

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

present: Smt.T.Hussain

Addl.Chief Judicial Magistrate

Dhubri

Misc.case No. 126/14

U/S 125 Cr.P.C

Kohinur Bibi

.....1st party

vs

Abdul Aziz Seikh

.....2nd party

Advocates appeared:

For the 1st party: Mr.S.K Dey

For the 2nd party: Mr.A.B.Seikh

Evidence recorded on: 18.11.2014

:18.12.2014

:27.02.2014

:21.03.2015

Argument heard on :21.03.2015

Judgment delivered on:31.03.2015

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 at the rate of Rs.12,000/- .

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 26.03.12 . After the marriage , the 1st party started her conjugal life with the 2nd party in the house of the latter. It is alleged that the 2nd party used to harass her physically and mentally asking her to bring money from her father and on 12.12.12 she was

brutally tortured for expressing her inability to meet his demand and thereafter she was ousted compelling her to take shelter in her paternal home .In this connection she lodged a case against the 2nd party u/s 498(A) IPC and also filed a case u/s 125 Cr.P.C seeking maintenance .But subsequently the matter was compromised in the intervention of the elderly persons of the village and she returned to her matrimonial home and the maintenance case was withdrawn.But thereafter the 2nd party again began to torture her and on 28.07.13 she was subjected to severe physical torture and thereafter thrown out of her matrimonial home .Since then she has been taking shelter in her paternal home. The 2nd party has neither enquired about her well being nor provided anything for her maintenance .The 1st party does not have any source of income.On the other hand the 2nd party has a grocery shop besides having other business and from all the sources he earns Rs 30,000/- per month. Hence the 1st party has come up with the instant petition seeking maintenace for herself .

2.The 2nd party has contested the case by filing written statement wherein he has admitted that the 1st party is his legally married wife .The 2nd party has denied all the allegations of torture ,demand of money etc . Deniyng the version of the 1st party regarding his income and occupation,the 2nd party has claimed that he is dependent on his parents and some times he works as labourer.and thus he has no capacity to provide separate maintenance to the 1st party and contended that ,the case is liable to be dismissed.

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

4. Points for determination:

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 ld counsel for both the parties and and perused the materials available in the case record. My findings on the points for determination and reasons thereof are as follows:

Here in this case it is already found from the pleadings of the parties

that it is an admitted fact that the 1st party is the legally married wife of the 2nd party .There is no dispute that for last more than one and a half years the 1st party has been taking shelter in her paternal home .

The 2nd party in his written statement denied the allegation of torture ,demand of money etc levelled against him by the 1st party ,claiming that 1st party insisted him to lead conjugal life with her in her paternal home and on his refusal to do so filed this case making false allegations.

On the other hand regarding the circumstances leading to her taking shelter in her paternal home,reiterating her pleadings, the 1st party Kahinur Bibi has stated in her deposition as Pw2 to the effect that 10/12 months of the marriage ,the 2nd party and his family members started to torture her demanding money . On her failure to meet their demand ,the 2nd party assaulted her and thereafter drove her out .After that she filed a case against him seeking maintenance .But subsequently he took her back to his home with assurance that she would not be subjected to any torture in future and hence that case was withdrawn by her .But thereafter again the 2nd party began to harass her demanding Rs.1 Lakh.from her parents.As her father could not fulfill the demand, she was ousted after inflicting physical torture.

By cross examining Pw1 nothing material could be brought out ,rather she further stated in her cross examination that though the 2nd party transferred his one bigha of land to her name at the time of earlier amicable settlement of the dispute , now the 2nd party is in possession of that land . She has further expressed her willingness to lead conjugal life with the 2nd party by saying that she is still ready to lead conjugal life with the 2nd party if he takes her back and assures to keep her properly.Thus from the evidence of Pw1 it is found that because of the torture inflicted on her ,she has been taking shelter in her paternal home .

From the pleading and evidence of Pw1/1st party, it is found that she has it is an admitted fact that the 1st party does not have any source of income and hence she is unable to maintain herself .The claim of the 1st party to the effect that nothing has been provided to her by the 2nd party towards her maintenance has

not been challenged by the 2nd party.

So far as income and occupation of the 2nd party is concerned , though at first the 2nd party has contended that he has no source of income, in his cross examination he has admitted that he has a shop in the market and that he works in Arunachal Pradesh as helper of Mason . Thus from his own version it is found that he has sufficient income Further being an able bodied person has capacity to earn sufficiently to maintain his wife.

Therefore from the discussion made above it is found and held that the 1st party has been able to prove all the conditions required to fulfill for granting maintenance u/s 125 Cr.P.C and accordingly I have come to the conclusion 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 ,cost of living , financial position of the 2nd party (discussed above), I am of the view that Rs.1,500/- 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.1,500/-(One thousand five hundred)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.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 31st day of March 2015.

(T.Hussain)

Addl.C.J.M,Dhubri

Appendix :

Witnesses examined by the 1st party :

PW1.....Abdul Mazid Mullah

Pw2.....Kohinur Bibi,1st party

Witnesses examined by the 2nd party :

Dw1.....Abdul Aziz Sk, 2nd party

Dw2.....Akhtar Hussain Sk

