

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

present: Smt.T.Hussain

Addl.Chief Judicial Magistrate

Dhubri

Misc.case No. 161/14

U/S 125 Cr.P.C

Askar Ali

.....1st party

vs

Jamil Hussain

.....2nd party

Advocates appeared:

For the 1st party: Mr.A.B.Seikh

For the 2nd party: Mr.A.Islam

Evidence recorded on: 05.12.2014

:06.01.2015

:07.02.2015

Argument heard on :12.12.2015

Judgment delivered on:20.12.2015

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 his minor daughter Akashi Begum@Bibi, married to the 2nd party , at the rate of Rs.5000/- PM .

The pleaded case of the 1st party in brief is that, his minor daughter Akashi Begum@Bibi is the legally married wife of the 2nd party and their marriage was solemnized on 01.11.2012 by executing registered Kabinnama.Soon after the marriage ,the 2nd party along with his family members started to ill treat and harass Akashi Begum demanding furniture and other articles.As the torture of the 2nd party and his family members upon Akashi Bibi gradually increased ,finding no other alternative on 20.02.13 ,the 1st party gave 41 iteams of furniture

and other articles to the 2nd party. Even after that 2nd party again demanded Rs.50,000/- and on her failure to meet his demand in the 1st week of April 2013, the 2nd party drove out his wife Akashi Begum after beating her severely and warned her not to return to her matrimonial home without fulfilling his demand. On 24.06.13 the 2nd party along with his family members came to the house of the 1st party and assaulted Akashi Begum demanding money. Though the 1st party waited for amicable settlement of the matter, later he lodged criminal case against the 2nd party and others. Thus since the month of April 2013, Akashi has been taking shelter in her paternal home. She has no source of income. On the other hand the 2nd party is a rich businessman having various properties. The 2nd party has neither enquired about the well being of his wife Akashi nor provided anything for her maintenance. Hence the 1st party has come up with the instant petition seeking maintenance for Akashi Begum.

2. The 2nd party has contested the case by filing written statement wherein he has admitted that 1st party's minor daughter Akashi Begum is his legally married wife. The 2nd party has denied all other allegations of torture, demand of money etc. The 2nd party has further alleged that after the marriage during continuance of conjugal life, it came to his knowledge that Akashi Begum had been suffering from Tuberculosis (T.B) since before her marriage and that fact was suppressed by the 1st party at the time of the marriage. In spite of that the 2nd party performed all his marital duties and obligations towards his wife. Though he tried to get her treated medically she refused to go to the Doctor. In the 1st week of May, 2013 his wife went to her paternal home taking all her ornaments and cash amount of Rs.30,000/- in his absence and thereafter she never returned. 2nd party and his guardians, relatives visited the house of the 1st party for getting back Akashi Begum, but she did not return. Therefore under the compelling circumstances the 2nd party instituted a suit for restitution of conjugal rights. Denying the averment of the 1st party regarding his income and occupation, the 2nd party has claimed that he is a daily labourer and contended that he has no capacity to provide separate maintenance to his wife.

3. In support of their respective cases, both the parties have examined two

witnesses each.

4. Points for determination:

Whether Akashi Begum ,the minor daughter of 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 ld 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:

There is no dispute that the Akashi Begum ,the minor daughter of the 1st party ,is the legally married wife of the 2nd party . It is also an admitted fact that for last nearly two years Akashi Begum@Bibi has been living in her paternal home .

Regarding the circumstances leading to her taking shelter in her paternal home ,reiterating the pleadings, Pw2 Akashi Begum has stated in her deposition to the effect that after one and a half months of the marriage the 2nd party started to torture her demanding Rs.50,000/-Her father being a poor Ricksaw puller could not fulfill his demand and so the 2nd party ousted her from his house after inflicting severe torture on her .

The plea of the 2nd party is that at the time of the marriage ,it was suppressed from them that Akashi Begum was suffering from T.B. After marriage they came to know about her disease .The 2nd party has contended that though they tried to get her treated ,she refused to visit the Doctor and when he was away from his home in connection with his work ,his wife Akashi went to her paternal home and her parents got her treated but thereafter she never returned.When he visited her paternal home to bring her back she refused to return compelling him to institute a civil suit for restitution of conjugal rights.

In her cross examination Pw2 has stated that after two /three months of the marriage ,she became a patient of T.B.The 2nd party provided only medicines to her but did not take her to the Doctor for her treatment.

Now from the evidence on record it is found that at the relevant period Akashi Begum was suffering from T.B .According to the 2nd party though he tried to get her treated ,she refused to visit the Doctor and when he was away from his home in connection with his work ,his wife Akashi went to her paternal home and her parents got her treated . The 2nd party has admitted in his cross examination that now his wife Akashi is cured.

It is not believable that without having any reason ,a wife would refuse to take treatment while living in her husband's home and went to her paternal home to get treated and even after getting cured refused to return to her matrimonial home.

That being the position ,it is concluded that the plea of the 2nd party to the effect that without having any reason ,his wife Akashi refused to return to her matrimonial home is not proved .

It is an admitted fact that a case against the 2nd party and others was lodged u/s 498(A) /34 IPC.The 1st party(Pw1) and his daughter (Pw2)have categorically stated about torture inflicted upon Pw1 demanding money .By cross examining Pw1 and Pw2 nothing could be brought out on material points.It is pertinent to note here that the 2nd party has admitted in his cross examination that after one month of the marriage ,his wife brought 41 nos of house hold article from her parents.

Situated thus it is held that the 1st party has been able to prove that due to the torture inflicted upon Pw2 , she has been taking shelter in her paternal home.

There is no dispute that Akashi Begum does not have any source of income and that nothing has been provided to her by the 2nd party for her treatment.

According to the 1st party ,2nd party has business of manufacturing trunk.Further he has half bighas of land and he earns Rs.25,000/-to Rs.30,000/- PM. On the other hand the 2nd party has claimed that he is a day labourer. Thus from the version of 2nd party himself ,he is found to be an able bodied person .Being an able bodied person it is his obligation to earn and to maintain his wife .

That being the position it is found and held that the 1st party is

entitled to get maintenace from the 2nd party.

Taking in to consideration the standard of living of the parties, needs and requirements of Akashi Begum ,cost of living , financial position of the 2nd party (discussed above), I am of the view that Rs.1000/-each per month towards her maintenace will be just to meet the ends .

6.Order:

In the result the 2nd party is directed to pay Rs.1000/- (One thousand)per month to his wife Akashi Begum@Bibi towards her maintenace with effect from today .The 1st party shall be at liberty to receive the maintenace allowance for and on behalf of his minor daughter Akashi Begum till attaining her majority.

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 20th day of February 2015.

(T.Hussain)

Addl.C.J.M,Dhubri

