

In the court of the Addl.Chief Judicial Magistrate ::::::::::::::Dhubri

Present: Smt.T.Hussain

Addl.Chief Judicial Magistrate

Dhubri

Misc.case No. 422/2014

U/S 125 Cr.P.C

Dalimi Roy

.....1st party

vs

Jogen Roy

.....2nd party

Advocates appeared:

For the 1st party: Mr.Y.A.Bepari

For the 2nd party: Mr.U.K.Dutta

Evidence recorded on: 05.01.2015

:04.01.2015

:18.03.2015

Argument heard on :22.05.2015

Judgment delivered on:02.06.2015

Judgment

1.The instant proceeding has been initiated upon the petition filed by the 1st party U/S 125 Cr.P.C claiming maintenance from the 2nd party for herself at the rate of Rs.5,000/- per month .

The pleaded case of the 1st party in brief is that, she is the legally married wife of the 2nd party and after the marriage they started their conjugal life in the house of the 2nd party. After 2 months of the marriage , at the instigation of his family members , the 2nd party started to torture her physically and mentally demanding Rs10,000/- .On her failure to meet his demand one month before filing of the case

,she was thrown out of her matrimonial home after inflicting physical torture on her . In this connection she lodged a case against the 2nd party u/s 498(A) I.P.C . Since then she has been taking shelter in her paternal home. The 2nd party has neither enquired about her well being nor provided anything for her maintenance .According to the 1st party she has no source of income .On the other hand the 2nd party is a Mason and he has sufficient cultivable land.He earns Rs.20,000/- per month from all the sources. Under these circumstances ,the 1st party has filed the petition U/S 125Cr.P.C claiming maintenance at the rate of Rs.5,000/- per month for herself .

2.The 2nd party has contested the case by filing written statement contending inter alia that the case is not maintainable and denying the allegations made by the 1st party in her petition against him and his family members and also denying the averments made by the 1st party regarding his occupation and income . It is admitted by the 2nd party that the 1st party is his wife .The 2nd party has contended that on 05.07.13 the 1st party went to her paternal home for "Nayor"(customary visit to paternal home) and thereafter she never returned to her matrimonial home without assigning any reason. Though several times the 2nd party along with his near relatives visited her paternal home for taking her back ,she refused to return.

Regarding his income and occupation ,the 2nd party has claimed that he is a daily wage earner . Countering the version of the 1st party to the effect that she has no source of income ,the 2nd party has alleged that she is self employed and has sufficient income .Thus according to the 2nd party the 1st party is not entitled to get maintenance and the case is liable to be dismissed.

3.In support of her case the 1st party has examined two witnesses including herself. For refuting the case of the 1st party ,the 2nd party has examined himself as Dw1.

4. Points for determination:

It is admitted fact that 1st party is the wife of the 2nd party. Therefore in this case the points for determination are:

- i) Whether the 1st party without having any reasonable cause refused to live with the 2nd party?
- ii) Whether the 1st party is unable to maintain herself?
- iii) Whether the 2nd party having sufficient means has refused / neglected to maintain the 1st party ?
- iv) Whether the 1st party is entitled to get maintenance from the 2nd party and if so ,what should be the quantum of the maintenance allowance?

5. Decision and reasons thereof:

I have heard the arguments advanced by the Id counsel for the parties and perused the materials available in the case record. My findings on the points for determination and reasons thereof are as follows:

point no.i):

In support of her pleadings , the 1st party Smt.Dalimi Roy has stated in her deposition as Pw1 to the effect that after about two months of the marriage the 2nd party started to torture her demanding Rs.10,000/- .She has further alleged the family members of 2nd party did not allow her keep any contact with their neighbouring people. Finally she was ousted from the matrimonial home after inflicting severe torture on her.Since then she has been taking shelter in her paternal home.

In her cross examination Pw1 has admitted that the 2nd party has instituted a civil suit for restitution of conjugal right.She has further stated that even if the 2nd party wants to take her back to his house ,she will not go ,since he subjected her to severe torture.

On the other hand ,the 2nd party has in his evidence as Dw1 ,simply stated that after the marriage ,the 1st party led conjugal life with him only for 15/20 days and after that she left his home and never returned .He filed a civil suit for restitution of conjugal rights
And that he is still ready to take her back if she comes to his house .

Thus according to the 2nd party without having any reason his wife i,e the 1st party left his home and living in her paternal home ,which is not believable whereas the 1st party in her evidence, supported by her pleadings, in material points ,has been able to explain that due to torture inflicted upon her ,she has been taking shelter in her paternal home and not willing to return to her matrimonial home. And hence it is found and held that the 1st party has been able to prove that for the torture meted out to her ,the 1st party has been taking shelter in her paternal home.

Accordingly this point is decided in negative against the 2nd party.

Point no.ii)

Reiterating her pleadings, in her evidence the 1st party has stated she has no source of income .

Though the 2nd party in his written statement alleged that the 1st party has her own income , Pw1 has not been cross examined on that point nor any suggestion has been put to her challenging her said version .

Therefore it is found to be an admitted fact that the 1st party does not have any source of income.

Point.no.iii)

In her pleadings as well evidence the 1st party has claimed that the 2nd party is a Mason and he has sufficient cultivable land.

Denying that version of the 1st party regarding his income and occupation ,the 2nd party has contended that he is a day labourer .

It is evident that 2nd party is an able bodied person and therefore it is his obligation to maintain his wife .

Thus it is found that he has sufficient means.

So far as , neglecting to maintain the 1st party by the 2nd party is concerned ,the 2nd party has nowhere claimed that he has been regularly providing maintenance to the 1st party .

Thus it appears that it is an admitted fact that the 2nd party has neglected to maintain the 1st party .

In view of the discussion made above it is found and held that the 2nd party having sufficient means neglected to maintain the 1st party .

Point no.iv):

In view of my findings arrived at the foregoing points for determination, it is held that the 1st party is to get maintenance from the 2nd party .Therefore , now the quantum of the maintenance allowance is to be determined.

From the version of 2nd party it is found that he is a day labourer . Being an able bodied person ,it is his obligation to maintain his wife .

Taking in to consideration the standard of living of the parties, needs and requirements of the 1st party ,cost of living , financial position of the 2nd party (discussed above), it is held that 1st party is entitled to get Rs.1000/-(Rupees one thousand) per month from the 2nd party for her maintenance .

6.Order:

In the result the 2nd party is directed to pay Rs.1000/-(Rupees one thousand) per month to the 1st party for her maintenance with effect from today .The 2nd party is further directed to pay a lump sum of Rs.500/-(Five hundred) to the 1st party towards the expenses of the proceeding.

A copy of the judgment be supplied to the 1st party free of cost.
Given under my hand and seal of the court on this 2nd day of June 2015.

(T.Hussain)
Addl.C.J.M,Dhubri

Typed & corrected by me:

02.06.2015

1st party is present.

2nd party is represented by her Ld counsel .

Judgment is delivered in open court. Judgment is written in separate sheet.

From the evidence on record it is found and held that the he 1st party is entitled to get maintenance from the 2nd party .

Taking in to consideration the standard of living of the parties, needs and requirements of the 1st party ,financial position of the 2nd party ,cost of living ,the 2nd party is directed to pay Rs.1000/- (Rupees one thousand) per month to the 1st party for her maintenance with effect from today .The 2nd party is further directed to pay a lump sum of Rs.500/- (five hundred) to the 1st party towards expenses of the proceeding .

A copy of the judgment be supplied to the 1st party free of cost.

