

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS, DIBRUGARH, ASSAM**

Present:- **Smti. Sanskrita Khanikar, A.J.S.**

Judicial Magistrate First Class, Dibrugarh

Date of Judgment:-28-02-2022

CASE NO. 08^M/2017

(Petition No.24/2017 dated 30/01/2017

under section 125 Cr.P.C.,1973)

Petitioner:	Smti. Rima Sonowal W/O - Sri Jyoti Sonowal D/O - Sri Gopal Sonowal R/O - 2 No. Sorai Habi Gaon P.O. - Khowang P.S. - Khowang Dist - Dibrugarh, Assam
Represented By	Learned Sri Tirthankar Bhowmik
Opposite Party	Sri Jyoti Sonowal S/O - Sri Aditya Sonowal R/O - Bharalibari Gaon P.O. - Khowang P.S. - Khowang Dist - Dibrugarh, Assam
Represented By	Learned Sri Niranjana Saikia

Date of Commencement of evidence	30-10-2018 & 26-08-2019
Date of Argument	15-02-2022
Date on which Final Order is reserved	28-02-2022
Date of Final Order	28-02-2022

J U D G M E N T

1. The petitioner Smti. Rima Sonowal filed the instant case/proceeding u/sec 125 Cr.P.C. against the Opposite Party Sri Jyoti Sonowal claiming maintenance for herself.

The Petitioner's case in brief:

The petitioner was married to the opposite party on 22-05-2013. Their marriage was solemnised at Bharali Bari Gaon, Khowang Dibrugarh, as per Hindu rites and ceremonies. Thereafter, the opposite party took the petitioner to his own house situated at Bharali Bari and they began their conjugal life therein along with the parents of the opposite party. About one month after their marriage, the opposite party began to physically abuse the petitioner. He also started demanding money from the petitioner and even started ordering her to bring money from her parental house. In the event of the petitioner's refusal or failure to arrange money for him,

he started subjecting her to physical assault. The petitioner's father-in-law, despite being aware of the ill-treatment meted out to her by the opposite party, turned a blind-eye to the situation and even participated in the abusive treatment meted out to her. Her father-in-law also threatened her to bring money from her parents. In order to put an end to the petitioner's misery, her parents along with the petitioner called for a village meeting and accordingly, on 17-06-2015, a village meeting was called for to settle the dispute between the petitioner and the opposite party but all efforts were in vain as the opposite party reverted back to his abusive ways and again started subjecting the petitioner to physical and mental abuse by demanding her to bring money from her parents. As such, the petitioner was compelled to leave the matrimonial home in order to save herself and she then took shelter and protection at her parental house. The opposite party is a man of sufficient means having a good earning source from agriculture along with side business and is earning about Rs. 30,000/- per month. It has been submitted that the present state of the petitioner is that of a destitute and vagrant lady as she is a jobless woman having no income of her own and despite being legally bound to maintain her, the opposite party has provided her no financial support. On 25-07-2016, the petitioner called the opposite party and asked him to provide her

monthly maintenance but he refused to do so. Hence, she was compelled to file the instant petition.

The opp.party Md. Nur Alam contested the case by filing written statement stating that he never physically assaulted the petitioner nor demanded her to bring money from her parents. He denied that he married the petitioner and cohabited with her. Hence, he prays for dismissal of the instant petition u/sec 125 Cr.P.C filed by the petitioner.

2. **THE POINTS FOR DETERMINATION**

Based on the above pleadings of both the parties, the points which arise for determination of the questions in controversy are:

- (i) Whether the petitioner is wife of the opposite party?
- (ii) Whether the petitioner without any sufficient cause left the company of the opposite party?
- (iii) Whether the petitioner is unable to maintain herself?
- (iv) Whether the opposite party despite having sufficient means refused and neglected to maintain the petitioner?
- (v) Whether the petitioner is entitled to relief of maintenance as prayed for?

In support of her contentions, the petitioner side examined herself as PW-1 and the opposite party, despite

being afforded several opportunities by the Court, failed to adduce any evidence in his favour and since 19-07-2021, he remained absent without step. As such, the case proceeded to the argument stage wherein the opposite party again remained absent without step. The petitioner has also submitted the affidavit of disclosure of her assets and liabilities.

I have heard the submission advance by the learned counsel for the petitioner and also perused the materials on record. Let me now discuss the above points on the basis of the materials and evidence on record.

DISCUSSION, DECISION AND REASONS THEREOF

3. I have taken all the points together for the sake of convenience. The provision under section 125 Cr.P.C. is a welfare provision. The main purpose of this provision is to protect the helpless wife, minor children and parents from destitution and vagrancy.

4. In this case the petitioner examined herself as PW-1. In her examination-in-chief, she reiterated the contents of the petition no. 24/2017 and also stated that the opposite party had promised during the village meeting that he would not mete out any ill-treatment to her but that he failed to abide by the acknowledgement of promise. She proved Exhibit 1 as the acknowledgement promise by

proving Exhibits 1(1) and 1(2) as the signatures of the opposite party which she knows and Exhibit 1(3) as her own signature therein.

