

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

Present: Smt. T. Hussain

Chief Judicial Magistrate

Dhubri

Misc. Case No. 216 OF 2016

U/S 125 Cr.P.C

Monija Khatun

.....1st party

vs

Mustafa Ali Sk

.....2nd party

Advocates appeared:

For the 1st Party: Mr. M Khan

For the 2nd Party: Mr. A.R.Seikh

Evidence recorded on: 24.03.2017

: 29.04.2017

Argument heard on : 16.06.2017

Judgment delivered on: 29.06.2017

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.10,000/- per month .

The pleaded case of the 1st party in brief is that, she is the legally married wife of the 2nd party and their marriage was solemnized on 18.10.2015 according to Muslim *Shariat* by executing a registered *Kabinnama*. After the marriage they started their conjugal life in the house of the 2nd party. It is alleged that shortly after the marriage, the 2nd party and his family members started to harass her asking her to bring Rs. 5 lakh from her father for purchasing a plot of land at Guwahati where the 2nd party works. Her father could not fulfil the demand and hence the 2nd party and his family members began to torture her physically and mentally. In respect of the torture inflicted on her, the 1st party instituted a criminal case. Finally on 07.03.16, the 2nd party and his family members assaulted the 1st party and thereafter taking all her

ornaments, ousted her from his house. The 1st party has added that she does not have any source of income and hence unable to maintain herself. On the other hand, the 2nd party is an established contractor at Guwahati and he earns Rs. 50,000/- per month. Despite having sufficient income he has provided nothing for her maintenance. It is also stated in her petition that at the time of her ouster she was carrying six months pregnancy. Under these circumstances, the 1st party has come up with the instant petition u/s 125 Cr.P.C seeking maintenance 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. However, the 2nd party has admitted that the 1st party is his legally married wife. The 2nd party has contended that the 1st party left her matrimonial home without informing him and his family members. Though he made repeated efforts to bring her back to her matrimonial home, she has refused to return and to resume conjugal life with him. Denying the version of the 1st party regarding his income and occupation, the 2nd party has said that he is a day labourer and earns hardly Rs. 250/- and with this meagre income he has to maintain his family members.

Thus, according to the 2nd party, the 1st party has not entitle to get maintenance and hence the case liable to be dismissed.

3. In support of their respective cases, both the parties have examined one witness each.

4. Points for determination:

Here in this case there is no dispute that 1st party is the legally married wife of the 2nd party. From the pleadings of the parties it is found to be an admitted fact that the 1st party has no source of income. Therefore the points for determination are:

- i) Whether the 2nd party having sufficient means, neglected to maintain the 1st party?
- ii) 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.

Having gone through the materials on record it is found that there is no doubt that from the month of March 2016, 1st party has been living in her paternal home. In her evidence the 1st party Moniza Khatun (as Pw1) has said that while she was carrying six months pregnancy she was ousted from her matrimonial home after subjecting her to severe physical torture for non fulfilment of demand of the 2nd party for money. She came to her paternal home and later gave birth to a male child aged about nine months on the date of her evidence. And since then she has been living in her paternal home along with the child. The 2nd party admitted paternity of the child and the 2nd party himself has said in his evidence that the child has been with the 1st party.

Reiterating her pleadings and evidence the 1st party has claimed that she does not have any source of income. The 2nd party has not challenged the aforesaid version of the 1st party. Accordingly, the 1st party is found to be unable to maintain herself and the child for not having any source of income. So far as the income and occupation of the 2nd party is concerned as per his own evidence, he is a labourer and earns Rs. 6,000/- to Rs.7,000/- per day.

Admittedly, the 2nd party is an able bodied person and has capacity to earn sufficiently to maintain his family. Being the able bodied person, it is obligation to earn sufficiently and to maintain his wife. The 2nd party nowhere claimed that he has provided anything for maintenance of the 1st party.

That being the position, it is found that the 1st party for not having any source of income, the 1st party is unable to maintain herself and the 2nd party despite having capacity to earn, the 2nd party neglected to maintain the 1st party and hence the 1st party entitled to maintenance from the 2nd party for herself and her minor child.

Taking in to consideration the standard of living of the parties, needs and requirements of the 1st party and the child, cost of living, financial position of the 2nd party (discussed above), I am of the view that payment of Rs.1,200/- (one thousand two hundred) per month to the 1st party and Rs.800/- (Eight hundred) per month for the child towards their maintenance will meet the ends of justice.

6. Order:

In the result the 2nd party is directed to pay Rs.1,200/- (one thousand two hundred) per month to the 1st party and Rs.800/- (Eight

hundred) for the minor child towards their maintenance with effect from the today

The 2nd party is further directed to pay a lump sum of Rs.1,000/- (one thousand) 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 29th day of June 2017.

(T.Hussain)

C.J.M,Dhubri

Dictated and corrected by me

Appendix:

Witnesses examined by the 1st party:

Pw1.....Beauty Khatun, 1st party

Witnesses examined by the 2st party

Dw1.....Rofiqul Islam

Documents exhibited by the 1st party:

Nil

