

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

Present: Darshana Nath, AJS

M.R. CASE No. 09/2017

U/S 125, Criminal Procedure Code

Smti Kakoli Ghosh

w/o Sri Bikash Ghosh

c/o Shri Chandan Ghosh

vill- Thekerajuli, P.O.- Kalakuchi

P.S. Misamari

Dist. Sonitpur (Assam)

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1st Party

Versus

Sri Bikash Ghosh

s/o Lt Balram Ghosh

R/o vill- Gopi Nagar colony

Ward No.10 P.S.- North Lakhimpur

Dist. North Lakhimpur (Assam)

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2nd Party

Evidence recorded on: 11/03/2020

Final Hearing Made on: 04/01/2021

Affidavit filed: 04/02/2021

Final Order passed on: 10/02/2021

FINAL ORDER

1. The present petition under section 125 Code of Criminal Procedure, 1973 (Cr.P.C.) was filed by the 1st Party, Smti Kakoli Ghosh against the 2nd Party, Sri Bikash Ghosh claiming maintenance of Rs. 15,000/- (Fifteen Thousand Rupees) per month for herself.

2. The 1st party's case in brief is that she got married to the 2nd party on 15/12/2015 as per Hindu rites and custom at her parental residence. Since then she was living as legally married wife with the opposite party at her matrimonial house. They spent their conjugal life happily till 2 months of marriage. Gradually she started to notice some changes in the behaviour of the 2nd party and started to torture 1st party on petty matters mentally and physically. The 2nd party on many occasions assaulted physically the 1st party with belts and fits. She stated that the unmarried sister of the 2nd party instigated him to do this. The other married sisters of the 2nd party assaulted physically the 1st party when they come to the matrimonial house of the 1st party. The 2nd party and his sisters locked the 1st party in a room for the day. The unmarried sister of the 2nd party sometimes did not allow the 1st party to sleep with the 2nd party. The 2nd party tried twice to kill the 1st party by pouring kerosene oil. She further stated that 2nd party started demanding the 1st party to bring money from her father. The financial condition of the father of the 1st party is not sound enough. The father of the 1st party paid a sum of Rs.30,000/- (Rupees Thirty Thousand) only on 10th April 2016 and a sum of Rs.20,000/- (Twenty Thousand Rupees) only on 1st July 2016 to the 2nd party. The 2nd party continued demanding to bring money, bike and other house hold items. The father of the 1st party fulfilled the demand of the 2nd party as per his capacity. The 1st party is residing at her parental residence at present. The 2nd party has not provided any basic needs to the petitioner and the 2nd party refused to maintain the 1st party. She further stated that the 2nd party and his sister on 05/10/16 suddenly started assaulting the 1st party by slapping her and blowing on different parts of body including head. They made her suffocated by pressing her neck and drove the 1st party out of her matrimonial house with a threat to kill the petitioner if she returned back to her matrimonial house. On 05/10/2016 the 1st party having no alternate way out, lodged an FIR in the North Lakhimpur Police Station. She added that the 2nd party has landed property consisting of 12-13 rooms from where he earns Rs.15,000/- as rent and as such he earns Rs.40,000/- per month. The 1st party in the petition along with Affidavit admitted that she has no source of income of her own. The 1st party has prayed Rs.15,000/- per month as maintenance for herself.
3. The case on the side of 2nd party is that he denied all the allegations. He stated in written statement that the father of the 1st party had never paid Rs.30,000/- on 10th April 2016 and Rs.20,000/- on 1st July 2016 to him. He never demanded money, bike and other house hold items from the 1st party. He stated that the facts mentioned in the FIR filed by the 1st party on 05/10/2016 at North Lakhimpur P.S. are quite different from the allegations made by the 1st party in her petition. He mentioned that if the incident dated 05/10/2016 as alleged had occurred, she would have reflected in her FIR dated 05/10/2016. He added that the 1st party earns her livelihood by doing business of duck, eggs, pigeons and milk since her pre-marriage time. The 1st party has domesticated cows which produce milk and by selling it she earns around Rs. 8000/- to Rs.9000/-. The 2nd

