

his written statement denied the entire averments of petitioner. O.P further pleaded that the O.P at the time of marriage never demanded any dowry nor received any money and house hold articles from the petitioner. After marriage the petitioner disliked the O.P and his family members and she put along with her relative pressure upon the O.P to stay as "Ghar Jamai" and O.P continued his happy conjugal life living as "Ghar Jamai" and after few days, the petitioner and her relatives with ill intention badly tortured the O.P and driven him out from the house and since then the O.P has been residing in his father's house. The petitioner never want to lead conjugal life with O.P at her matrimonial house. Hence, the alleged demand Rs.20,000/- and torture both mentally and physically does not arise and O.P neither torture upon the petitioner physically or mentally nor demanded Rs.20,000/- and the allegation made by the petitioner completely false and manufactured. O.P is a labour by profession and having no landed property. His monthly income is only Rs.2,000/- (Two thousand) per month and passing his days very hardship along with his first wife along with her minor children. Petitioner's father is a rich man having landed property and sufficient means of income and the petitioner herself is also a worker of "AGOR BATI" factory and she earns Rs.4,000/- (Four thousand) per month.

3. Upon the above pleadings of both sides, following are appears to be the points for determination:-

- i) Whether petitioner is the legally wedded wife of O.P?*
- ii) Whether O.P deserted the petitioner from her matrimonial house?*
- iii) Whether O.P refuses to provide maintenance the petitioner?*
- iv) Whether the O.P earns Rs.25/30 thousand per month?*
- v) Whether the petitioner is entitled to get monthly maintenance as claimed from the O.P?*

4. In this case the petitioner adduced oral evidence by way of examining herself as PW-1 before this court and on the other hand, O.P failed to adduce any evidence. During the pendency of this case, O.P has taken several dates to bring his evidence, but, he failed and the evidence of O.P is closed. Hence, the argument was heard from both sides.

DISCUSSION, DECISION AND REASONS FOR SUCH DECISION

5. For the proper adjudication of dispute between the petitioner and O.P, I would like to discuss all the points for determination together. In this case first point for determination is whether petitioner is legally wedded wife of O.P.? On perusal of the petition filed u/s 125 Cr PC as well as the written statement submitted by the O.P, it reveals before this court that O.P himself admitted in his written statement that petitioner is his wife. It is the well known principle that admitted fact need not be proved further in view of section-58 of Indian Evidence Act. Therefore, in the light of all the above discussion, it proved before this court that petitioner is the wife of the O.P. Hence, this point for determination answered in affirmative and in favor of petitioner.

6. Points for determination No.2 & 3, relates to the fact "Whether O.P deserted the petitioner from his house?" or "whether O.P declined to provide maintenance to petitioner since she started residing at her parent's house?" Both the points for determination taken together for the discussion & decision as both such points are co-relates and discussion & decision of both the points shall decide the fate of the petitioner's case. Petitioner to prove her case examined herself as PW-1 and she herself appears to be supportive and corroborative about the fact that she got married with the O.P 3 years back and she leads conjugal life with O.P happily 3 months. During her conjugal life with O.P, she was tortured by O.P mentally and physically. At the time of marriage O.P suppressed that he married earlier before her marriage. O.P assaulted her demanding Rs.20,000/- as dowry. Thereafter, 7/8 months back O.P tortured her mentally and physically demanding dowry of Rs.20,000/- and drove her from his house. She took shelter at her parent's house. Since for last 7/8 months her husband did not provide her any sort of maintenance. She does not have any earnings. O.P is a businessman by profession and he has landed property of 5/6 Bighas. He earns Rs.3,000/- per month. She prayed Rs.8,000/- as monthly maintenance from the O.P as monthly maintenance for herself with effect from the filing of this case. Petitioner in her cross-examination deposed that she has not submitted any documents of land belongs to her husband. She forgot the date and time of mental and physical torture. She has not submitted any documents with regard to business of her husband.

7. The testimony of PW-1 clearly supports and corroborate her entire case and the O.P failed to collect any sort of material contradictions from her cross-examination.

8. The O.P in his written statement claimed that after marriage the petitioner disliked the O.P and his family members and she along with her relative asked the O.P to stay as "Ghar Jamai" and O.P leads conjugal life living as "Ghar Jamai" and after few days, the petitioner and her relatives with ill intention badly tortured the O.P and driven him out from the house and since then the O.P has been residing in his father's house. The O.P though pleaded all the above said facts in his written statement, but, he failed to substantiate those pleadings by way of adducing any forms of evidence before this court.

9. To sum up the evidences on record, it reveals that petitioner is living separately as she was deserted by the O.P and O.P declined to provide any valid maintenance to her. During the pendency of this case, O.P had not made any endeavour to bring the petitioner to her matrimonial home and also further failed to pay any maintenance to petitioner. Hence, both issue No.2 & 3 are answered in affirmative and in favour of the petitioner.

10. The points for determination No.4 relates to whether opposite party earns Rs.25/30 thousand per month? That fact is not proved as the petitioner failed to adduce any cogent evidence before this court to prove the fact that Opposite Party earns Rs.25/30 thousand per month from his all source of income. Hence, it appears clearly before this court that petitioner failed to prove the fact that O.P earns Rs.25/30 thousand per month. Accordingly, the points for determination No.4 decided in negative and against the petitioner.

11. Now last question relates to the fact that "whether petitioner and her child are entitled to get monthly maintenance of Rs.8,000/- per month from the O.P.? In the light of all the above discussion, it apparently appears before this court that now the petitioner is living separately and O.P did not pay any sort of maintenance to her. As such petitioner being the wife of the opposite party is entitled to get proper maintenance from the Opposite Party and in the other words opposite party being the husband of petitioner is bound to provide maintenance to petitioner as per section-125 of Cr. P.C. Hence, it can be safely decided here that petitioner is entitled to get

maintenance from the O.P. In the light of discussion & decision of issue No-4 the petitioner is not entitled to get the exact amount as prayed for. Hence, points for determination No-5 is answered partly in affirmative and in favor of petitioner. Accordingly, this Misc case is disposed of by giving following order:-

ORDER

12. In the result opposite party is directed to pay Rs.1,500/- (Fifteen hundreds) only per month to the petitioner as monthly maintenance from the date of filing of this case. This order has been given effect from the date of filing of this case as the O.P has not made any endeavor to provide maintenance to petitioner since she started residing at the house of petitioner's parents. Let a copy of this judgment shall be given to the petitioner free of cost.

13. Judgment is pronounced and delivered in open court under the hand & seal of this court on 06th day of September, 2017.

Addl. C.J.M,Dhubri.

APPENDIX

PETITIONER WITNESS:- PW-1 Somela Khatun (Petitioner).

Addl. C.J.M,Dhubri.

Misc Case No.417/16

ORDER

06/09/2017

Today both the petitioner and O.P are present
before this court.

Judgment is pronounced and delivered in open court by directing the O.P to pay Rs.1,500/- (Fifteen hundreds) only per month to the petitioner from the date of filing of this case.

Let a copy of this order and Judgment shall be furnished to the petitioner free of cost forthwith.

This case is disposed of accordingly.