

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

Present: Smt.T.Hussain
Addl.Chief Judicial Magistrate
Dhubri

Misc.case No. 753/14

U/S 125 Cr.P.C

Anjuma Bibi

.....1st party

vs

Latif Ali Seikh

.....2nd party

Advocates appeared:

For the 1st party: Mr.R. Karim

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

Evidence recorded on: 19.03.2015

:20.04.2015

:18.05.2015

Argument heard on :02.07.2015

Judgment delivered on:13.07.2015

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 herself and her minor child at the rate of Rs.7000/- and Rs.3,000/- PM respectively .

The pleaded case of the 1st party in brief is that, she is the legally married wife of the 2nd party and that about 7 years back their marriage was solemnized as per Islamic sariat . After the marriage the 1st party started her conjugal life with the 2nd party in his house . Shortly after the marriage the 2nd party started to torture her physically and

mentally demanding dowry .Tolerating all these torture inflicted on her she tried to continue her conjugal life with the 2nd party and thus became pregnant and gave birth to a female child who is now two and a half years old .After birth of the child (as she could not give birth to a male child) ,the 2nd party with intent to contract 2nd marriage ,began to torture her more and asked her to bring Rs.20,000/- from her father .On her refusal to do so ,on 15.09.14 ,she was mercilessly beaten up and ousted from her matrimonial home along with her child . Since then she has been taking shelter in her paternal home. The 1st party has claimed that she does not have any source of income whereas the 2nd party cultivation and deals in pan and betel nut and from all the sources he earns Rs.30/40 thousand per month.Hence the 1st party has come up with the petition u/s 125 Cr.P.C seeking maintenance for herself and her minor child.

2.The 2nd party has contested the case filing written statement denying all the allegations levelled against him by the 1st party in her petition and contending inter alia that the case is not maintainable . The 2nd party has not disputed the claim of the 1st party to the effect that she is his wife and that they have a two and a half year old daughter . The 2nd party has alleged that on 15.09.14 at about 7 PM the 1st party fled away with one Rofiqul Islam and in that connection he lodged an ejahar giving rise to Golokganj PS case no.685/14 u/s 447/497/354(b)323 I.P.C .Denying the version of the 1st party regarding his income and occupation ,the 2nd party has contended that he does not have capacity to provide maintenance to the 1st party and according to him the 1st party is not entitled to get maintenance and hence 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 three witnesses including himself and exhibited two documents.

4. Points for determination:

Here in this case, from the contents of the written statement

(paragraph no.9) it is found that it is an admitted fact that the 1st party is legally married wife of the 2nd party and that they have a minor daughter .Therefore the points to be determined here are as follows:

- i)Whether the 1st party is unable to maintain herself?
- ii) Whether the 1st party is living in adultery ? if not
- iii)Whether the 2nd party having sufficient means has neglected to maintain the 1st party ?
- iv) Whether the 1st party and her minor child are 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 her pleadings as well as evidence ,the 1st party has claimed that she does not have any source of income. On the other the 2nd party has though in his written statement contended that the 1st party has enormous earnings from cultivation and stock business ,he neither cross examined the 1st party on that point nor adduced any evidence in that respect .

As such it is found and held that the 1st party has been able to prove that she has no source of income and hence unable to maintain herself.

point no.ii)

It is an admitted fact that since 15.09.14 the 1st party has been living in her paternal home along with the child as the 2nd party in paragraph no.17 of his written statement admitted that .

The 2nd party has alleged in his written statement that on 15.09.14

at 7 PM the 1st party fled away with one Rofiqua Islam and in that connection he lodged an ejarah giving rise to Golokganj PS case no.685/14 u/s 447/497/354(b)323 I.P.C and thus the 2nd party has taken the plea of adultery against the 1st party and during argument also the Ld counsel for the 2nd party has submitted that the 1st party was involved in adultery and is leading a adulterous life and hence she is not entitled to get maintenance from the 2nd party.

To prove said allegation of adultery ,the 2nd party has testified to the effect that the 1st party has illicit relation with his nephew Rofiqua Islam .He caught both of them in compromising position .In that connection he lodged a case giving rise to Golokganj PS case no.685/14 .Ext-A is the FIR (certified copy),Ext-A(1) is the certified copy of the ejarah .2nd party /Dw1 has further stated that since the date of said incident ,the 1st party has been living in her paternal home.He has further alleged that the 1st party took away all gold ornaments and Rs.20,000/- which he had taken as loan from 'Bandhan'

In his cross examination Dw1 /2nd party has admitted that on 15.09.14 ,the 1st party lodged a case against him u/s 498(A) I.P.C .

