

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

present: Smt.T.Hussain

Addl.Chief Judicial Magistrate

Dhubri

Misc.case No. 544/14

U/S 125 Cr.P.C

Zahanara Bibi

.....1st party

vs

Azahar Ali

.....2nd party

Advocates appeared:

For the 1st party: Mr.M.A Ahmed

For the 2nd party: Mr.S.S Goni

Evidence recorded on: 08.01.2015

19.02.2015

:18.03.2015

Argument heard on :18.03.2015

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.6000/-PM .

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 07.05.13 . 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 when she was carrying two months pregnancy ,the 2nd party forcibly got her pregnancy

terminated. Even after that she tried to continue her conjugal life but on 15.02.14 the 2nd party along with his parents brutally tortured for not fulfilling their dowry demand and drove her out .Since then she has been taking shelter in her paternal home .In this connection she lodged a case against the 2nd party u/s 498(A) IPC. 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 is a businessman. He has landed properties and from all the sources he earns Rs.15 thousand 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 .The 2nd party has further contended that the 1st party used to insist him to lead conjugal life with her in her paternal home as Gharjamai and on his refusal to do so ,she left her matrimonial home home and despite efforts made by the 2bd party and his parents to get her back ,she refused to return she has been living in her paternal home without having any just ground. The 2nd party stated that he has no capacity to provide separate maintenance to the 1st party claiming that he is a day labourer and earns Rs .2000/- to Rs.2,500/- per month. Thus according to the 2nd party ,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 himself as Dw1.

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 Id 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 and that for last one year the 1st party has been taking shelter in her paternal home .

The 2nd party in his written statement simply denied the allegation of torture ,demand of money etc levelled against him by the 1st party ,claiming that 1st party left for her paternal home on her own and she has been living in her paternal home without having any just cause.

On the other hand regarding the circumstances leading to her taking shelter in her paternal home, the 1st party Jahanara Bibi has stated in her deposition as Pw1 to the effect that after two months of the marriage ,the 2nd party started to torture her demanding Rs.30,000/- . When she was carrying two months pregnancy the 2nd party forcibly got terminated her pregnancy by adminstering some medicine. Thereafter her brother took her to her paternal home for 'Nayor and thereafter she did not return to her matrimonial home .She is still willing to lead conjugal life with the 2nd party. She has further stated that if 2nd party takes her back she will go with him.

Thus it is seen that the 1st party has expressed her willingness to go with the 2nd party But the 2nd party has not responded to it .Therefore the plea of the 2nd party that 1st party left his house for his refusal to live in her paternal home as Ghar Jamai is found to be not acceptable. It appears that under compelling circumstances she has been living in her paternal home. In view of the aforesaid findings,the plea of the 2nd party taken in his written statement that the 1st party has been living in her paternal home without having any just cause is found to not sustainable.

From the pleadings of the parties ,it is found that it is an admitted fact that the 1st party, does not have any source of income and hence unable to maintain herself . Regarding neglecting of 2nd party to maintain the 1st party ,it is seen that the claim of the 1st party to the effect that nothing has been provided to her for her maintenance has not been challenged by the 2nd party.

So far as income and occupation of the 2nd party is concerned ,the 2nd party has claimed that he is a day labourer and earns Rs.2000/-to Rs.2500/- per

month Thus from his own version it is found that he being an able bodied person has capacity to earn sufficiently to maintain his family.

Therefore from the discussion made above it is found and held that the 1st party has been to 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.1000/- 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.1,000/-(One thousand)per month to the 1st party towards her maintenace with effect from today.

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.....Jahanara Bibi ,1st party

Pw2.....Nazrul Islam

Witnesses examined by the 2nd party :

Dw1.....Azhar Ali , 2nd party

