

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

Present: Smt.T.Hussain

Chief Judicial Magistrate

Dhubri

Misc.case No.612/15

U/S 125 Cr.P.C

Nilima Biswas

.....1st party

vs

Ukil Biswas

.....2nd party

Advocates appeared:

For the 1st party:Mr.I.Ali

For the 2nd party: Mr.Y.A.Bepari

Evidence recorded on: 27.01.2017

:27.02.2017

Argument heard on :23.05.2017

Judgment delivered on:06.06.2017

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 herself and her two minor children at the rate of Rs.2,000/-and Rs.1,500/-each per month respectively.

The pleaded case of the 1st party in brief is that, she got married to the 2nd party about 18 to 19 years ago and out of their wedlock ,two sons were born to them now aged about 10 years and 5 years respectively .It is alleged that shortly after the marriage the 2nd party started to torture her on different pretext. Tolerating all the torture, she was continuing her conjugal life with the 2nd party .But 4 years before institution of this case, the 2nd party ousted her along with the two minor sons. Since then they have been living in her paternal home. The 2nd party has neither enquired about their well being nor provided anything for their maintenance. She has added that she does not have any source of income and hence has been passing her days with the children in great hardship for having no income . On the other hand the 2nd party deals in fish and

earns Rs.20,000/- to Rs.25,000/- p.m . Hence the 1st party has come up with the instant petition u/s 125 Cr.P.C seeking maintenance for herself and her two minor sons .

2. The 2nd party has contested the case by filing written statement contending inter alia that the case is not maintainable and denying the allegations made by the 1st party in her petition against him and also denying the averments made by the 1st party regarding his income .The 2nd party has admitted the claim of the 1st party that she is his legally married wife . Paternity and minority of the children is also admitted .But the 2nd party has contended inter alia that the 1st party has been living in her paternal home at her own and that in spite of his repeated efforts, she refused to return to her matrimonial home and in that respect he instituted a civil suit for restitution of conjugal rights .Further he has asserted that he is a daily wage earner and that he does not have capacity to provide separate maintenance to 1st party. Thus according to the 2nd party the case is liable to be dismissed.

3. In support of her case the 1st party has examined herself as Pw1.For refuting her case ,the 2nd party has examined two witnesses including himself.

4. Points for determination:

Here in this case there is no dispute that 1st party is the legally married wife of the 2nd party and that the couple has two minor children. In absence of any specific plea of the 2nd party, it is also found to be an admitted fact that the 1st party is unable to maintain herself for not having any source of income. Therefore the points for determination are :

- i) Whether the 2nd party having sufficient means, neglected to maintain the 1st party and the minor child?
- ii) Whether the 1st party and the 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.

6. Having gone through the materials on record it is found that there is no dispute that for last a few years the 1st party has been living in her paternal home .The two minor children are with her.

7. Regarding income and occupation of the 2nd party ,the 1st party has said in her evidence reiterating her pleadings that the 2nd party deals in fish and earns Rs.20,000/- p.m .On the other hand according to the 2nd party ,he is a day labourer .There cannot be dispute that being an able bodied person, the 2nd party has capacity to earn sufficiently to maintain his family. And being an able bodied person it is his obligation to maintain his wife and children.

8. Here in this case the 2nd party has taken the plea that the 1st party left his house in his absence and later refused to return expressing her unwillingness to live in his village. But it is not believable that merely for the reason that her matrimonial home is at a village ,she has been living in her paternal home for last a few years with her two minor sons .Hence the 2nd party's said plea is not acceptable.

9. So far as, neglecting to maintain the 1st party and the children by the 2nd party is concerned, it is seen that the 2nd party has nowhere claimed that he provided anything towards the maintenance of the 1st party and the children and therefore it is found to be an admitted fact that the 2nd party has neglected/refused to maintain the 1st party and the children.

10. In view of the discussion made above, it is found and held that the 2nd party having capacity to earn sufficiently refused/neglected to maintain the 1st party and the children .

11. In view of my findings arrived at the foregoing points I have come to the conclusion that the 1st party and the minor children are entitled to maintenance from the 2nd party.

12. Taking in to consideration the standard of living of the parties, needs and requirements of the 1st party and the children ,cost of living ,financial position of the 2nd party (discussed above), I am of the view that payment of Rs.1,000/- (One thousand) per month to the 1st party and Rs.700/-(Seven hundred) each per month for the two children towards their maintenance will meet the ends of justice .

13.Order:

In the result the 2nd party is directed to pay Rs.1,000/-(One thousand)per month to the 1st party and Rs.700/-(Seven hundred) each per month for the two minor sons towards their maintenance with effect from today . The minor children shall get maintenance till attaining majority.

The 2nd party is further directed to pay a lump sum of Rs.1,000/- (one thousand) 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 6th day of June 2017.

(T.Hussain)
Chief Judicial Magistrate
Dhubri

Dictated and corrected by me

Appendix:

Witnesses examined by the 1st party:

Pw1.....Nilima Biswas ,1st party

Witnesses examined by the 2nd party

Dw1.....Ukil Ch. Biswas @ Dinesh Biswas, 2nd party

Dw2.....Namani Biswas

