

IN THE COURT OF THE SESSIONS JUDGE ::::::::::: DHUBRI

Criminal Revision No.18/2016

Revisionist : Monjoli Dakua
W/o. Amullya Dakua
Village-Lakhimari Pt-III
P.S-Golakganj,
Dist-Dhubri, Assam

- Vs -

Opp. Party : Amullya Dakua
S/o. Lakhimon Dakua
Village-Lakhimari Pt-III
P.S-Golakganj,
Dist-Dhubri, Assam

Present : Sri Rajib Goswami, AJS
Sessions Judge, Dhubri

Sri M. Seal Sarma, Advocate for Revisionist
Sri A.K. Fazlul Hoque, Advocate for the respondent.

Date of Hearing : 12-05-2016
Date of Final Order : 20-05-2016

J U D G M E N T

The propriety, legality, correctness and regularity are questioned in this revision preferred in respect of judgment and order dated 18-12-2015 passed in Misc. Case No.9/2015 u/s.125 of Cr P.C. by Learned Addl. Chief Judicial Magistrate, Dhubri.

2. The revision was admitted for hearing. The LCR was called for and the Notice was issued to the respondent.

3. The revision has been preferred primarily on the following grounds:

1. Ld. Court below did not take into consideration the fact that the present revision petitioner is the legally married wife of respondent and four minor children living with her had been born in the marriage to respondent.

2. The plea of the respondent in his W.S. in the proceedings u/s.125 of Cr.PC that respondent lost sight of his eyes while working in the factory was not true and he is a healthy man capable of taking any avocation.

3. The Court below while considering the evidence on record had held that the son of petitioner as major depriving him of his share of maintenance from his father.

4. I have gone through the pleadings of the parties. The petition for maintenance filed by the 1st party, Monjoli Dhakua, the revision petitioner reveals that she had been living with her husband Amullya Dhakua for last 20 years with four children born to them in these 20 years. Her husband, the present respondent had married another girl pushing the petitioner and her four children to near destitution. According to the petitioner, the present respondent is a rich person and works as a skilled Silver Moulding Craftsman earning about Rs.30,000/- per month.

5. The written statement of the present respondent in proceedings u/s.125 of Cr.PC. reveals that present respondent denied having driven out his wife and children out of his house. According to present respondent, his wife had deserted him to become a cook and as such she has her independent source of earning. The present respondent had many times attempted to bring his wife back but failed. The present respondent had been rendered handicap while working in Silver Moulding factory at Siliguri due to loss of eye sight and he was driven out of his job. The answering respondent hardly manages to earn around Rs.1000/- to Rs.1500/- and as such he is unable to provide maintenance allowance to his wife and minor children.

6. In her evidence the proceedings u/s.125 of Cr.P.C. the present revision petitioner had alleged that after having brought in another wife she had been deserted. In her cross-examination she admitted with regard to her husband losing sight of both eyes while working in the silver factory.

7. The D.W.-1, the present respondent admitted to revision petitioner being his legally married wife and having four children. According to DW-1 both his elder son and elder daughter are major. The eldest, the daughter is married and living in Rajasthan and the son is 18 years old working in Jorhat as Mason. D.W-1 also related the fact of having lost sight of his right eye while working at the plastic factory. After his eye sight had gone, he is unable to pursue any avocation. On the other hand, the revision petitioner has her own source of income and the elder son earns around Rs.12,000/- per month. He has brought a maid servant to look after his needs. She lives at his house and cooks meals. D.W-1 denied that he earns around Rs.30,000/- per month in income.

8. I have gone through the judgment of the learned trial Court dated 18-12-2015 and learned trial Court while writing the judgment in the proceedings u/s.125 of Cr.PC in Misc. Case No.9/2015 had framed three points for determination. Out of these three points decision on the point whether the present respondent having sufficient means neglected to maintain the present revision petitioner and the four children is vital since while discussing this point learned trial Court had taken into consideration the loss of eye sight of the present respondent while working at Silver Moulding Factory in Siliguri and the fact of present respondent having been driven out from his work which clearly indicates that the present respondent was rendered handicapped. Disregard of his actual income, it is his ability to earn a living that constitutes "sufficient means" for the purpose of Section 125 of Cr.P.C. The "sufficient means" had referred to the decision of Hon'ble High Court in Fakaruddin Ahmed Vs Parveen Sultana reported in MANU/GH/0202/2004: (2005)1GLR 105(para:5).In the instant case, the 2nd party admittedly had lost sight of his eyes which incapacitated his ability to pursue any avocation.

9. The learned trial Court further held in view of the admission by the present revision petitioner in her deposition with regard to the present respondent having lost his eyes sight working in a silver moulding factory. In his deposition DW-1 had stated that due to his loss [C.R. No.18/2016]

of eye sight he could not take up any avocation since following loss of eye sight he was completely incapacitated. Since the 1st party had herself admitted that the accused had lost his sight of both eyes while working at Silver Moulding factory. The very definition of "having sufficient means" for the purpose of Sec. 125 of Cr.PC proceedings which envisages that a healthy man in spite of not having any tangible wealth and other source of income or unemployed, nevertheless is liable to provide maintenance to his wife and children. However, the present respondent without eye sight is rendered incapacitated and for him to pursue an avocation to sustain himself and for the sustenance of his wife and children will not be without much hardship and it may not be possible for him to work at all for his livelihood.

10. Thus in the light of the discussion with regard to the evidence adduced by 1st party, present revision petitioner and 2nd party, present respondent in the proceeding u/s.125 of Cr.PC, I find that the learned trial Court had rightly held in view of the admission of 1st party that the present respondent had lost his eye sight in a silver moulding factory that the present respondent has been incapacitated due to loss of his eye sight to take up any avocation and as such I find no reason for interference in the order of learned trial Court rejecting the prayer, claiming maintenance u/s.125 of Cr.PC by the present revision petitioner from the present respondent. The revision fails. The order of the learned trial Court is affirmed.

11. Send back the L.C.R. along with the copy of the order to the learned lower Court below.

Given under my hand and seal of this Court on this 20th day of May, 2016.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri

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