Dw2 Joyal Haque ,uncle and next door neighbour of the 2nd party has deposed to the effect he heard that Rafiqua of their village used to visit the 1st party frequently and came to know that said Rofiqua has relation with the 1st party .One day the 2nd party caught Rafiqua after having seen the 1st party with him in a compromising state.Hearing hue and cry Dw2 arrived there along with many other villagers .The 2nd party lodged a case against Rafiqua .The panchyat President was also informed about the incident .Thereafter police came to that place and questioned the 1st party as well as Rafiqua in presence of Dw2 and others and then the 1st party disclosed that she had relation with Rafiqua .Though the parents of the 1st party were called ,they did not respond and hence police took both 1st party and Rafiqua to the police station.Thereafter the 1st party has not come to the place of the 2nd party.

In his cross examination Dw2 has stated that when he arrived at that place he did not find Rafiqua there .At that time 1st party was weeping .The 2nd party has not divorced the 1st party .The marriage is still subsisting .

Dw3 Abdul Latif has deposed to the effect that nearly 7 months ago one evening having heard commotion he came out to the road and saw that the villagers were chasing a person.Dw3 could not see the person as it was dark night .He came to know that people saw Rafiqua with 1st party in compromising state and therefore people were chasing him but could not nab him.

Dw4 Sahabuddin Sk has stated in his deposition that he heard that 1st party is a woman of loose character and once she was caught with one Rafiqua in a compromising state .Having heard commotion they tried to chase Rafiqua but could not nab him.

Now from the evidence of Dw2 Dw3 and Dw4 it is found that none of them saw the 1st party with said Rafiqua .They only heard about that.

It is an admitted fact that since 15.09.14 the 1st party has been living in her paternal home. Though the 2nd party (Dw1) has stated in his deposition that the 1st party has illicit relation with his nephew Rafiqua Islam ,could not adduce any evidence to show that at present the 1st party is leading adulterous life .

u/s 125 (4) Cr.P.C no wife shall be entitled to receive maintenance from her husband if she is living in adultery .

Here in this case the evidence on record adduced by the 2nd party suggests about adulterous life led by the 1st party in past ,not at present. There is no evidence on record to show that at present the 1st party is living in adultery and hence the plea of the 2nd party to the effect that the 1st party is living in adultery has not been proved.

In this context I would like to refer to the decision of the Hon'ble High court in the case of Abdul Sattar Vs State of Assam reported in 2008(4) GLT 838 in which it is held that facts of past living in adultery

would not disentitle the wife to receive maintenance ..

Point no.iii)

So far as income and occupation of the 2nd party is concerned ,it is seen that in his cross examination he admitted that earlier he had betel nut business in Dhepdhepi Market .Admittedly he is an able bodied person and has capacity to earn sufficiently to maintain his family. Further he admitted that he has provided nothing for maintenance of 1st party and his minor son.

In view of that it is found and held that the 2nd party has neglected to maintain the 1st party and his son making allegation of adultery against 1st party .

Point no.iv):

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

It is already found that 2nd party is an able bodied person and hence it is duty and responsibility to maintain his wife and child.

Taking in to consideration the standard of living of the parties, needs and requirements of the 1st party and her minor child ,cost of living , financial position of the 2nd party (discussed above), I am of the view that an amount of Rs.1,500/-(one thousand five hundred) and Rs.500(Five hundred) per month shall be justified for maintenance of the 1st party and the minor child respectively .

6.Order:

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

1st party shall be at liberty to receive the maintenance allowance for and on behalf of her minor child.

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 13th day of July 2015.

(T.Hussain)

Addl.C.J.M,Dhubri

Typed & corrected by me:

Appendix

Witnesses examined by the 1st party:

Pw1.....Anjuma Bibi ,1st party

Pw2.....Hussain Ali

Witnesses examined by the 2nd party:

DW1.....Abdul Latif Sk,2nd party

Dw2.....Joynal Haque

Dw3.....Abdul Latif

Dw4.....Sahabuddin Sk

Documents exhibited by the 2nd party:

Ext-ACertified copy of the FIR of Golokganj PS case
no.685/14

Ext-A(1)..... Certified copy of the Ejahar of Golokganj PS case
no.685/14

13.07.2015

1st party is represented by her Ld counsel.

2nd party is present .

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 and her minor child are 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 ,financial position of the 2nd party ,cost of living ,the 2nd Party is directed to pay Rs.1,500/-(Rupees one thousand five hundred) per month to the 1st party and Rs.500/- (five hundred) to the minor child for their Maintenance with effect from today .The 2nd party is further directed to pay a lump sum of Rs.1000/-(Two thousand) to the 1st party towards the expenses of the proceeding.

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