

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

present: Smt.T.Hussain

Addl.Chief Judicial Magistrate

Dhubri

Misc.case No. 841/14

U/S 125 Cr.P.C

Himani Ray

.....1st party

vs

Khokan Mazumdar

.....2nd party

Advocates appeared:

For the 1st party:Mr.J.Talukdar

For the 2nd party: Mr.M.Rahman

Evidence recorded on: 08.07.2015

09.11.2015

09.12.2015

Argument heard on :17.02.2016

Judgment delivered on:01.03.2016

Judgment

1.The facts leading to initiation of the instant proceeding u/s 125 Cr.P.C are that on 20.12.14 ,the 1st party Smt.Himani Roy filed a petition stating therein that on 21.02.14 the 2nd party Khokan Mazumder and she executed a Marriage agreement before the Notary Public ,Dhubri in presence of two witnesses and thereafter they led their conjugal life for two months in her house and after that the 2nd party went to his work place for joining his duty with a promise that within few days he would arrange a rented accommodation for them and thereafter they would

continue their conjugal living there .Though after some days ,the 2nd party came to her, he failed to keep his words with regard to making arrangement for rented accommodation and on being questioned by the 1st party on that point ,he altercated with her ,threatened her and left for his work place. Subsequently when the 1st party contacted him over telephone and requested for arranging a rented accommodation for her ,he put a condition that he would lead conjugal life with her only on her paying Rs.50,000/- .The 1st party has claimed that she has no source of income and hence unable to maintain herself. She has added that the 2nd party being a BSF personnel has sufficient means to provide maintenance to her. And therefore she has come up with the instant petition seeking maintenance from the 2nd party u/s 125 Cr.P.C at the rate of Rs.10,000/- per month.

2.The 2nd party has contested the case by filing written statement wherein he has disputed the version of the 1st party about executing marriage agreement and denying the claim of the 1st party to effect that they led conjugal life for two months in her paternal home contended that inter alia that the averments made in the petition are false ,concocted and distorted .Pertaining to the matter of execution of the marriage agreement ,the 2nd party has asserted that 1st party is known to him since they were from the same college and in the 1st week of February 2014 ,he met the 1st party with her parents at Kolika Mela at Bhanukumari and before going to take holy bath there he kept his mobile phone and money bag with the 1st party .After bath he could not trace out the 1st party in the Mela for taking back his said articles and therefore on 21.02.14 he went to the house of the 1st party with a view to collect his phone and money bag.It is alleged that soon after his arrival ,the mother of the 1st party asked him to marry the 1st party.On his refusal to do so ,mother of the 1st party called 12/15 local youths including one Kabir .Thereafter the said youths forcibly took the 2nd party and the 1st party to Dhubri Court

Premises and took his signatures on some papers ,non judicial stamped papers and also took his photo and thereafter set him free with warning not to disclose that matter to anyone. Afterwards the 1st party lodged a case against the 2nd and his family members giving rise to GR case No.3712/14 u/s 376/498(A)/34IPC.Thus according to the 2nd party the marriage agreement dated 21.02.14 was not executed voluntarily and hence the same is fraudulent and further that he never led conjugal life with the 1st party as stated by her in her petition and hence the case is liable to be dismissed.

3.In order to prove her case ,the 1st party has examined two witnesses including herself. On the other hand for refuting the case of the 1st party ,the 2nd party has examined four witnesses including himself. Both the parties have exhibited some documents in support of their support of their respective cases .

4. Points for determination:

- I) Whether the 1st party is the wife of the 2nd party ? if so
- II) Whether the 1st party is entitled to 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)

