

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, FTC, BISWANATH CHARIALI,
SONITPUR, ASSAM

Criminal Revision No. 08(S-2)/2019

Revision against the Final order dated 10.04.2019 passed by SDJM(M), Gohpur
in Misc. Case No. 18/2018 u/s 125 Cr.P.C

Shri Debananda Pegu - Petitioner

- Vs -

Sri Lalita Pegu - Respondent/Opposite Party

Present: Sri Dipankar Bora, MA, LL.M., AJS,
Additional Sessions Judge, FTC,
Biswanath Chariali, Sonitpur.

Advocates Appeared:-

For the Petitioner : Mr. P. Hazarika, learned Advocate.

For the Respondent: Mr. G. Borah, learned Advocate.

Date of hearing : 10.11.2020.

Date of Judgment : 10.11.2020.

JUDGMENT

1. This criminal revision petition u/s 397/399 Cr.P.C. is preferred by the petitioner Shri Debananda Pegu being aggrieved by the Final order dated 10.04.2019 passed by the learned SDJM(M), Gohpur in Misc. Case No. 18/2018 u/s 125 Cr.P.C. awarding maintenance allowance of Rs. 2,000/- (Rupees Two thousand) to the petitioner/respondent and Rs. 1,000/- (Rupees One thousand) to their daughter from the date of the order until she is married off.
2. The present respondent filed a petition under Section 125 Cr.P.C. stating that she was married by the revisionist/opposite party in the year 2002. Soon thereafter the opposite party started to harass her by demanding dowry. Her two sons were born in the year 2004 and 2005 and their daughter was born in the year 2010. The opposite party had illicit relationship with other woman but he used to suspect her. He used to close her inside the house without allowing her to have food. He bore all his atrocities for sake of her family. In the year he remarried and led her out of his house with the three children. She therefore started living separately with the children by constructing a temporary house. She was accosted to fetch Rs. 30,000/- from her maternal house by her husband which he wasted in vain. On 16.07.2018 she was finally thrown out by her husband from his house for which she had to take shelter in her father's house with the three children. According to her, her husband is a mason and owns a vehicle which he

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Biswanath Chariali, Sonitpur

gives on rent. He too has other landed properties and poultry from which he earns Rs 10 lakh annually. She therefore prayed for monthly maintenance allowance at a rate of Rs. 5000/- each for her and her three children.

3. The Opposite party/revisionist in his written statement admitted the petitioner to be his wife and he is the father of the three children. He however denied of committing any atrocity on the petitioner by demanding dowry. According to him, the petitioner left his house without any sufficient reason. He denied of about the allegation of his second marriage. He stated that his wife though converted to Christianity and he converted to a Hindu. He denied of taking any money from her and the disclosures made by the petitioner with regard to his income as according to him, he is only a daily wage labourer. He contended that she had illicit relationship with a man which was detected by him. He has no landed property of his own. He earns as a mason and also as an assistant to a mason. He has to look after his two children and his aged mother. He stated that as the Opposite party lives maintains illicit relationship, she is not entitled to get any maintenance from him.
4. On evaluation of evidence of both the sides, the learned Court below allowed the petition with reliefs as indicated above.
5. The impugned judgment and order passed by the learned court below have been challenged mainly on the ground that the learned Court below did not take notice of evidence that emanated mainly the evidence that the petitioner/Respondent had led an adulterous life.

Points For Determination

Whether the impugned Final order suffers from any illegality or infirmity?

Discussion, Decision & Reasons Thereof

6. I have heard learned counsel for both sides. It has been submitted by the learned counsel for the revisionist that the evidence relating to the petitioner/respondent enjoying an adulterous life was overlooked by the learned Court below. He further submitted that the maintenance allowance as ordered is excessive.
7. As we go through the written statement, we find that revisionist/opposite party has admitted the Respondent/petitioner to be his wife.
8. In Jahanara Begum –vs- Md. Rustom Ali Bhuyan @ Rustom Bhuyan, (2014) 3 GLR 681, which cited Shail Kumari Devi –vs- Krishan Bhagwan Pathak (2008) 9 SCC 632, it is observed "42. Again, maintenance is a right which accrues to a wife against her husband the minute the former gets married to the latter. It is not only a moral obligation but is also a legal duty cast upon the husband to maintain his wife".

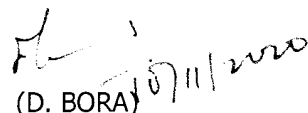


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 JUDGE

9. As we turn to the evidence on record, we find that the evidence of PW1, i.e., the petitioner with regard to cruelty meted to her by her husband has remained un-assailed in her cross. DW1 has admitted his signature on the Ext.1- the Agreement signed by the parties in order to maintain cordial relationship. This fact itself as noted by the learned Court below shows that there was some kind of discord between the parties. Again we find that no reliable evidence could be placed by the Second party to show that his wife led an adulterous life. The cruelty meted by the husband to his wife- the petitioner therefore entitles her to live separately from him and to claim maintenance. Evidence of PW1 shows that the two sons stay with their father, while the daughter stays with her mother. Under such circumstances, I find that the learned Court below did not commit any error while appreciating the evidence thereby granting monthly maintenance allowance to the petitioner and their daughter.
10. So far the quantum of maintenance is concerned, we find the learned Court has passed its order in that regard weighing the evidence that emanated as adduced by both the sides. The revisionist as it appears from the materials on record is an able bodied person having sufficient means. In his written statement he has claimed that he earns by working not only as a mason but also as an assistant of a mason. On the other hand, it is found that the petitioner/respondent has no source of income. The amount of Rs. 2,000/- awarded as monthly maintenance to the petitioner/respondent and Rs. 1,000/- to their daughter considering the price index of various commodities in today's context seem to be too meager and minimum. The learned Court below while passing the order on the quantum of maintenance took into consideration of the relevant factors including his liabilities. Taking note of all these factors, the learned Court below deemed it fit to order the payment of maintenance only from the date of passing the order and not from the date of filing the claim petition, as is ritually followed.
11. Thus I find that the learned trial court has committed no illegality while passing the impugned Final Order. The revision therefore is found to be bereft of merit, hence dismissed and disposed of.
12. Send back the case record as was called for along with a copy of this judgment and order to the learned court below.

Given under my hand and seal of this court on this the 10th day of November, 2020.




(D. BORA) 07/11/2020
Additional Sessions Judge, FTC,
Biswanath Chariali, Sonitpur, Assam.

Adl. Sessions Judge
Biswanath Chariali, Sonitpur