

IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR

Criminal Revision NO. :- **4(S-1)/2015**

Present :- **Mridul Kumar Kalita, AJS**
Sessions Judge, Sonitpur
Tezpur.

Petitioner :- **Sri Mahendra Bora**
Son of Late Hemdhar Bora
R/O- Bahuakuri,
P.O. & Mauza:- Nagsankar,
P.S.-Sootea, Sonitpur
Assam

-vs-

Opposite Party :- **Smt. Niru Bora**
w/o Sri Mahendra Bora
r/o Solal Sonari gaon
P.O.- Solal Sonari gaon
P.O. & Mauza:- Nagsankar,
P.S.-Sootea, Sonitpur
Assam

Counsel for the Petitioner : Sri Rupjyoti Baruah, Advocate

Counsel for the Opposite Party : Sri Jatin Borah, Advocate

Date of hearing : 09/04/2015 & 29/04/2015

Date of Judgment : 13/05/2015.

JUDGMENT

1. Being highly aggrieved by the judgment and order, dated 07/11/2014, passed by Smt. Audri Bhattacharyya, Addl. Chief Judicial Magistrate, Sonitpur, in M.R. Case No. 80 of 2013, under section 125 of the Code of Criminal Procedure, directing the present Petitioner to pay a maintenance allowance of Rs.3000/-per month to the Opposite Party from the date of passing of the order i.e., 07/11/2014, Sri Mahendra Bora, who was the opposite party in M.R. Case No. 80 of 2013, has preferred the instant Criminal Revision, impugning the judgment and order dated 07/11/2014.

2. Before entering into the merit of the instant revision Petition, let me briefly state the facts relevant for consideration of this Revision Petition.

(a) The Revision Petitioner married the Opposite Party as per Hindu rites and Customs about 40 years ago. Both of them lived together as husband and wife, and four sons and three daughters were a born out of the said wedlock. All the daughters have been married. The Revision Petitioner is a retired headmaster, and during his service period, in the year 1978, he married another lady, namely, Smt. Nijara Borah, and resided separately with her at various places. The Revision Petitioner, though married another lady, paid maintenance allowance to the Opposite Party till the year 1990, however, thereafter he stopped paying maintenance to the Opposite Party and his children. In the year 2013, the Opposite Party filed an application, in the Court of Chief Judicial Magistrate, Sonitpur, under section 125 Cr.P.C claiming maintenance at the rate of Rs 8000/-per month from the Revision Petitioner. The case was transferred, for disposal, to the Court of Additional Chief Judicial Magistrate, Sonitpur. The Revision Petitioner contested the case, wherein he took the plea that he never refused to maintain the Opposite Party.

(b) During trial, both the parties adduced the evidence of two witnesses each. After hearing both the parties Learned Additional Chief Judicial Magistrate, Sonitpur, by judgment and order dated 07/11/2014 directed the present Revision Petitioner to pay a sum of Rs. 3000/- per month, as maintenance allowance, to the opposite party from the date of the passing of the order i.e., 07/11/2014.

This judgment and order dated 07/11/2014 is impugned in this instant Criminal Revision.

3. The Revision Petitioner, *inter-alia*, took following grounds for impugning the order dated 07/11/2014:-

(i) That learned Additional Chief Judicial Magistrate has gravely erred in law as well as in fact while passing the impugned judgment and order and as such the same is liable to be set aside;

(ii) That in the proceeding under section 125 of the code of criminal procedure, the present opposite party had failed to establish that she was ever neglected or refused to be maintained by the Revision Petitioner.

(iii) That the Revision Petitioner do not have sufficient means to pay Rs.3000/-to the opposite parties as presently he gets monthly pension of Rs 8038/- and as the revision petitioner is very old person he constantly needs an attendant and it may not be possible for him to survive at a meager amount of Rs.5000/-.

4. I have gone through the aforementioned grounds of set forth by the Revision Petitioner; the deposition of witnesses recorded in M.R. Case No-80 of 2013 and all the available materials on record including the Judgment & Order, passed on 07/11/2014, by the trial Court, thoroughly. I have also heard Ld. Counsel for both the parties.

5. The main contention of Ld. Counsel for the Revision Petitioner is that the opposite party has failed to prove, in the proceeding under section 125 Cr.P.C that the Revision Petitioner has neglected to maintain the opposite party. Ld. Counsel has also argued that as the revision petitioner has another wife and three children to look after, he may not be able to sustain at a meager amount which will be left after payment of maintenance allowance, to the opposite party, as ordered by the trial Court. Learned Counsel has also submitted, during the course of the argument, that the revision petitioner has given landed property to the opposite party and he is ready to pay an amount of Rs.1500/- per month to the Opposite Party.

6. Ld. Counsel for the Opposite Party has submitted that the opposite party is ailing and the revision petitioner has not paid any maintenance amount to her since 1990 and there is no proof that the Revision Petitioner has given any landed property to the opposite party.

7. On careful perusal of the impugned order it appears that the learned trial Court framed two points for determination, which are as follows:-

(a) Whether the opposite party neglected the petitioner and refused to give maintenance to her?

(b) Whether the petitioner is entitled to get the maintenance as prayed for?