As per the pleadings of the 1st party ,on 21.02.14 the 2nd party and she executed a marriage agreement before the Notary Public ,Dhubri in presence of two witnesses and they led their conjugal life for two months

in her house. There can not be any dispute that a mere deed of agreement for marriage is not a proof of marriage . In her pleadings the 1st party has nowhere said about their marriage and nowhere claimed that she is the legally married wife of the 2nd party though in her evidence as Pw1 ,the 1st party Himani Roy has stated that on 22.02.14 the 2nd party took her to the Snanghat temple at Khoraghat and their marriage was solemnized there as per Hindu custom .And supporting and corroborating the 1st party , Pw2 Kabir Roy has said that in his presence the marriage between the parties was solemnised in the Snanghat temple .Therefore this piece of evidence adduced by Pw1 and Pw2 with regard to the marriage between the parties is beyond the pleadings .It is settled proposition of law as held by the Hon'ble Supreme Court in the case of Anathula Sudhakar Vs P.Bushi Reddy (Dead) by LR 7 others MANU/SC7376/2008,that any amount of evidence beyond pleadings is not to be considered .In view of this law laid down by the Hon'ble Supreme Court ,the aforesaid testimony of Pw1 and Pw2 about marriage between the parties can not be considered.

Although marriage between the parties is essential for a claim of maintenance u/s 125 Cr.P.C ,in view of the decision of the Hon'ble Supreme Court in the case of Chanmuniya Vs Chanmuniya Virendra Kumar Singh Kushwaha & another MANU/SC/0807/2010 ,wherein it was held that "where a man ,who lived with a woman for a long time even though they may not have undergone legal necessities of a valid marriage should be made liable to pay maintenance if he deserts her ,.....", if the 1st party becomes able to prove that the 2nd party and she lived together as husband and wife under one roof for some period ,the fact that she has failed to prove their marriage will not disentitle her to maintenance u/s 125 Cr.P.C . Therefore let us now come to the materials on record regarding the claim of the 1st party about her conjugal living with the 2nd party.

In paragraph No.3 of her petition ,the 1st party has clearly said that she led conjugal life with the 2nd party for two months in her house and after that the 2nd party left for joining his service. But contradicting her own said pleadings ,in her evidence she has said to the effect that after their marriage at the Sanghat temple at Khoraghat(which is beyond her pleadings as discussed above)she went to her matrimonial home and started to lead conjugal life with the 2nd party .After two days of leading conjugal life ,the 2nd party left for his work place .Afterwards the 2nd party contacted her over telephone and asked her to bring Rs.50,000/- from her parents and told her that otherwise he would not lead conjugal life with her.Her father being a poor person could not meet the demand of the 2nd party and since then she has been taking shelter in her paternal home. Thus it is seen that there are glaring discrepancies and inconsistencies between the pleadings and evidence of the 1st party regarding the place and period of her conjugal living with the 2nd party and as these discrepancies and inconsistencies are on material points ,these can not be discarded. Situated thus the evidence of Pw1 covering the point of conjugal living of the parties does not inspire confidence and hence can not be acted upon. And thereby the 1st party has not been able to substantiate her claim about her conjugal living with the 2nd party.

That being the position it is found and held that neither the 1st party is the wife of the 2nd party nor it is proved that there is/was any conjugal living between the parties.

Point.No.II)

In view of my findings arrived at the foregoing point ,it is found and held that the 1st party is not entitled to maintenance from the 2nd party.

7.Order : In the result it is held that the 1st party has failed to prove that she is the wife of the 2nd party or that she led conjugal life with the 2nd party as claimed by her and hence she is not entitled to maintenance from

the 2nd party u/s 125 Cr.P.C and accordingly her petition stands rejected.

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 1st day of March 2016.

(T.Hussain)

Addl.C.J.M,Dhubri

Typed & corrected by me:

Appendix:

Witnesses examined by the 1st party:

PW1.....Himani Roy,1st party

Pw2.....Kobir Roy

Witnesses examined by the 2nd party:

Dw1.....Khukan Mazumdar,2nd party

Dw2.....Dulal Mazumdar

Dw3.....Suchitra Sarkar

Dw4.....Tapan Poddar

Documents exhibited by the 1st party:

Ext-1.....Deed of Marriage Agreement

Documents exhibited by the 2nd party:

Ext-Ka.....Certified copy of the FIR of golganj PS case No.653/14

Ext-Kha..... ,, ,,statement of victim recorded u/s 164
Cr.P.C in GR case No3712/14

Ext-Ga.....Pleader's notice

Ext Gha..... Postal Acknowledgment

(T.Hussain)

Addl.C.J.M,Dhubri

