

District:-Sonitpur

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, TEZPUR, SONITPUR

MISC CASE No.293/2011

Musstt. Nurjahan Begum

W/o Md. Abdul Hasim

R/o Barguri, P.S.-Tezpur

.....First party/petitioner

Versus

Md. Abdul Hasim

S/o Makbul Hussain

R/o Uriumguri, P.S.-Tezpur

.....Second party/opposite party

Present: Bijaya Khakhlary,

J.M.F.C., Tezpur, Sonitpur

Monday the 18th day of May , 2015.

Advocates appeared:

For the first party: - Mr. F. Haque, Mr. B. Tamuli, Ms. A. Dutta, Ms. Hasina Begum, Ms. T. Biswakarma

For the Second party:- Mr. A. K. Saika

Date of Argument: - 09.04.2015, 23.04.2015

Date of Final Order: - 18.05.2015

FINAL ORDER

1. Present Misc. case was registered upon an application filed by first party by invoking mandate of section 125 Cr. P.C. with a prayer for direction to the second party for payment of maintenance amount of Rs. 3000/- each towards herself and her daughter per month.

2. Claim of the first party as stated in her application , in short is that she got married to the second party as per Muslim Shariat Law, about twelve years back . At the time of marriage the first party was gifted a cow and articles of value about Rs.15,000/- from her parents' house. After marriage along with those gifted articles the first party came to the house of the second party and lived as husband and wife as a result of which three children were born to them namely Nur Amin Haque(nine years old), Nur Alam Hussain(five years old) and Hafiza Khatoon(two years old). That since after a few days of the marriage the second party started to torture the first on small pretexts and asked her to bring Rs.10,000/- from her parents' house. For not being able to bring the demanded money, the second party along with his family members assaulted the first party and caused injury to her. That on 21.01.2011 the second party and his family members assaulted the first party and drove her out along with her baby. Regarding this the first party filed a case against the second party but the second party compromised the matter and took her back to his house. But again after a few days the second party started to torture the first party physically and mentally. That on 01.10.2011 the second party strangulated the first party with intention to cause her death, but somehow the first party managed to run away with her two years old daughter. Finding no other alternative the first party had to take shelter in her father's house. After that also, the first party sent her family members to the house of the second party to settle the matter amicably but the second party told them that he would accept her only if she comes with Rs.15,000/-. That the second party had forcefully kept both of her sons with him. That the first party has no income of her own and that the second party is a person with means and earns monthly about Rs.30,000/- from his business and cultivation. That the second party has contracted second marriage with a girl from Laltapu. That the first party has been spending a miserable life with her daughter and therefore the first party has prayed for granting maintenance allowance of Rs. 3,000/-each per month for her and her three years old daughter i.e., a total of Rs.6,000/- per month from the second party.

3. The second party contested the case by filing written statement wherein though he has admitted that the first party is a legally married wife of him and they have three children but has denied all the allegations brought

against him and any kind of torture on the first party in demand of money . The second party has denied that his monthly income is Rs.30,000/- and that he has forcefully kept both the sons of the first party with him. The second party has also denied the allegation that he has contracted second marriage with a girl from Laltapu. That the first party is of violent nature and do not listen to her husband. That the first party used to pick up quarrel with her husband on unnecessary matters, used to abuse him and torture him mentally and asked for Talaq from him. When the second party refused to give Talaq, the first party herself proceeded before 'Tezpur Purbanchal Nagarik Suraksha Samitee', Tezpur for 'bichar'. In the said 'bichar' on 28.10.2011 in presence of both the parties, it was decided that the first party would give Talaq to the second party by receiving a cash amount of Rs.15,000/- and on the same day the second party deposited an advance of Rs.2,500/- and it was also decided that on payment of the remaining balance the procedure of Talaq would be completed. The first party had put her signature in the said agreement in presence of the Joint Secretary of the Samittee. That thereafter the first party eloped with one Nur Jamaml and got married to him. Regarding this Fazila Begum, the wife of said Nur Zamal had filed a case u/s 498-A of IPC before the Tezpur P.S. vide Tezpur P.S. Case No.850/2012 and has also filed a maintenance case against her husband. That, as the first party has eloped with the husband of another woman and has got married to him, she is no longer a wife of the second party and hence she is not entitled to get maintenance u/s 125 Cr.P.C. and therefore the second party has prayed for dismissal of the case.