party has no any stationary shop and landed property consisting of 12-13 rooms and he does not earn Rs.15000/- as rents. His monthly income is only Rs.6000/- (Six Thousand Rupees) only. The 2nd party is to maintain himself and his unmarried sick sister with arthritis problem. He further stated that marriage between the parties was arranged one which was fixed in presence of Sri Basudev Ghosh, Sri Shvamai Seai, Sri Chandan Ghosh and Sri Makhan Ghosh with an understanding that after marriage the bride shall be part and parcel of the 2nd party as he lost both of his parents. But after marriage, the 1st party showed her true colour and instead of staying at home she used to attend Addaa party with the neighbouring boys and used to take Gudka. She also used to enter 'Puja Ghar' during her menstrual period. When the matter was reported to the parents of the 1st party along with her maternal uncle, one mahi and her daughter visited matrimonial home of the 1st party. On 01/05/2016 and took her along with them to Missamari for "JURBHANGA" stating that they would keep the 1st party for two months and rectify her bad habits. Accordingly, the 1st party was taken back to her parental home on 01/05/2016 and she stayed there till 01/07/2016. After two months i.e. on 02/07/2016 she was taken to her matrimonial home. On that day, the elder brother of the 1st party executed one written agreement with the second party which is enclosed with the case record as ANNEXURE B. After 02/07/2016 though the 1st party resumed her married life at North Lakhimpur her bad habits did not change. She used to state to the 2nd party that she was not ready to marry the 2nd party as his income is not up to the mark. She agreed to marry him only at the pressures put on by her parents. On 22/08/2016 the 2nd party along with the 1st party had to take 2nd party's sister to Wintrop Hospital, Guwahati for a minor surgery. At that time also, the 1st party quarrelled with the 2nd party upon spending money for his sister. The elder brother of the 1st party used to instigate the 1st party in her misdeeds. On 04/10/2016 the elder brother of the 1st party quarrelled with the 2nd party on filmsy ground and left outside. But when the 2nd party was at his work place, he returned and asked the 1st party to accompany him to Missamari. The 1st party said to her brother that as it was Navaratri time, it would not be good to leave the 2nd party's place. The 2nd party's sister requested the 1st party not to go her parental home during Navaratri days. However, on 05/10/2016 the 1st party along with her brother left the 2nd party's place in his absence. Subsequently he was informed that one FIR has been filed by the 1st party in the North Lakhimpur P.S. He stated that the 1st party has left his house without any reasonable cause and he had never denied to maintain the 1st party. He stated that the 1st party is not entitled to maintenance and the petition shall be dismissed.

4. Upon considering the arguments and on perusal of the record, I have formulated the following points for determination:
 - a. Whether the 1st party had sufficient reason for not residing with the 2nd party?

- b. Whether the 1st party is unable to maintain herself?
- c. Whether the 2nd party despite having sufficient means has refused or neglected to maintain the 1st party?

- d. Whether the 1st party is entitled to get maintenance as prayed for and if yes, how much she is entitled to?

Point no. (a)

- 5. The petitioner as PW1 stated that the opposite party and his sister fought with her on silly matters. His sister used to beat her. She stated that when her father called on the opposite party and his sister's phone, she was not allowed to talk to him. She was ousted for 15-20 days. Later, in Durga Puja when her brother came to meet her, she showed him how they beat her. Then her brother asked her to file a case against the opposite party. Then she filed an FIR in Lakhimpur P.S. She called her brother through mobile phone of the OC of Lakhimpur P.S. and he took her home. She was medically examined two days after filing the FIR.

- 6. As per the rules of the society, no woman deserts her matrimonial home without sufficient cause. In the instant case. There is a clear, specific and unambiguous allegation of domestic violence on the part of PW-1. PW-2 has also substantiated the allegations.

