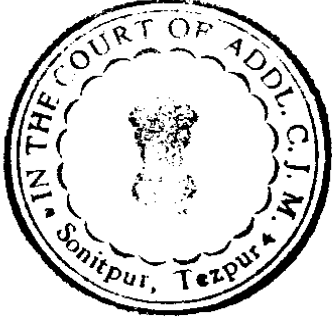


In the court of the Addl.CJM:.....Tezpur

Present:Smti Bobita Kshetry
Addl.CJM,Tezpur

Case no- M.R.38/12
U/S125 crpc



Smti Ruma Das
.....1st party
Vs
Sri Biren Ch. Das
....2nd party

Evidence recorded on – 16.9.13, 27.3.14, 3.5.14.
Argument heard on – 15.5.14
Judgment delivered on – 29.5.14

APPEARANCE

Advocate for 1st party - Smti Ranjana Chakroborty , Ld Advocate.
Advocate for 2nd party- Sri M. Hazarika, Ld Advocate.

JUDGMENT

1. This proceeding has arisen out of a petition filed by the first party u/s 125 crpc claiming maintenance allowance of Rs 14,000/- per month for herself , from the second party.

The case of the first party, in brief, is that on 7.3.2003, she got married with the second party as per Hindu Religious Rites. After solemnization of the marriage, she lived with the second party at his house at Thelamara as husband and

wife. They lived peacefully for 4 months. Thereafter, the second party went back to his work place at MES, Arunachal Pradesh while the first party stayed back at Thelamara. The second party came to visit her sometimes. Then, the second party got transferred to Guwahati and she also went with him . They stayed together for sometime very happily. But, soon the second party stated to come home getting drunk and he would torture the first party both mentally and physically. Being unable to bear his torture, the first party returned back to Dhekiajuli and took shelter in her aunt's home. Thereafter, on 15.1.11, the first party again came to stay with the second party but he scolded her in slang words, beat her and drove her out of the house. It is stated that the second party is now living with a widow and her daughter in Guwahati. It is stated that since the day the first party was driven away , the second party never enquired about her well-being. He even did not provide her with any maintenance. It is claimed that the second party is an able-bodied person and he works in MES. His monthly income is about Rs 28,000/-. But, the first party is facing great difficulty in leading her life. Hence, the case.

2. The second party contested the case by filing the written-statement denying all the allegations made therein. He admitted his marriage with the first party. But after their marriage, the first party never stayed with him. Instead, she stayed with her aunt and refused to stay with him at his workplace at Arunachal Pradesh and Guwahati. It is alleged that the first party is secretly involved in a relationship with another youth. He denied torturing the first party physically and mentally. It is denied that the second party beat the first party and drove her out of the house. He stated that the first party declined to stay with him at Guwahati, where he was posted and she lived with her aunt at Dhekiajuli. He further denied keeping another lady. He admitted that he works in MES as a 4th grade employee. But he will not be able to give the maintenance amount as claimed by the first party. Hence, prayed for dismissal of the case.

29.5.14
 J. B. Chakraborty
 Additional Magistrate
 Bongaigaon, Tezpur

3. Upon perusal of the pleadings, the following points are taken up for consideration:

1. Whether the first party has just and reasonable ground for living separately from the second party?
2. Whether the second party having sufficient means neglected or refused to maintain the first party ?
3. Whether the first party is entitled to get maintenance as prayed for?

4. The first party adduced her evidence as pw-1 and another witness as pw-2. The second party also examined himself as dw-1 and another witness.

5. I have heard the arguments put forward by the Learned Counsels for both the parties.

29.5.14
 M. Chhetri Judicial Magistrate
 Bonitpur, Tezpur

6. DISCUSSION, DECISION AND REASONS THEREOF:

POINT NO 1:

The first party as PW-1 has categorically stated that she got socially married to the second party on 7.3.2003. After the marriage, she lived with the second party at his house and started the marital life peacefully. She does not have any issue. After some years, the second party started to come home in drunken state and he inflicted mental and physical torture upon her. Then, finally in the year 2011, he drove her out of the house. Pw-1 alleged that the second party married another lady. She has been taking shelter in her aunt's home as her maternal home is at Silchar. After she was driven away, the second party never enquired about the well-being

of the first party and he also did not provide her with any maintenance. She claimed that the second party works in MES and at present he is posted in Army Hospital, Basistha , Guwahati as washer-man. His monthly salary is about Rs 28,000/-. But, pw-1 has no income of her own. Evidence of pw-1 is corroborated by Pw-2, who has also stated that after the marriage, the second party started to drink liquor and he tortured pw-1. Thereafter, pw-1 was driven out of the house by the second party while they were staying in Guwahati and since then, he never enquired about her nor he provided her with any maintenance. Pw-2 further stated that the second party has performed another marriage. This witness also claimed that the second party works as a washerman in the Army Hospital, Guwahati. His monthly income will be about Rs 26,000/- but pw-1 has no income of her own.