4. The first party in support of her case examined three witnesses including herself. The second party examined five witnesses including himself.

5. I have heard the argument of the learned counsels for both the parties. I have perused & considered materials on record.

6. Upon hearing and on perusal of the record I have framed the following points for determination.

POINTS FOR DETERMINATION:

(i) Whether the first party is wife of the second party ?

(ii) Whether there is any just ground on the part of the first party to live separately from the second party ?

(iii) Whether the second party having sufficient means neglected to maintain the first party and her daughter ?

(iv) Whether the first party is entitled to relief as prayed for?

DECISION, DISCUSSION AND REASONS FOR THE DECISION:

Decision for point No. 1

7. PW1, Musstt. Nur Jahan Begum has stated in her petition as well as in her deposition before the court that she got married to the second party as per Muslim Shariat Law about twelve years ago. After marriage she came to live in her husband's house and two sons and a daughter was born to them. The name of her daughter is Hafiza begum and she is of five years old. After marriage her husband demanded her Rs.10,000/- and for not being able to bring the said amount her husband tortured her physically, due to which she had to be hospitalised. When she was at hospital her husband contracted second marriage. She stated that now also her husband threatens her over phone to kill her. She has been staying in her parents' house since last two years. The second party strangulated her and assaulted her for which she filed a case against the second party which is still pending. Mahila Samitee settled their problem twice for the tortures of the second party and he was made to do kneel down by touching his ear and he promised to leave the habit of drinking and gambling. She stated that the second party earns about Rs.30,000/- per month. The second party has cows and landed property. Since she was driven out of her matrimonial house, the second party has not been providing any maintenance to her. She stated that the second party sometimes pulls a rickshaw and sometimes does business. She stated that she is seeking maintenance at the rate of Rs.6000/- per month.

8. In cross examination PW1 stated that even if the second party then wanted to take her back, she would not go with him as the second party may cause her death. She stated that she could not say on which date the second party contracted second marriage. She stated that on 21.01.2011 the second party asked her to bring Rs.10,000/- and on 01.10.2011 the second party tortured her physically and drove her out of her matrimonial house. She admitted that on 28.10.2011 the second party gave a bichar in Tezpur Nagarik Suraksha Samittee and exhibit-A is the agreement made in the bichar and exhibit-A(1) is her signature. The meeting was held as regard the matter that she did not want to stay with the second party and wanted Talaq from him. She stated that at the time of meeting the second party already contracted second marriage. She stated that in exhibit-A, her husband had put his thumb impression. She stated that in the meeting the opposite party was ready to give Talaq and agreed to pay Rs.15,000/-, but she did not receive the agreed amount . She stated that the second party had not deposited Rs.2,500/- with the Samittee. She stated that she did not know any Nur Zamal but she admitted that she knew Fazila who is her sister in-law. She denied the suggestion that she has got married to Nur Zamal and has been living with him as husband and wife. She denied the suggestion that she left the house of second party at her own will. She denied the suggestion that she had not performed the duties of a wife and left the house of the second party of her own. She stated that in the meeting Talaq was not done.

9. PW2, Md. Naushad Ali Hazarika deposed that about 12/13 years back the first party got married socially to the second party. He stated that he did not have any knowledge regarding what matter the first party and the second party had dispute.

10. In cross examination he stated that he was not present in the meeting of Nagarik Samittee, but he heard about it. He stated that he could not say since when both parties stay separately. He stated that he heard that the first party went with one Nur Zamal.