8. I have gone through the entire evidence on record very carefully. It appears that PW-1, Smt. Niru Borah, has deposed that that the Revision Petitioner had married her sister Smt. Nijara Borah, in the year 1978, and they had three children out of that wedlock. She has also deposed that the monthly income of the revision Petitioner is Rs. 30,000/- (*However, no other supporting evidence was produced to substantiate this stand*). Whereas, DW-1, Sri Mahendra Bora, has deposed that the opposite party resided with him till 2.5.2006 and thereafter owing to various differences he left the house and started residing with his second wife Smt. Nijara Borah. He has also deposed that he was paying maintenance allowance of Rs.1500/- to the opposite party since the year 2006. He has also deposed that he is only getting pension of Rs.8038/- and in support of that he exhibited a certificate issued by the Chief Manager of State Bank Of India, Biswanath Chariali Branch as Ext.A. On perusal of the impugned order, it appears that learned Magistrate, while deciding the Issue No. 1 has come to the conclusion that the Opposite party (i.e. Revision Petitioner) has neglected to provide maintenance to the petitioner (Opposite Party in this Revision Petition), who is his legally married wife. Learned Magistrate has also observed that though the Opposite party (i.e. Revision Petitioner) has given landed property to the petitioner (Opposite Party in this Revision Petition) however, no monetary support has been provided to her. The DW 2 Sri Jiten Bora, who deposed to support a case of the Revision Petitioner before the trial court has stated that the Revision petitioner was giving Rs. 1500/- to the Opposite Party before commencement of the case against the Revision Petitioner, however, after the initiation of the case, no maintenance allowance has been given. If we believe the testimony of DW 2, who deposed for the Revision Petitioner, it becomes clear that at least since the inception of MR Case No. 80/2014, i.e. from 18-06-2013, no maintenance allowance has been paid to the Opposite Party. Thus, in any view of the matter, the conclusion arrived at by learned Magistrate against Issue No. 1 suffers from no infirmity and, in the considered opinion of this Court, it is rightly held by the learned Magistrate that the Opposite Party (Revision Petitioner) has neglected to maintain the petitioner (Opposite Party in this case).

9. Now, coming to the second point for determination, learned Magistrate has held that the Opposite Party (Revision Petitioner) has himself admitted that he is

getting a pension of Rs. 8038/- (vide Ext. A) and he has given 6 (six) bighas of cultivable land , 4 (four) kathas of court-yard land having fruit bearing trees like banana, jack fruit, mango, betel nut and coconut tree with Assam type houses. However, learned Magistrate held that as no monetary support is provided, the petitioner (Opposite Party in this case) is entitled to get the maintenance allowance and considering the rising price of goods in the market and the cost of living in day to day life, she awarded Rs. 3000/- per month as monthly maintenance allowance to be paid to the petitioner (Opposite Party in this case) by the Opposite Party (Revision Petitioner).

10. Learned Trial Court has, in its Judgment (impugned), referred to the judgment of Hon'ble Supreme Court of India in "**Charturbhuj Vs. Sita Bai**" reported in **(2008) 2 SCC 316**, wherein it was held by Hon'ble Supreme Court that -

"The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors. (MANU/SC/0067/1978:1979CriLJ3) falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (in short the 'Constitution'). It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted

wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves."

11. The Court has to see that the petitioner is not subjected to vagrancy and destitution. While ascertaining the quantum of maintenance allowance, the Court has to take into consideration all the relevant factors. In the instant case, the Opposite Party has seven grown up children, of whom three daughters were married and all the four sons are engaged in some occupation. In the instant case, the facts that the Opposite Party has been given landed property by the Revision Petitioner and that the Revision Petitioner is an old and ailing person, cannot be ignored while deciding the quantum of maintenance allowance. The learned trial court has assessed the monthly income of the Revision Petitioner at Rs.8038/- which is not challenged by the Opposite Party. Admittedly, the evidence on record also shows that the Revision Petitioner has another family to look after. The evidence on record also shows that the Revision Petitioner is an old person with ailment and, therefore, there is investment on medicines etc. The estimation of the quantum of maintenance shall have to be only on the basis of all available materials as well as the compelling circumstances. This Court also cannot ignore the fact that the learned counsel for the Revision Petitioner has submitted that the Revision Petitioner is ready to pay Rs. 1500/- per month to his wife. The case was initiated in the year, 2013 and it is already pending in the Court since last two years and the Opposite party has not yet received anything as a fruit of the litigation, prolonged litigation has a tendency of exposing both the parties to unnecessary sufferings. Considering the fact that being a husband, the Revision petitioner has a legal as well as moral obligation to maintain his wife who is unable to maintain herself, considering the fact of old age and ailment of the Revision Petitioner , considering the fact that the Revision petitioner has to maintain another family and considering the entire aspects of this case, this court is of considered opinion that if 1/4th of the earnings of the Revision Petitioner is fixed as the allowance for maintenance of Opposite Party, she would not suffer from vagrancy and destitution, therefore, it appears that Rs. 2000/- per month (roughly being 1/4th of the total income of the Revision Petitioner) would be fair and reasonable fixation of amount as maintenance

allowance. The Revision Petitioner may not have any objection to this amount as he had already agreed to pay Rs. 1500/- and it is only marginal increase from what he has already agreed to pay.

12. In view of the above, the order passed by learned Addl. Chief Judicial Magistrate, Sonitpur, on 07-11-2014, is modified to the extent that the Revision Petitioner shall pay maintenance allowance of Rs. 2000/- (Rupees two thousand only) per month to the Opposite Party with effect from passing of the order of the trial Court i.e. 07-11-2014. The impugned order is accordingly modified and this Criminal Revision Petition is disposed of.

13. Send back the LCR to the Ld. Trial Court, along with a copy of this judgment.

14. Given under my hand and seal of this court on this the 13th day of May, 2015.

(M. K. Kalita)
SESSIONS JUDGE
SONITPUR: TEZPUR

Dictated and corrected by me

(M. K. Kalita)
SESSIONS JUDGE,
SONITPUR :: TEZPUR

Dictation taken and transcribed by me:

R. Hazarika,
Steno