

IN THE COURT OF SDJM (S) TEZPUR, ASSAM.

MR. NO :186 of 2011

Smti Simpy Ara.... Petitioner
Vs.
Md Haidar Ali Ansar..... Opp. Party

Present : ABDUL KADER
SDJM (S) Tezpur, Assam.

Counsel for prosecution: Mr. A. Aziz
Counsel for the defence: Mr. B. Goswami

Date of evidence : 30.03.2012,24.08.2012,15.10.12,09.01.13,09.01.13,01.04.14.
Date of argument : 16 .05.2014
Date of judgment : 20 .05.2014

JUDGMENT

The case of the petitioner in a nutshell as bellow :

The petitioner Simpy Ara filed a petition under section 125 CrPC praying for granting maintenance for herself and for her two minor sons @ Rs. 3000/ per month each, total Rs. 9000/. She stated that she was married with the opposite party on 16/04/2009 and started conjugal life. Out of their wedlock twin male children are born. Thereafter the Opposite party used to torture her and attempted to kill her pouring kerosin as he intent to solemnized second marriage with another girl. The petitioner was compelled to leave the matrimonial house. Thereafter the Opposite party neglected to provide any maintenance to her and her two children.

The OP contested the case filling written objection stating interalia that the petitioner was married with him and out of their wedlock two children are born. The petitioner left the matrimonial house voluntarily as his income is not sufficient.

During the course of proceeding the petitioner side examined three PWs and the Op examined him as DW-1 and other two witnesses.

Heard argument of learned Counsel of the petitioner and learned counsel of the OP.

POINTS FOR THE DECISION :

- I. Whether the petitioner is the wife of the Opposite party ?
- II. Whether the OP having sufficient mean neglected to provide maintenance to the petitioner and her minor son ?
- III. Whether the petitioner and the minor son entitled to maintenance, if so , what would be the quantum of the same ?

REASONS FOR DECISION:

DECISION ON POINT NO-I:

There is no dispute as to marriage. The OP admitted that the petitioner is his wife and out of their wedlock two male children are born. Hence it is held that the petitioner is the wife of the Opposite party.

DECISION ON POINT NO- II :

PW-1 stated that after marriage while she was pregnant she was admitted to hospital for delivery. Her father paid entire Rs. 45,000/ to the hospital as cost of delivery. Thereafter her husband came to her father's house and paid some money and brought her to his house along with the children. Since after one month of marriage her husband used to torture her and he fall in love with one girl namely Dipty and asked for permission to marry her. But she refused the same. While raising objection the petitioner tried to set fire on her body by pouring kerosin. The accused also assaulted her and tried to throw away two children from building . Then she informed her parents. Her two sister went there and took her with the children to her parent's house. After one month, her husband came to the house and threaten that he will solemnized second marriage. Thereafter her husband sent an Advocate notice (Ext- A) . She took shelter at the house of her parents. In cross examination her evidence remained unshaken.

PW-2 mother of the petitioner stated that after marriage while she was pregnant she was admitted to hospital for delivery. Her father paid entire Rs. 45,000/ to the hospital as cost of delivery. Since after one month of marriage her husband used to torture her. The OP intent to marry another girl and asked for permission to marry her from the petitioner. But she refused the same. While raising objection the petitioner tried to set fire. Two moth later the OP came to their house and returned the petitioner. She stayed for about three and half month at the house of the opposite party. Thereafter her two other daughter went there and took her with the children to their house. She was cross examined but her evidence remain unshaken.

PW-3 uncle of the petitioner stated that after marriage while she was pregnant she was admitted to hospital for delivery. Her father paid entire amount to the hospital as cost of delivery. Since after marriage her husband used to torture her demanding dowry and intending to marry another girl and asking for permission of the petitioner. Later on the OP came to their house and returned the petitioner. She was again tortured by the OP. Thereafter she came to her parent's house with children to their house. He was cross examined and he stated that the petitioner completed M.A. but could not completed LLB. He heard about the incidents from the father of the petitioner.

DW-1 stated that the petitioner left the matrimonial house as she is not satisfied with the earning of the OP who is an electrician. The OP wanted to admit her at Jorhat Hospital to minimize the expenses. He also stated that he paid expenses of hospital. On 24.12.10 the petitioner left his house. Since then she was not maintain by him. The children are with the petitioner.

DW-2 Kamal Pual stated that he know the OP since long. He did not heard any incident of torture upon the petitioner.

PW-1 stated that since after one month of marriage her husband used to torture her as because he fall in love with Dipty and asked for permission to marry her. While raising objection the petitioner tried to set fire on her body by pouring kerosin. The accused also assaulted her and tried to throw away two children from building. He left the matrimonial house. Thereafter her husband sent an Advocate notice (Ext- A). She replied the Advocate notice. Her statement is supported by the PW-2 and PW-3 except the contention that the OP tried to throw the children from building. On the other hand the PW-1 stated that the petitioner left the matrimonial house as because she is not satisfied with the income of the OP. But the defence could not establish the fact . DW-2 is silent about the fact. Defence did not produce any other witnesses to substantiate the fact. Hence it cannot be held that the petitioner left the matrimonial house without reasonable cause. Further all the PWs stated that due to torture the petitioner was compelled to leave the matrimonial house. DW-1 also stated that on 24.12.10 the petitioner left his house. Since then she was not maintain by him. The children are with the petitioner. Threatening to solemnized second marriage is sufficient caused to leave the matrimonial house on the part of the petitioner. Non providing of any maintenance since 24.12.2010 is sufficient contention for holding that the opposite party neglected to provide maintenance to the petitioner.

From the above evidence it is clear that the OP having sufficient mean neglected to provide maintenance to the petitioner and her minor sons.

DECISION ON POINT NO- III :

It is appeared that the petitioner is the wife of the OP and she as well as her minor sons entitled to maintenance from the OP.

So far as quantum of maintenance is concerned, the OP admitted that his monthly income is Rs. 5000/ per month depending upon availability of work. The PW-1 stated that the OP used to do work as electrician and his monthly income is Rs. 15,000/ to 16,000/. PW-2 and PW-3 also stated that income of the OP is Rs. 15,000/ per month.

From the above discussion it is clear that the OP is an electrician and he has sufficient income. On the other hand the defence examined DW-3 Ramani Medhi, who is the Head master of Amare Bari ME School, who stated that the petitioner is working in the school and she is paid Rs. 500/ per month as Honorius. The school is a venture school.

It is appears that the petitioner earn Rs. 500/ only per month. Although there is no evidence whether such earning is sufficient to maintain herself but at the present juncture it can not be said that Rs. 500/ is sufficient for maintaining a person.

Considering above the OP is directed to pay Rs. 1000/ per month to the petitioner and Rs. 1000/ each, per month to the two minor children, total Rs. 3000/ (three Thousands) from the date of order.

Given under my hand and seal of the court, on this 20th day of May 2014.