

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE(S)

SONITPUR, TEZPUR

MISC. CASE NO:-164/10

Under section-125 Cr.P.C.

Musstt. Umme Kulsum.....Petitioner/1<sup>st</sup> party.

-VS-

Md.Nizamuddin.....Opp. Party/2<sup>nd</sup> party.

Present: - O. Mize, A.J.S.

Counsel appeared:-

For the Petitioner:- M.Islam.

For the Opp. Party:- A.Aziz.

Evidence Recorded on: - 23.06.14 & 03.08.14.

Argument Heard on: - 28.05.15.

Judgment Delivered on: - 30.05.15.

JUDGMENT

This is a case under section 125 of the Cr.P.C filed by the petitioner Musstt. Umme Kulsum claiming maintenance from her husband/opposite party Md.Nizamuddin.

The case of the petitioner is that, on 07.04.2010 her marriage was solemnized with the 2<sup>nd</sup> party and they lived as husband and wife. However, after a week from the marriage, the 2<sup>nd</sup> party fled away. The 2<sup>nd</sup> party does not give any maintenance to the petitioner. The petitioner has no source of income. The 2<sup>nd</sup> party is

a teacher and earns Rs.10,000/- per month. Thus, petitioner is praying for maintenance allowance of Rs.3,000/- per month from the 2<sup>nd</sup> party.

The 2<sup>nd</sup> party contested the case by filing written statement admitting the solemnization of his marriage with the petitioner. However, 2<sup>nd</sup> party is denying that he lived with the petitioner as husband and wife. On 07.04.2010 the family member of the petitioner called the 2<sup>nd</sup> party to their house and wrongfully confined him in their house and threatened to kill him and forcefully solemnized his marriage with the petitioner. They also took signature of the 2<sup>nd</sup> party in a blank paper. After getting the information about the wrongful confinement of the 2<sup>nd</sup> party, Noor Islam, Ayub Ali Munsif, Samsul Haque, and the father of 2<sup>nd</sup> party rescued the 2<sup>nd</sup> party. The marriage between the parties is not valid and 2<sup>nd</sup> party is praying to dismiss the case of the petitioner.

In the course of the proceeding of the case, the 1<sup>st</sup> party adduced the evidence of four witnesses including her evidence. The 1<sup>st</sup> party's witnesses were cross-examined by the opposite party. The 2<sup>nd</sup> party adduced the evidence of two witnesses including his evidence.

On the basis of the pleading of the parties, the points for determination in this case are as follows:-

- 1) Whether the 2<sup>nd</sup> party being the husband of the petitioner and having sufficient means neglects to maintain his wife/petitioner?
- 2) Whether the 1<sup>st</sup> party/petitioner is entitled to get maintenance from 2<sup>nd</sup> party?

I have heard the argument of Id. Counsel for the 1st party and Id. Counsel for the 2<sup>nd</sup> party.

#### DECISION WITH REASONS

##### POINT NO.1 & 2

Both of the points for decision are taken together for simultaneous discussion & decision. I have gone through the entire evidence on record. Pw1- Umme Kulsum has deposed that she is the petitioner and she has filed this case against her husband. On 07.04.2010 her marriage was solemnized with the 2<sup>nd</sup> party and they started conjugal life in the house of the 2<sup>nd</sup> party. However, after a month from their

marriage the 2<sup>nd</sup> party fled away. So, after 3/4 days she came to her parent's house. Her father has expired and her mother is an old lady. She is unemployed and she has no source of income. Her husband is a teacher and his monthly income is Rs.10,000/- per month and the opposite party does not maintain her.

Pw2- Rahim Badsha has deposed that his house is situated near the house of the petitioner. On 07.04.10 the petitioner married the opposite party. He was also present in the marriage ceremony. The father along with 9/10 persons came to the house of the petitioner for the marriage. The marriage was solemnized as per Muslim custom (Sahariat). After the marriage, the petitioner went to her matrimonial home. But, after 15 days the petitioner returned back to her parent's house and she never went to her husband's house. The opp. Party is a teacher of Madrassa.

Pw3-Idrish Ali has deposed that the petitioner belongs to his village. He was also present in the marriage ceremony of the petitioner and the 2<sup>nd</sup> party. The father of the 2<sup>nd</sup> party came along with 7/8 persons. The gaon burah Innus Ali had written the marriage agreement. After the marriage, the petitioner went to her husband's house. But, she came back to her parent's house after a week as the 2<sup>nd</sup> party left his house. At present 2<sup>nd</sup> party is working as a teacher in a Madrassa.

Pw4- Innus Ali has deposed that, he knows the petitioner and the 2<sup>nd</sup> party. The 2<sup>nd</sup> party is the husband of the petitioner. On 07.04.10 Rahim Badsha called him. He went there and saw that an arrangement for the marriage of the petitioner and 2<sup>nd</sup> party was done. When he asked about the moharana, they told them that moharana is Rs.31,100/-. After the writing of marriage panjiyan/agreement and after reading it, he gave his signature in the marriage panjiyan/agreement. Exhibit-1 is the marriage Panjiyan/agreement and exhibit-1(1) his signature in the marriage Panjiyan/agreement. 1<sup>st</sup> party, 2<sup>nd</sup> party and their counsel also gave signature in the marriage Panjiyan/agreement.