29.5.14
 J. Chel Jadhav Magistrate
 Sonapur, Tezpur

The second party in his evidence as dw-1 did not deny his marriage with pw-1. He admitted that the first party is his wife. So, there is no dispute on this point. He stated has since the year 2006, he has been posted in Arunachal Pradesh but the first party refused to stay with him and she stayed in a rented house in Dhekiajuli. Thereafter, in the year 2010, he was posted in Guwahati but still the first party refused to stay with him. Dw-1 alleged that 2/3 times, she visited him and brought Rs 60,000/- and also withdrew money from his account. She is living with a youth, Ranjan Pal. Dw-1 also stated that his monthly salary is Rs 8,000/-. In his cross-examination, dw-1 disclosed that he has not submitted the salary certificate. Dw-2 revealed in his cross-examination that after their marriage, first party and the second party lived together. He did not see the first party living the house of dw-1 with all her belongings. So, the evidence of dw-1 that the first refused to live with him after marriage and she stayed with her aunt in Dhekiajuli on her own will does not inspire any confidence in the absence of any corroborating evidence. From the evidence of pw-1, it has come out that the second party has married another lady and is living with her. No woman will tolerate her husband living with another lady.

From the discussion of the evidences adduced by the parties, it is found that the first party was physically and

mentally tortured by the second party by getting drunk and she was driven out of the matrimonial home . He also married another lady and is living with her . So, the first party has just and reasonable ground for living separately from the second party. Accordingly, this point is decided in favour of the first party.

POINT NO 2:

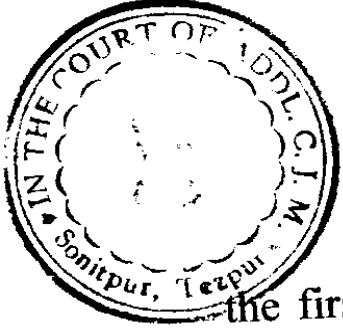
According to the first party (pw-1), the second party drove her and she came to Dhekiajuli to stay in her Aunt's house. So, she was compelled to stay separately from him. Dw-1 has admitted that the first party is not staying with him. Pw-1 has stated that since the day she left the matrimonial house , the second party did not enquire about her well-being nor provided her with any maintenance. The first party has no income of her own. Pw-1 claimed that the second party works as washerman in MES. His monthly salary is Rs 28,000/-. Dw-1 has admitted that he is a 4th grade employee in MES. He claimed that his monthly salary is about Rs 8,000/- but he has not produced the salary certificate to prove the same.

29-5-14
 JUD. CHIEF JUDICIAL MAGISTRATE
 SONITPUR, ASSAM

It reveals clearly from the evidence of the second party that he has his own source of earning. It is clear that the second party (Dw-1) did not give any maintenance to the first party. There is clear prove that the first party has no income of her own. It is the primary duty of the husband to maintain his wife whether the latter stays with him or not. Hence, even mere omission on the part of the husband to provide for requisite maintenance without there being any prior demand for the same by his wife would be a refusal in the eye of law within the purview of section 125(1) crpc. It is undeniable that the second party is an able-bodied person. Thus, in this instant case, the failure of the second party to provide maintenance to the first party clearly establishes that he having sufficient means, neglected and refused to maintain the first party. This point is decided in favour of the first party.

POINT NO 3:

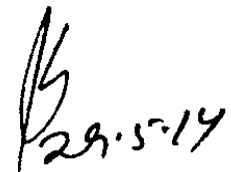
In view of the discussions and decisions in point nos 1 and 2, it is held that the first party is entitled to get maintenance from the second party as prayed for.

ORDER

In the result, maintenance allowance is granted to the first party at the rate of Rs 2,500/- only (two thousand and five hundred) per month from the second party with effect from the date of passing this order.

The petition is disposed of accordingly.

Given under the hand and seal of this court on the 29th day of May, 2014.


(Smti B.Kshetry)
Addl.CJM, Tezpur
Chief Judicial Magistrate,
Sonitpur, Tezpur