the Opinion that the petitioner has in all probability proved her marriage with the respondent as all the witnesses deposed the same and fully corroborated each other on this fact.

**A.2** Now the question needs to be proved is whether the respondent is the father of said Ashikul Hoque, the son of the petitioner.

In this respect the petitioner confirming his averment as made in the petition deposed that while she was thrown out of her matrimonial home she was pregnant of seven months and gave birth to said Ashkul Hoque after coming to her parent's home. This fact was totally corroborated by all the witnesses adduced by the petitioner who also deposed exactly similar to the petitioner.

The respondent denied the marriage and as such denied the paternity of the child but the witnesses adduced by him did not depose anything to this effect and only deposed that they do not know if the respondent married the petitioner. Moreover, as the marriage is proved as above and the child was allegedly born during

the subsistence of the marriage hence, paternity of the child presumably falls on the respondent.

Thus, considering the evidences put forward by both the sides in totality, I am of the opinion that the petitioner has successfully proved the fact that the respondent is the father her son, Ashikul Hoque and the respondent had failed to rebut the same.

Hence, considering the above discussion the instant issue is decided in favour of the petitioner.

**B. The ground for her residing separately, which should be reasonable and sufficient.**

**B.1** It is the case of the petitioner that she was subjected to physical and mental cruelty by the respondent on instigation by his first wife.

The petitioner deposing as P.W.1 fully supported the petition and she was in turn supported by P.W. 2, 3 7 4. She deposed that the respondent and his first wife used to beat her while she was residing in the house of the respondent and ultimately was thrown away from her matrimonial home by beating her when she was seven months pregnant. P.W.1 further deposed that she again went to the house of the respondent with the child about two years ago but was thrown out of the house by the respondent. P.W.2, supporting P.W.1 deposed that she was deserted by the respondent when he was seven months pregnant and the child took birth at her father's house. He also deposed that she again went to the house of the respondent with the child but was thrown out of the house by the respondent. P.W.3 and 4 also deposed similarly fully corroborating the statements made by the first two witnesses. Moreover, the witnesses stood firm on their stand in the cross-examination.

The respondent and the witness produced by him denied desertion and cruel treatment by the him

upon the petitioner on the ground that the respondent never married the petitioner and the same is discussed in the first point for determination and I find it unnecessary to reiterate the same. But, the evidence adduced by the defence is not reliable as discussed above. Here, it may be cited that even the respondent in his written statement admitted that he has another wife and children from her and this adds to the justifiability of the separate living of the petitioner.

Thus, I am of the considered opinion that the petitioner was forced to leave the house of the respondent by the respondent and his first wife by their alleged cruel acts and as such; the petitioner had a just and reasonable cause to reside separately and accordingly this issue is also decided in favour of the petitioner.

**B.2** As per second proviso of Section 125 (3) Cr. P. C. if the husband offers to maintain his wife on condition of her living with him and the wife refuses to live with him, then she is not entitled to maintenance unless the Magistrate is satisfied that there is just ground for refusal to live with the husband and Section 125 (4) also provides that the wife shall not be entitled to receive maintenance if without any sufficient reason, she refuses to live with her husband. The petitioner in her examination-in-chief stuck to her version as stated in the petition and she is very well supported by reliable witnesses. Moreover, the respondent denies the marriage and as such is not willing to live with the petitioner.

Further, as discussed in the foregoing paragraph, the fact of cruel treatment upon the petitioner was proved by her and as such has a just and reasonable ground to live separately.

Considering the facts and circumstances of case and evidence produced in totality, I am of the considered

opinion that the petitioner has proved, on scales of preponderance of probabilities, that she has just and reasonable cause to live separately from the respondent.

**C. Incapability of petitioner to survive on her own.**

**C.1** The petitioner has alleged in her petition that she has no source of income. In her examination-in-chief she has deposed on similar lines as in the petition. The fact that the petitioner does not have an income of her own had been deposed by all the witnesses adduced by the petitioner. P.W.4, Nurul Amin specifically deposed that the petitioner earns living by begging. He also deposed that the son of the petitioner studies in School. Neither the respondent nor any witnesses produced by him deposed anything as to the income of the petitioner. The respondent did not even deny this fact in his Written Statement. No evidence has been produced by the respondent to establish that the petitioner has any source of income and is in a position to maintain herself. The burden of proof has been, thus, discharged by the petitioner. As such the petitioner is the prime responsibility of the respondent and he is under moral and legal duty to prevent her from vagrancy and from being left at the mercy of destiny. Being the husband of the petitioner, the respondent cannot be absolved of his liability to maintain the petitioner. Accordingly, the present issue is decided in favour of the petitioner.