During her cross-examination, she denied the suggestion of the other side that they were living happily after their marriage. She stated that after one month of their marriage, the opposite party began to harass and torture her. She also stated that her parents-in-law never tortured her and that they infact treated her like their own daughter. She denied the suggestion of the other side that the opposite party did not have any source of income. According to her the opposite party worked at Ghanakanta College but she had never seen him working there. The opposite party's lace of work is situated at a considerable distance from his residence and so, he used to stay at a place nearby his workplace. She denied the suggestion of the other side that due to his work, he could not come home. She denied the suggestion of the other side that at the time of their marriage, the opposite party was still looking for a job. She denied the suggestion of the other side that the opposite party did not give his consent to their marriage and that he was forced to marry her. She denied the suggestions of the other side that on the day of their marriage the opposite party was not at home, that he was elsewhere as he did not consent to the marriage and that he had to be searched and brought for the marriage. She denied the

defence suggestion that she left the matrimonial home as the opposite party had no income. The opposite party has three brothers and their land has not been partitioned and the brothers carry out cultivation work on the said land. She denied the suggestion of the other side that the opposite party does not earn any income from cultivation.

In this instant case, the evidence adduced by the petitioner is found believable and cogent; there is nothing on record to disbelieve the version of the petitioner. Perusal of Exhibit 1 being the acknowledgement of promise dated 27-06-2015 indicates that the petitioner was indeed the wife of the opposite party. Moreover, the opposite party neither adduced any evidence to rebut or disprove the petitioner's contentions nor did he turn up in Court at the stage of argument. As such, the averments made by her in the petition u/sec 125 Cr.P.C. are deemed to be true. In the absence of anything contrary on the record to the petitioner's claims, the facts stated by the petitioner's witnesses in their evidence-in-affidavit are deemed to be true and as such, the petitioner has substantiated her claims. Resultantly, all the points for determination are decided in favour of the petitioner.

5. The Hon'ble Gauhati High Court in **1999(1) GLT 168 Pradip Das -Vs- Jabamoni Das**, has held that "even an able bodied husband having no income cannot be divested of the responsibility to maintain his wife. His

plea that he has to maintain a number of persons is of no consequence as he is obliged to maintain his wife first.”

The object of Section 125 Cr.P.C, being a welfare legislation, is to prevent vagrancy and destitution and to afford the petitioner to live a dignified life in conformity with the status of her husband. It provides speedy remedy for the supply of food, clothing, shelter and other basic necessities to the deserted wife. The opposite party is an able bodied person and he has the capacity to earn. Marriage between the petitioner and opposite party itself proves the factum that the opposite party had undertaken to maintain the petitioner.

In view of above, I hold that the petitioner, namely, Smti. Rima Sonowal is found entitled to maintenance allowance.

6. So far as quantum of maintenance is concerned, I have considered the daily price rise, present market scenario and the cost of living. As nothing in the record suggests that the petitioner is financially independent and that instead after moving back into her parental abode she has been dependent on her family for her maintenance, it is thus clear that she requires a certain amount to meet her basic necessities. I have also gone through the affidavit of disclose of assets and liabilities of the petitioner. Although, the petitioner has submitted that the opposite party is earning about Rs. 30,000/- per

month, there is no proof of the same as the petitioner has not submitted any documents in support of the same. Considering all, I have arrived at the conclusion that maintenance allowance of Rs. 1,500/- (Rupees One Thousand Five Hundred) only in total per month to the petitioner shall meet the ends of justice.

ORDER

7. In view of the above discussion, the petition of the petitioner is allowed. The opposite party is directed to pay Rs. 1,500/- (Rupees One Thousand Five Hundred) only to the petitioner in per month as maintenance allowance w.e.f. the date of making the application.

Let a copy of this final order be given to the petitioner free of cost.

The case is, thus, disposed of on contest.

Given under my hand and the seal of this Court on this 28th day of February, 2022 at Dibrugarh.

Typed by: Self

Sanskrita Khanikar

Judicial Magistrate First Class

Dibrugarh

APPENDIX

**LIST OF PETITIONER /OPPOSITE PARTY /COURT
WITNESSES**

A. Petitioner:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Smti. Rima Sonowal	Petitioner

B. Opposite party Witnesses,if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	Nil	Nil
DW2	Nil	Nil

C. Court Witnesses,if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS,
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		OTHER WITNESS)
CW1	Nil	Nil
CW2	Nil	Nil

LIST OF PETITIONER/ OPPOSITE PARTY/ COURT EXHIBITS

A. Petitioner:

Sr. No.	Exhibit Number	Description
1	Exhibit-1	i) The acknowledgment of promise

B. Opposite Party:

Sr. No.	Exhibit Number	Description
1	Exhibit D-1/DW1	Nil
2	Exhibit D-2/DW2	Nil

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	Exhibit C-1/CW1	Nil
2	Exhibit C-2/CW2	Nil

D. Material Objects:

Sr. No.	Exhibit Number	Description
1	MO1	Nil
2	MO2	Nil

Sanskrita Khanikar

Judicial Magistrate First Class

Dibrugarh