- 7. DW-1 stated that 1st party used to demand money from the 2nd party and she used to attend adda with other boys by taking Gutka. The 2nd party in written statement stated the same thing and he had objection regarding this. But the 2nd party could not prove it.

- 8. The 1st party had lodged the FIR dated on 05/10/2015 at Lakhimpur P.S. stating that the 2nd party tortured her physically and used abusive language. Hence, it can be held that the 1st party had sufficient reason for not residing with the 2nd party. No woman wants to continue to stay at such place where she is subjected to violence. Situated this, Point no. (a) is decided in the affirmative.

Point no. (b) and (c):

- 9. PW-1 has claimed that she has no discernible income of her own and she is facing financial hardship to maintain herself. The 1st party in the complaint mentioned that her father had given the 2nd party Rs. 30,000/- on 10th April 2016 and Rs. 20,000/- on 1st July 2016 which is corroborated by PW-1 and PW-2 in their evidence. She added that the 2nd party has landed property consisting of

12-13 rooms from where he earns Rs.15,000/- as rent and as such he earns Rs.40,000/- per month. The 1st party in the petition along with Affidavit admitted that she has no source of income of her own. The 1st party has prayed Rs.15,000/- per month as maintenance for herself.

10. The 2nd party has filed the Affidavit disclosing his assets and liabilities. It is stated that his monthly expenses is Rs. 6000/- approximate. He has a dependent ailing sister and the 2nd party has to bear her medical expenses which is approximately Rs.500/- per month. He added in the Affidavit that he has a mobile repairing shop and his earning is approximately Rs. 5000/- to 6000/- per month. He mentioned that the 1st party is earning around Rs.7,000/- to Rs. 8000/- per month with her petty business. But he could not prove it.
11. He stated that he has taken the mobile repairing shop on rent from the owner Miraj Ahmed at a monthly rent of Rs.1000/-.
12. The 1st party has filed Affidavit disclosing her assets and liabilities. She passed her matriculation as per the Affidavit. She stated that the 2nd party earns approx Rs. 6000/- per month, a cosmetic shop from where he earns approx Rs. 5000/- per month, several rented room in his own landed property at Gopi Nagar Colony, Lakhimpur from where he earns Rs. 60,000/- per month and package drinking water supplier from where he earned approx Rs. 15,000/- per month and having other immovable property. She stated she is not earning at present.
13. There is no doubt that the 1st party has no income of her own. Moreover, there is no evidence to suggest that the 2nd party is not able bodied person. Hence, it is expected that the 2nd party can earn like a reasonable person. It is the moral duty of the husband to maintain his wife irrespective of his present income as he is an able bodied person. Hence, both point no. (b) and (c) have been decided in affirmative.

Point No.(d)

14. The main object of the Section 125 CrPC is to assist women, children and aged parents in distress and help them if they are unable to maintain themselves. Considering the basic object and in the light of all the evidence adduced, I am of the opinion that the 1st party is entitled to get maintenance from the 2nd party.
15. Keeping social status of the both parties and medical expenses of the sister of the 2nd party, I deem it fit to direct the 2nd party to pay a monthly maintenance of Rs. 2500/- (Two Thousand Five Hundred Rupees) to the 1st party which shall be sufficient to meet the expenses of her basic needs and to live a life of dignity.

16. The payment to the 1st party shall be made from the date of application within first 7 days of each succeeding month.

17. The final court is pronounced in open court and given in my hand and under the seal of this court on this 10/02/2021.

Typed by me:

Darshana Nath
JMFC, Tezpur

APPENDIX

**Prosecution witness: PW1 Kakoli Ghosh
PW2 Dipok Ghosh**

Defence witness: Moina Paul

**Prosecution exhibits: Annexure 'A'
Annexure 'B'
Annexure 'C'**

Defence exhibits: none