11. PW3, Musstt. Romisa Khatoon who is the mother of the first party deposed that since after five months of marriage, the second party started to torture the first party. Mahila Committee was informed about it and the Committee settled the matter amicably . After that also the second party again

started to torture her in demand of money. The second party used to drink alcohol and gamble and after coming home used to beat PW1. On 21.01.2011, the second party assaulted PW1 and drove her out of her matrimonial house. After that the police reconciled the matter. Thereafter they lived six months together, but after that the second party again started torture on PW1 and drove her out. She stated that the second party strangulated her daughter and she had to make her treatment. She stated that after fifteen days of the assault the second party contracted second marriage. At present her daughter has been staying with her and since then the second party has not providing any maintenance to her daughter. She stated the girl child is with the first party and the two sons are with the second party. She stated that still the second party threatens to kill PW1 . She stated that the second party is a rickshaw puller . She stated that the first party has no income of her own.

12. In cross examination PW3 stated that she had not seen the second party torturing PW1 but PW1 told her about it. She stated that PW1 told her that the second party demanded money. She admitted that on 28.10.2011 there was a meeting and she was present in the meeting. She stated that in the meeting the agreement of Talaq was not made and her daughter did not sign in any paper. She stated that she knew Fazila Begum but did not know the name of her husband. She denied the suggestion that her daughter has given Talaq to the second party and left the house of the second party at her own will. She denied the suggestion that her daughter stays with Nur Zamal.

13. DW1, Musstt. Fazila Begum deposed that the first party had illicit relationship with her husband Nur Zamal and most of the time she used to be in bed with her husband. Her husband used to beat her if she raised any objection to it. Her husband married the first party by saying that he did not need DW1. Thereafter her husband has not returned back to her due to which she had filed G.R. Case No. 1499/12 u/s 498-A of IPC against her husband which is pending in Court. She exhibited certified copy of the case record of G.R. Case No. 1499/12 u/s 498-A of IPC as exhibit-B. She stated that she has also filed M.R. case No.58/2012 seeking maintenance from her husband which is also pending. DW1 exhibited the certified copy of case record of M.R. case No.58/2012 as exhibit-C. She stated that she did not know where the first party is staying with Nur Zamal,

but on previous day of each date the first party comes to her mother's house and appears before the Court.

14. In cross examination DW1 has stated that the second party is her maternal aunt's son i.e., her cousin . She stated that this maintenance case is pending since 2011 and she has filed the case against her husband Nur Zamal one year later than this. She stated that she could not say on which day and where the first party married Nur Zamal. She also stated that the second party is a rickshaw puller.

15. DW2, Md. Motiur Rahman who is the Chief Secretary of Tezpur Purbanchal Nagarik Suraksha Samitee, deposed in his evidence that on 04.10.2011 the second party gave a bichar on the first party in their Samitee. In the bichar both parties were advised to continue their conjugal life , but the first party sought Talaq from the second party. Exhibit-D is the complaint filed by the second party dated 04.10.2011, Serial No.128/2011. On 28.10.2011 the matter was decided, exhibit-E is the first page of the relevant Register. As the first party was not willing to carry on their conjugal life, the Samitee as per the opinion of both parties decided to make them divorced. As per the decision of the Samitee both parties agreed that the second party would pay Rs.15,000/- as one time maintenance to the first party. Accordingly the second party deposited Rs.2,500/- with the Samittee which was given to the first party. He stated that it was decided that the balance amount would be paid one month later. Accordingly on 28.10.2011 an agreement was prepared. On exhibit-A, the agreement, exhibit-A(1) is the signature of the first party which was put before him. He identified the signature of the Joint Secretary as exhibit-A(2).

16. In cross examination he stated that their Samitee is a social organisation. He stated that in exhibit-A, nowhere written that the first party did not want to continue conjugal life with the second party and sought divorce. He stated that in exhibit-A(1) there is signature of the first party only as a party to the agreement and nothing else has been written. He stated that in exhibit-A it has been mentioned that the second party has deposited an amount of Rs.2,500/- with the Samitee. In exhibit-A it has not been mentioned that the said amount is to be given to the first party. He also admitted tha there is no any

mention in exhibit-A, that the first party has received the said amount. He stated that in exhibit-A it is written that there will be Talaq only after payment of the whole amount. He stated that he did not have any record whether they had Talaq or not thereafter.