Thus, it appears from the above evidence that, on 07.04.2010 the marriage between the parties was solemnized and they started conjugal life in the house of the 2<sup>nd</sup> party. However, after a month from their marriage, the 2<sup>nd</sup> party fled away. The evidence of Pw2, Pw3 & Pw4 supports the evidence of the petitioner. They have deposed that, they were present at the time of the marriage of the parties. Pw4

has also exhibited the marriage agreement as exhibit-1 and exhibited his signature as exhibit-1(1). The evidence of Pws remained unshaken during the cross-examination and there is no reason for disbelieving the petitioner's witnesses.

On the other hand, it appears from the evidence of the 2<sup>nd</sup> party that, 2<sup>nd</sup> party is not denying the marriage between the parties. The contention of 2<sup>nd</sup> party is that, he was compelled to marry the 1<sup>st</sup> party. His signature was taken forcefully in the marriage Punjiyan/agreement. Dw1/2<sup>nd</sup> party has deposed that, Rahim Badsha called his father to his house and his father came along with Nurul Islam & Samsul Haque and he was forced to marry the 1<sup>st</sup> party. However, in his written statement Dw1/2<sup>nd</sup> party had not stated that Rahim Badsha called his father to his house. In his written statement Dw2/2<sup>nd</sup> party had stated that Noor Islam, Ayub Ali Munsi, Samsul Haque, and the father of 2<sup>nd</sup> party rescued the 2<sup>nd</sup> party from the house of 1<sup>st</sup> party.

In the cross-examination Dw1 has deposed that he signed the Ext.1(marriage Punjiyan). His father also gave his signature in the Ext.1 (marriage punjiyan). But, 2<sup>nd</sup> party has never deposed that the signature of his father was taken forcefully. 2<sup>nd</sup> party had also not stated in his written statement that he signed the Ext.1(marriage punjiyan). In the Written statement, 2<sup>nd</sup> party had stated that his signature was taken in a blank paper. Dw2 has also deposed in the cross-examination that they were not tied. So, they could have informed other people or police, if 2<sup>nd</sup> party was forced to marry the 1<sup>st</sup> party. It also appears to me that, if 2<sup>nd</sup> party does not like the 1<sup>st</sup> party, then 1<sup>st</sup> party cannot live happily in the house of the 2<sup>nd</sup> party by compelling the 2<sup>nd</sup> party to marry her. So, it is not possible that 1<sup>st</sup> party will force the 2<sup>nd</sup> party to marry her. For the aforesaid reasons, the Dws are not trustworthy.

The Apex Court in Dwarikha Prasad Satpathy -vs- Bidyut Prava Dixit & Anr: AIR 1999 SC 3348 observed that, the proceedings U/S 125 Cr.P.C is a summary proceeding the object of which is to prevent vagrancy and that object is achieved by directing for maintenance to the wife, minor children or the parents, as the case may be who are unable to maintain themselves. Since, the proceedings U/S 125 of the Cr.P.C is for the objects discussed above, the standard proof is not as strict as required in a civil proceeding for declaration of titles or required in a trial of offence under I.P.C. The provision U/S 125 of the Cr.P.C. is not to be utilized for defeating the rights conferred by the legislature to the destitute woman, children or parents who are victim

of civil enforcement. Moreover, order passed U/S 125 of the Cr.P.C does not finally determine the right and liabilities of the parties and the parties can file civil suit to have their status determined.

Hence, in the view of the aforesaid evidence, discussion and finding, it appears to me that, the marriage between the parties was solemnized on 07.04.10 as per Muslim custom. So, the first party is the wife of the 2<sup>nd</sup> party. If the 2<sup>nd</sup> party is contending that the marriage is not valid, then he has liberty to file civil suit to have their status determined. It also appears from the evidence of the petitioner's witnesses that petitioner has no source of income and unable to maintain herself. The 2<sup>nd</sup> party does not give any maintenance to the 1<sup>st</sup> party. On the other hand 2<sup>nd</sup> party is a teacher.

Hence, it is clear from the above findings that, 2<sup>nd</sup> party being the husband of 1<sup>st</sup> party and having sufficient means neglect to maintain his wife who is unable to maintain herself. So, the petitioner is entitled to get maintenance from the 2<sup>nd</sup> party. Accordingly, both the points are decided in affirmative.

ORDER

In the result, the 2<sup>nd</sup> party namely Md.Nizamuddin is directed to pay maintenance allowance of Rs.2,000/- (Rupees two thousand only) per month to his wife Umme Kulsum from the date of this judgment.

Given under the hand and the seal of this Court.

Sub-Divisional Judicial Magistrate (S),  
Sonitpur, Tezpur

APPENDIX

Petitioner has examined the following witnesses:-

Pw1-Musstt.Umme Kulsum.

Pw2-Md.Rahim Badsha.

Pw3-Md.Idrish Ali.

Pw4-Innus Ali.

Petitioner has exhibited the following document:-

Ext.1- Marriage panjiyan/agreement.

Ext.1(1)- signature of Pw4.

2<sup>nd</sup> party has not examined any witness.