

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

present: Smt.T.Hussain

Addl.Chief Judicial Magistrate

Dhubri

Misc.case No. 786/14

U/S 125 Cr.P.C

Rohima Sultana @Lucky

.....1st party

VS

Nur Alom Seikh

.....2nd party

Advocates appeared:

For the 1st party:Mr.M.Khan

For the 2nd party: Mr.M.A Ahmed

Evidence recorded on: 09.07.2015

: 23.11.2015

Argument heard on :23.11.2015

Judgment delivered on:05.12.2015

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 her self 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 13.11.12 . 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 torture her physically and mentally demanding dowry. After about one month of the marriage ,the 2nd party brought the 1st party to her paternal home and left her there

and subsequent to that ,several times salishes were held in the village and thereby that matter was settled. Thereafter the 2nd party did a course of ITI (E.E) and the entire expenses of the course was born by the father of the 1st party on demand of the 2nd party and his family members and as per the terms of the earlier settlement, during that period the 1st party was in her paternal home so that she could continue her studies.After completion of his course the 2nd party did job in private company and thus earned sufficiently. But in the month of September 2014 the 2nd party demanded Rs.3 Lakh and this time the parents of the 1st party refused to pay the amount .As a result the family members of the 2nd party warned that unless and until the said demand was fulfilled ,they would not allow the 1st party to lead conjugal life with her husband(2nd party) In the mean time 2nd party entered in to 2nd marriage with one Nargis Sultana .In spite of that the parents of the 1st party approached the 2nd party for amicable settlement of the matter whereupon the 2nd party clearly declined to resume conjugal life with the 1st party. It is added by the 1st party that she being a student ,has no source of income and the 2nd party despite having monthly income of Rs.40,000/- which he earns by working as 1st class contractor has been neglecting to provide maintenance to the 1st party.

Hence 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 against him and also denying the averments made by the 1st party regarding his occupation and income .The 2nd party has admitted the claim of the 1st party that she is his legally married wife .But it is contended by the 2nd party that in the next day of their marriage ,the 1st party left for her paternal home on the pretext of continuing her studies and thereafter she has never come to her matrimonial home despite repeated efforts of 1st party and his family members and that instead of returning she insisted the 2nd party to live

in her paternal home as "Ghar Jamai" and under such circumstances he had to institute a civil suit against the 1st party for restitution of conjugal rights .Denying the version of the 1st party regarding his income and occupation ,the 2nd party has said that he is a poor day labourer and with his meagre income he has to maintain his parents and other family members and hence he has no financial capacity to provide separate maintenance to the 1st party .He has further claimed that 1st party earns Rs.4000/- PM by doing private tuitions and hence according to him the case is 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 . Therefore the points for determination are :

i)Whether the 1st party is unable to maintain herself?

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

iii)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 dispute that the 1st party has been living in her paternal home . In his evidence the 2nd party has admitted that he already contracted 2nd marriage and therefore it is found that as per the law [Explanation provided u/s 125(3)]the 1st party has just ground for her refusal to live with the 2nd party.

Challenging the version of the 1st party to the effect that she does not have any source of income ,the 2nd party in his pleadings as well as in

evidence claimed that by doing private tuitions ,she earns Rs.3,000/- to Rs.4,000/- per month . It is an admitted fact that the 1st party is a student .Since the in her evidence the 1st party has categorically denied the claim made by the 2nd party about her income ,burden lies on the 2nd party to prove his claim by adducing cogent evidence. But the evidence adduced by the 2nd party in that respect is found to be not convincing and hence can not be relied upon . And hence it is found and held that the 2nd party has not been able to prove him claim and accordingly I have come to the conclusion that the 1st party is does not have any source of income and hence unable to maintain herself .

Denying the claim of the 1st party regarding his income and occupation ,the 2nd party has stated in his pleadings that he is a poor day labourer and that with his meagre income he has to maintain his parents and other family members whereas in his evidence he has said that he is unemployed. Thus it is seen that there is glaring discrepancy between his evidence and pleading about his occupation and therefore his version in that respect can not be accepted . Evidence adduced by the 1st party regarding income and occupation of the 2nd party is not cogent .Admittedly 2nd party is an able bodied person and has capacity earn sufficiently to maintain his family. Being an able bodied person, it is his duty and responsibility to maintain his wife .Further from my personal observation(from his wearing apparels ,wrist watch etc) , I am of the considered view that it can be safely inferred that the 2nd party is financially sound.

The 2nd party has nowhere claimed that he has provided anything to the 1st party and therefore it is found to be an admitted fact that despite having sufficient income he neglected to maintain the 1st party and hence she is entitled to maintenance from the 2nd party .

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), I am of the view

that payment of Rs.3000/-(three thousand) per month to the 1st party towards her maintenance will meet the ends of justice .

6.Order:

In the result the 2nd party is directed to pay Rs.3,000/-(three thousand)per month to the 1st party towards her maintenance with effect from the date of filing of the petition .

The 2nd party is further directed to pay a lump sum of Rs.2000/-(Two 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 5th day of December 2015.

(T.Hussain)

Addl.C.J.M,Dhubri

Dictated & Corrected by me

Addl.C.J.M,Dhubri

05.12.2015

Both the parties are represented by their Ld counsel
Judgment is delivered in open court. Judgment is
written in separate sheets.

From the evidence on record it is found and held that
the 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.3,000/-(Three thousand
)per month to the 1st party towards her maintenance
with effect from the date of filing of the petition.

The 2nd party is further directed to pay a lump sum of
Rs.2000/- (Two thousand) to the 1st party towards expenses
of the proceeding .

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