17. DW3, Abdul Hasim who is the second party deposed that the first party is his wife, they have two sons who are with him and one daughter who is with the first party. He stated that three years earlier when he went towards the town to pull his rickshaw, first party eloped with one Nur Zamal. When the first party eloped with Nur Zamal, he gave a bichar in Panchmile Nagar Samitee, in the bichar the decision was taken down in a paper and the first had put her signature on the paper in his presence. In the meeting it was decided that he would pay Rs.15,000/- to the first party and accordingly an advance of Rs.2,500/- was deposited with the Samitee and the Samitee gave it to the first party. He stated that at present the first party stays with Nur Zamal. He stated that he heard that a girl child was born to the first party from the side of Nur Zamal and the said child has died(the petitioner side raised objection to this). He stated that he is a rickshaw puller and earns daily about Rs.100 to 150 or sometimes Rs.200 to 300/- , beside this he does not have any other source of income. He stated that he also has to look after his two sons and bear their educational expenses.

18. In cross examination DW3 stated that in the meeting he deposited the amount of Rs.2,500/- with the Purbanchal Committee. He stated that when the first party eloped with Nur Zamal he did not file any case in the police. He stated that DW1 is his cousin. He stated that his sons stay with him and they are studying in Government school. He stated that he has not provided any maintenance to the first party and his daughter as the first party has not come back to live with him as his wife. He stated that he is ready to keep the first party as his wife if she comes back. He denied the suggestion that he had driven out the first party in order to contract second marriage. He stated that the name of his second wife is Dilwara.

19. DW4, Musstt. Phul Banu deposed that DW1 is her daughter and the name of DW1's husband is Nur zamal. She stated that Nur Zamal eloped with

Nur Jahan(the first party) and drove out DW1 due to which DW1 is staying in her house. She stated that her house is adjacent to the house of the second party. She stated that one day the first party and Nur Zamal was inside a room closing the door . On her call when they did not open the door, she herself opened the door and found them in objectionable state in the bed. When she told them that she would expose them, Nur Zamal left with first party by saying that she could not do anything and he did not want her daughter. Then DW1 filed a case against Nur Zamal.

20. In cross examination she stated that the second party is her sister's son. She stated that there are houses of Sahabuddin, Kuddus etc. Near her house and there were people in those houses on the day of incident. She stated that on that day DW1 was not at home.

21. DW5, Musst. Jaybanu deposed that the first party is her daughter in-law and the second party is her son. She stated that the first party told her that she would not stay with the second party and would go with Nur Zamal. Then she advised the first party not to do so as it would destroy the life of her children. After that she went towards the town for work, on return she saw that PW1 eloped with Nur Zamal and took away all the articles from the house.

22. In her cross examination DW5 stated that she goes for work at 8:00 a.m. and returns at 4/5 p.m. and her son goes earlier than her and returns back at 6/7 p.m. She stated that she had not seen who took away the articles. She stated that she could not say where did Nur Zamal stay. She also stated that she could not say where did the first party stay.

23. From evidences it is apparent that the first party and second party got married as per Muslim Shariat Law and three children are born out of their wedlock of which two sons are staying with the second party and the daughter is staying with the first party . The contention of the second party is that the first party has already taken Talaq from the second party and received Rs.15,000/- as one time maintenance and as such she is no more a wife of the second party. The second party has also contended that the first party has got married to Nur

Zamal and therefore she is now wife of Nur Zamal and therefore she is not entitled to maintenance from the second party.

Regarding the Talaq, though PW1 has admitted that there was an agreement for Talaq on 28.10.2011, but she has denied the receipt of the agreed amount of Rs.15,000/-. PW1 admitted her signature on exhibit-A as exhibit-A(1). On perusal of exhibit-A it is seen that it was an agreement prior to Talaq. As per the said agreement it was decided that DW3 would pay Rs.15,000/- as one time maintenance to PW1 and, after one month and payment of the whole amount the Talaq would be done in writing. Accordingly DW1 deposited Rs.2,500/- with the Samitee. There is no any mention in exhibit-A, that the said amount was delivered to PW1 or PW1 received the amount. DW2, the Chief Secretary of the Samitee though stated in his evidence that the second party deposited Rs.2,500/-with the Samittee which was given to the first party, in cross examination he himself admitted that in exhibit-A there is no any mention that the said amount was given to the first party, or that the first party had received the said amount. He also stated that in exhibit-A it is written that there would be Talaq only after payment of the whole amount, but he did not have any record whether the they had Talaq or not thereafter. Again DW3 though has stated that he deposited Rs.2,500/- as advance, with the Samitee and the Samitee gave it to PW1, neither in his evidence nor in W.S. he has stated that he paid the remaining amount Rs.12,500/- to PW1 and the Talaq was done. Hence the contention of the second party that the second party has already divorced the first party and she has already received the maintenance amount is not proved.

