

IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE (M):

BISWANATH CHARIALI:: SONITPUR.

Present: Mrs. Priyanka Hazarika Nair

Sub Divisional Judicial Magistrate (M)

Biswanath Chariali, Sonitpur.

Misc Case No. 51 of 2017

u/s 125 of the Criminal Procedure Code, 1963

Ramija KhatoonPetitioner

Vs.

Md. Jahir AhmedRespondent

Learned Advocate for Aggrieved party: Mr. Apurba Baruah.

Learned Advocate for Respondent: Mr. Toufique Ahmed.

Evidence recorded on: 25.01.2019; 26.04.2019.

Argument Heard on: 26.04.2019

Final Order on: 07.05.2019.

FINAL ORDER

1. **Case of the aggrieved party in brief:** The petitioner, Ramija Khatoon, pleads that she had entered into the wedlock with the Opposite party, Md. Jahir Ahmed on 02.08.2015. She further claims that after their marriage they started residing at the Opposite Party's house as husband and wife. The petitioner submits that after two months of their marriage, the opposite party started to harass her both mentally as well as physically. She states that the Opposite party used to assault her badly and did not provide her food and other necessities. The Opp. Party had allegedly subjected the petitioner to severe physical cruelty on pretext of his unlawful demand for dowry from her and drove her out from her matrimonial home. The petitioner submits that she was compelled to take shelter in her parental house and the Opp. Party again married another woman from Kharupetia. The petitioner submits that the opposite party has a monthly income of Rs. 30,000/-. The petitioner submits that she has been compelled to live in her parental house and that the respondent has not been providing any sustenance expenses to her. Thus, the petitioner was compelled to file the instant case against the opposite party for the maintenance of herself.

2. On receipt of the instant application, show cause notice was issued to the respondent but the respondent did not contest the case and as such the case proceeded ex parte against him.

POINT FOR DETERMINATION:

3. Whether the petitioner, Ramija Khatoon, is entitled to maintenance for herself as claimed from the Opposite party?

TRIAL:

4. During the trial, the petitioner/aggrieved party adduced her evidence as well as evidence of her witness to substantiate her case. I have considered the pleadings and evidence of the petitioner. I have also heard the vociferous and rival submissions of the Learned Counsel for the petitioner and have arrived at the following finding:

DISCUSSION, DECISION AND REASONS THEREOF:

5. I would like to discuss the above question in light of the evidence adduced by the petitioner:-
 - (i) Whether the petitioner has sufficient reason for residing separately from the respondent?

P.W-1 has deposed in her evidence that since their marriage, the respondent used to harass her. She deposed that the respondent had harassed her badly and compelled her to leave his house. She deposed that because of torture of the respondent she was compelled to leave her matrimonial house. She deposed that she has been staying in the house of her parents since then and that the respondent has not been paying any sustenance amount to her. P.W-2 also corroborated her version. The respondent did not contest the case and

thus the allegations of the petitioner remained uncontroverted. The respondent neither contested the case nor adduced any evidence so as to render the version of the P.Ws unbelievable.

Thus, considering all the above, it can be very well deduced that the petitioner is entitled to maintenance from the Opposite Party. The other P.W also corroborated the version of P.W-1, that the petitioner/P.W-1 was compelled to leave the house of the respondent as he used to harass her badly. Thus, it cannot be said that the petitioner had left her matrimonial house without any sufficient reason.

6. (ii) Whether the respondent has sufficient mean to maintain his wife?

P.W-1 testified that the monthly income of the respondent is around Rs. 30,000/-. P.W-2 also corroborated the version of P.W-1 and further testified that the monthly income of the respondent is around Rs. 30,000/-. The respondent did not contest the case and adduce any evidence to disprove the said fact. Therefore, the pleading of the petitioner pertaining to the income of the respondent also remains uncontroverted.

Thus, I am of the firm opinion that the petitioner is entitled to an order of maintenance u/s 125 Cr.P.C, as her husband, despite having sufficient means, has refused/neglected to pay her maintenance for her.

ORDER:

7. The proceeding under this provision is not punitive. The object is not to punish a person for neglecting to maintain whom he is bound to maintain. It is merely

meant to enforce liability in order to avoid destitution and vagrancy. This statutory provision gives effect to a natural duty of a man to maintain his wife and thus the benevolent purpose behind the legislation has to be upheld at all cost.

Keeping the above in mind, and for deciding upon the matter of the quantum of maintenance, I have considered the monthly income of the Opposite Party as pleaded by the petitioner. I have also equally pondered upon today's high price index of goods of daily use. Weighing all the above, the Opposite Party/respondent is hereby directed to pay a monthly maintenance allowance of Rs. 5,000/- for the maintenance of the petitioner from the date of filing of this application.

8. Supply copy of the final order to the aggrieved party free of cost.
9. The final order is delivered and operative part of the same is pronounced in open court, today, i.e. the 7th day of May, 2019 under the hand and seal of this Court.

Smti. Priyanka Hazarika Nair

Sub Divisional Judicial Magistrate (M)

Biswanath Chariali, Sonitpur.

Misc Case No. 51 of 2017

Date: 07.05.2019

APPENDIX

I. Petitioner Witnesses:

1. P.W-1: Ramija Khaton

2. P.W-2: Samala Khaton

II. Petitioner Exhibits: Nil

III. Respondent Witnesses: Nil

IV. Respondent Exhibits: Nil

Mrs. Priyanka Hazarika Nair

Sub Divisional Judicial Magistrate (M),

Biswanath Chariali, Sonitpur.