**D. Capability of respondent to make provision for the maintenance.**

**D.1** As regards income of respondent, it is averred in the petition that the respondent earns of

Rs. 30,000/- per month and the petitioner reaffirmed the same in her examination in chief. She deposed that the respondent has a Restaurant at Nalbari New Bus Stand and has a two-storied building. Her statement was supported by all the witnesses though they also did not specifically state the amount of income. P.W.3, Raisuddin, deposed that after the marriage when the respondent alongwith the petitioner went to his house to attend a dinner party, the respondent told him that he has a big Hotel and earns a good sum. In his cross-examination P.W.3, stated that he never went to the house of the respondent hence, does not know what property does the respondent have but stated that the respondent told him that he also had a Poultry Farm. P.W.4 also deposed that the respondent has a Hotel. The respondent denied of having such a income in his written statement and said that he earns only Rs. 2000/- per month as salary working as a labour in a Restaurant.

**D.2** The respondent adduced himself and two other witnesses to prove that he did not have sufficient means to maintain the petitioner. Siddique Ali, the respondent deposing himself as D.W.1 stated that he does not have any landed property or restaurant but works in a Tea Stall and earns Rs. 3000/- per month thereby contradicting his own written statement where he mentioned that he earns only Rs. 2000/- per month. In his cross-examination he admitted that the address mentioned in the Notice was C/O Popular Restaurant and received the notice by post in that address. D.W.2, Jogesh Boro deposed that he is the owner of the Hotel named Poupular Restaurant and Siddique Ali works for him in that restaurant. In his cross-examination he deposed that thought the hotel is in his name but he did not bring the Trade Licence of the same. D.W.3, Matleb Ali also deposed that the respondent works in the Popular restaurant.

The respondent in his examination-in-chief as well as the written statement stated that he used to come to Dhekiajuli in connection with his Furniture Business, which shows that he not only works in the Hotel but has other business too. Hence, his statement that he earns on Rs. 3000/- per month can not be relied upon nor the other D.Ws. be relied upon on this point as the D.W.2 though claiming to be owner of the Hotel could not produce the trade Licence and the D.W.3, though a neighbour does not know if the respondent has any other business. The respondent is a healthy bodied person and thus able to earn through any sort of work.

From the material on record, I find that the respondent is fully capable to provide maintenance to petitioner. Therefore, this issue also stands decided in favour of the petitioner.

6. The quantum of liability however has to be seen. It is the settled law that the petitioners shall be entitled to receive such maintenance as is consistent with the life style and standard of living of the respondent. The respondent himself agreed to the fact that he used to come to Dhekiajuli in connection with his Furniture Business and as such he may be presumed to earn from that business in addition to the earning as stated by him by working in the Hotel. Thus, in the present day of price hike to live as middle class family also would need a earning of 15000/- to 20000/- per month.

Thus, in view thereof, total income of the respondent is assessed as Rs. 15,000/- per month.

### **ORDER**

On careful Scrutiny of the Case Record and the evidence adduced by both the sides, I am of the considered opinion that the respondent Siddique Ali has

wilfully neglected the petitioner, Fazila Khatoon, and her son born out of the wedlock between them and refused to maintain them inspite of having sufficient means to do so. Hence, considering the income of the respondent and requirements of the petitioner and her son; the respondent is directed to pay as maintenance a sum of Rs. 1500/- (Rupees One Thousand Five Hundred) only each to the petitioner and her son per month with effect from the date of the order, i.e. 16.03.2012.

7. The Judgement is delivered and operative part of the same is pronounced today the 16<sup>th</sup> day of March, 2012 in the open Court, under my hand and the seal of this Court.

(KIRAN LAL BAISHNAB)  
Judicial Magistrate First Class,  
Tezpur, Sonitpur

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**CLASS,**

**AT TEZPUR.**

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**ANNEXURE**

**1. PETITIONER'S WITNESSES:**

P.W.1- Fazila Khatoon (Petitioner),

P.W.2- Anowar Hussain,

P.W.3- Raisuddin

And

P.W.4- Nur Amin

**2. DEFENCE WITNESSES:**

D.W.1- Siddique Ali (the respondent),

D.W.2- Jogesh Boro

And

D.W3- Matleb Ali

**3. EXHIBITS (BY PETITIONER):**

NIL

**4. EXHIBITS(BY RESPONDENT):**

NIL.

(KIRAN LAL BAISHNAB)

Judicial Magistrate First Class,

Tezpur, Sonitpur