24. Regarding the contention of the second party that PW1 has got married to Nur Zamal, to prove this, the second party has examined DW1 who is the wife of Nur Zamal, DW4 who is the mother in-Law of Nur Zamal and DW5 the mother of second party. DW1 stated in her evidence that PW1 had illicit relationship with her husband Nur Zamal and most of the time she was in bed with him and whenever she raised any objection, Nur Zamal used to beat her up and he married PW1 by saying that he did not need her. Again as per the evidence of DW4 one day, PW1 and Nur Zamal was inside a room closing the door, inspite of her call, when they did not open the door, she herself opened the door and found them in objectionable state in a bed and when she told them

that she would expose them, Nur Zamal took away PW1 by saying that he did not need her daughter(DW1). Again as per the evidence of DW5, one day PW1 told her that she would not stay with the second party and would go with Nur Zamal, then she advised the first party not to do so as it would destroy the life of her children and, then she went away for work towards the town, but on return she saw that PW1 has eloped with Nur Zamal and took away all the articles from the house. Thus DW1, DW4 and DW5, all of them have stated different versions. DW1 though has stated that PW1 has got married with Nur Zamal but in cross examination she stated that she could not say on which day and where the first party got married to Nur Zamal. DW3 has stated in his evidence that three years earlier PW1 eloped with Nur Zamal, but in cross examination he stated that that he has not been providing any maintenance to the first party and his daughter as the first party has not come back to live with him as his wife, and he also stated that he is ready to keep the first party as his wife if she comes back, which is quite strange, as usually no husband would keep a wife who eloped with some other person and got married to that person and specially when he already has a second wife.

25. DW1 has stated that as her husband married PW1 and left her, she had filed G.R. Case No. 1499/12 u/s 498-A of IPC against her husband and M.R. case No.58/2012 seeking maintenance from her husband which are pending in Court. But in cross examination she admitted that the instant maintenance case has been pending since 2011 and she has filed the case against her husband Nur Zamal one year later than this . There is no any explanation why did she filed the cases late. Moreover mere showing that a case is pending is not enough, the party alleging that the first party eloped with some other person and got married to him, will have to prove it by adducing evidence in the instant case. Again DW3 has stated in his evidence that when the first party eloped with Nur Zamal, he gave a bichar in Panchmile Nagar Samitee, whereas in written statement he has stated that the first party used to pick up quarrel with him on unnecessary matters, used to abuse him and tortured him mentally and asked for Talaq from him, when he refused to give Talaq, PW1 herself proceeded before 'Tezpur Purbanchal Nagarik Suraksha Samitee', Tezpur for 'bichar'. Perusal of exhibit-D reveals that the second party proceeded before the Samitee to file complaint, as in the register of Tezpur Purbanchal Nagarik Suraksha Samitee, the name of the

second party is written as the petitioner and the name of the first party is mentioned as the opposite party. Thus what he stated in W.S. is contradictory to what he deposed in Court. Thus the second party failed to establish that the first party has got married to Nur Zamal and is no longer a wife of second party.

26. From the evidences available on record it is established that the first party is a wife of the second party and the second party failed to prove that his marriage with first party was void.

27. In view of the above I am of the considered opinion that the first party is wife of the second party.

Decision for point No. 2

28. The Learned counsel for the second party argued that the first party is not entitled to maintenance as she is not able to prove by adducing evidence that there was demand of dowry and she was subjected to cruelty, in support of this the learned counsel relied upon the case of *Deb Narayan Halder vs. Smt. Anushree Halder 2003 CrI. L. J. 447*.

29. I have carefully gone through the case . In the above case the Hon'ble Supreme Court held that the petitioner was not entitled to get maintenance as the evidence on record showed that no dowry was ever demanded either before the marriage or after the marriage and even the mother of the petitioner admitted that the respondent had never demanded any dowry or gift.

30. In the present case PW1 has categorically stated in her evidence as well as in her petition that after marriage her husband demanded her Rs.10,000/- and for not being able to bring the said amount her husband tortured her physically. Due to physical tortures meted out to her in demand of money she had to take shelter in her parents' house along with her minor daughter. PW3 has corroborated the evidence of PW1 and has stated that though she herself had not seen the second party torturing first party, PW1 told her about it. She also stated that PW1 told her that the second party demanded money.

31. On the other hand the contention of the second party is that she left the house of the second party of her own and got married to Nur Zamal. But while deciding the point No.1 it has already been held that the second party failed to prove that PW1 eloped with Nur Zamal and got married to him.

32. In view of the above discussion I am of the considered opinion that the first party is able to prove that she was tortured physically in demand of dowry due to which she had to leave her matrimonial house and had to take shelter in her parents' house. Moreover admittedly the second party has contracted a second marriage which is a just ground on the part of the first party to live separately from the second party .

33. Hence this point is decided in favour of the first party.

Decision for point No.3

34. PW1 has stated that the second party earns about Rs.30,000/- per month. The second party has cows and landed property. She stated that the second party sometimes pulls a rickshaw and sometimes does business. Whereas the second party has stated that he is a rickshaw puller and earns daily about Rs.100 to 150 or sometimes Rs.200 to 300/- , beside this he does not have any other source of income. He stated that he also has to look after his two sons and bear their educational expenses.

35. The first party has no source of income. The first party clearly stated in her petition and deposition that the second party does not maintain her. Further the second party himself has admitted in his evidence that he has not been providing any maintenance to the first party and his daughter as the first party is not living with him.

36. Hence this point is decided in favour of the first party.

Decision for point No.4

37. In view of the decision of point No.1, 2and 3 the first party and her daughter are entitled to get maintenance from the second party.

38. Regarding the quantum there is no clear proof of actual income of the second party, therefore in my view, an amount of Rs.2,000/- (Rupees two thousand) only per month for the first party and Rs.1,500/- (Rupees one thousand five hundred) only per month for the daughter will be reasonable amount of maintenance .

ORDER

In result the petition filed by the first party is allowed on contest granting an amount of Rs.2,000/- (Rupees two thousand) only per month for the petitioner and Rs.1,500/- (Rupees one thousand five hundred) only per month for her daughter i.e., a total of Rs.3,500/- (Rupees three thousand five hundred) only per month from the date of filing the petition.

Free copy of the Judgment be furnished to the petitioner free of cost.

Given under my hand and seal of this Court on this 18th day of May, 2015 at Tezpur.

Bijaya Khakhlary
JMFC, Tezpur, Sonitpur

APPENDIX

FIRST PARTY WITNESSES:

PW1— Musstt. Nur Jahan Begum

PW2— Md. Naushad Ali Hazarika

PW3— Musstt. Romisa Khatoon

EXHIBITS OF FIRST PARTY

Nil

SECOND PARTY WITNESSES:

DW1— Musstt. Fazila Begum

DW2— Md. Motiur Rahman

DW3—Md. Abdul Hasim

DW4—Musstt. Phul Banu

DW5—Musstt. Jay Banu

EXHIBITS OF SECOND PARTY:

Ext. A.....Agreement dated 28.10.2011.

Ext. B.....certified copy of case record of G.R. case No. 1499/12.

Ext. C.....certified copy of case record of M.R. case No.58/12.

Ext. D.....name of the second party as the petitioner and the name of the first party as the opposite party in the register of Tezpur Purbanchal Nagarik Suraksha Samitee.

Ext. E.....copy of the first page of the register of Tezpur Purbanchal Nagarik Suraksha Samitee.