

**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. 27 of 2018**

**u/s 125 of the Criminal Procedure Code, 1963**

Smt. Asha Sarkar .....Petitioner

Vs.

Sri Rantu Sarkar .....Respondent

Learned Advocate for aggrieved party: Sri Thageswar Baruah.

Learned Advocate for Respondent: Sri Dinamoni Das.

Evidence recorded on: 27.11.2018; 26.03.2019.

Final Order on: 03.05.2019.

## **FINAL ORDER**

1. **Case of the aggrieved party in brief:** The petitioner, Smti. Asha Sarkar, pleads that she had entered into the wedlock with the Opposite party, Sri rantu Sarkar, on 13.12.2017 s per Hindu rites and rituals socially. She further claims that after their marriage she started residing with the Opposite party at his house. The petitioner submits as a result of her co-habitation with the Opp. Party, she got pregnant and now has a minor daughter. The petitioner submits that after one month of her marriage, the opposite party and his family members started to harass her physically and mentally on the pretext of their unlawful demands for dowry. She further states that the father of the Opp. Party also tries to outrage her modesty and that she was also compelled to leave her matrimonial house and go to her parental house. The petitioner states that when she was compelled to leave her matrimonial house she was five months pregnant. The petitioner states that during her stay at her parental house she gave birth to a female child on 06.10.2018. The petitioner submits that the respondent has monthly income of Rupees 40,000- Rs. 45,000. The petitioner submits that he has not been paying any sustenance expenses to her and the minor child. Thus, the petitioner was compelled to file the instant case against the opposite party.
  
2. On receipt of the instant application, show cause notice was issued to the respondent. The respondent appeared and filed his written statement and contested the case.

3. The Case of the Respondent: The respondent admits that the petitioner is his wife and that the minor daughter is his daughter. The respondent has denied that he or his family members had subjected the petitioner to any form of cruelty or torture. He submitted that the petitioner had left her matrimonial house as per her own desire and thus is not entitled to maintenance. He further submits that he does not have a monthly income as stated by the petitioner. He prays that the case may be dismissed.

**POINT FOR DETERMINATION:**

4. Whether the petitioner, Smt. Asha Sarkar, is entitled to maintenance from the Opposite party for herself and her minor daughter?

**TRIAL:**

5. During the trial, the petitioner/aggrieved party adduced her evidence to substantiate her case. The respondent also adduced evidence of his witnesses. Both the sides had ample opportunity to cross examine the witnesses of the other side. I have considered the pleadings, evidence and documents of the petitioner and the respondent, heard the Learned Counsels of both sides and have arrived at the following finding:

**DISCUSSION, DECISION AND REASONS THEREOF:**

6. Upon the perusal of the pleadings and the evidence adduced by both sides, the factum of marriage between the petitioner and the Opposite Party and the fact that the parties have a minor female child is established.

7. P.W-1 deposed that the Opposite Party subjected her to cruelty, both mental as well as physical as a result of which she was compelled to leave his house. She deposed that the petitioner has been residing at her parental house with the minor child. She deposed that the Opposite party has a monthly income of Rs. 40,000 or Rs. 45,000/-. She deposed that the respondent has a mobile repairing shop. P.W-2 and P.W-3 corroborated the version of P.W-1. P.W-3 deposed that he was told by P.W-2 earlier that the petitioner was being subjected to cruelty by respondent on the pretext of his unlawful demand for dowry. He further deposed that he knows that the respondent has a mobile and laptop shop at Bedetti centre and has a tempo. In his cross examination, he said that he does not know in whose name the tempo is. He deposed that the father of the respondent drives the tempo. He deposed that the shop belongs to the respondent.
8. The respondent denied the allegations of cruelty committed upon her by him or his family members. D.W-3 is a neighbour who deposed that he had never heard of any quarrel or hue and cry in the respondent's house when the petitioner used to stay there. But in his cross examination, he deposed that there is a considerable distance between his house and the respondent's house and he would not be able to hear any hue and cry in respondent's house, if any, from that distance. He further deposed that he knows that the petitioner had lodged a case against the respondent's father. He further deposed that he does not know as to how much is the income of the respondent. D.W-3 and D.W-4 deposed that respondent works in someone else's mobile shop but in his cross examination, he could not name as to in whose shop the respondent

works. D.W-4 also deposed that there is a considerable distance between her house and the house of the respondent.

9. Thus, from the threadbare perusal of the entire pleadings and evidence adduced by both the parties, it is evident that the factum of marriage between the petitioner and the Opposite party; the existence of a minor female child of the parties who at present stays with the petitioner, as well as the factum of the respondent not giving any sustenance expenses to the petitioner or the minor child since petitioner had left his house, have been admitted in instant case.
10. From the evidence adduced by the D.Ws also it is clear that there was some case which was lodged by the petitioner against the respondent's father. The petitioner had alleged that the respondent and the family members of the respondent used to harass her for dowry. D.W-3 and D.W-4, though neighbours of the respondent, but admitted in their cross examination that they could not hear as to what was happening in respondent's house as the distance between their houses was considerably far. P.W-3 had deposed that P.W-2, as informed by her daughter, had told him earlier that the respondent used to demand money from the petitioner. Thus, considering all the evidence on record, I am of the opinion that the allegation of the petitioner being subjected to cruelty/harassment by the respondent is fairly and well established by the petitioner.

Thus, considering all the above, it can be very well deduced that the petitioner as well as the minor daughter is entitled to maintenance from the Opposite Party.

**ORDER:**

11. While deciding upon the matter of the quantum of maintenance, I have considered the alleged monthly income of the Opposite Party. Though the respondent had denied that the mobile shop in which he works is not his but he has failed to rebut the same by means of evidence, either documentary or by adducing the evidence of the actual owner of the shop.
12. I have also equally pondered upon today's reality of the prices of goods of daily use touching sky high. Weighing all the above, the Opposite Party/respondent is hereby directed to pay a monthly maintenance allowance of Rs. 2,000/- for the maintenance of the petitioner and Rupees 3,000/- for the maintenance of the minor child from the date of filing of this Petition. The child being a minor, the petitioner shall receive the maintenance amount on behalf of the minor till the child attains the age of majority.
13. Supply copy of the final order to the aggrieved party free of cost.

14. The final order is delivered and operative part of the same is pronounced in open court, today, i.e. the 3rd 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. 27 of 2018**

**Date: 03.05.2019**

**APPENDIX**

**I. Petitioner Witnesses:**

1. P.W-1: Smt. Asha Sarkar
2. P.W-2: Smt. Subhadra Mazumdar
3. P.W-3: Sri Akhil Biswas

**II. Petitioner Exhibits:** Nil

**III. Respondent Witnesses:**

- A. D.W-1: Sri Rantu Sarkar
- B. D.W-2: Smt. Sandhya Sarkar.
- C. D.W-3: Sri Arun Kumar Das
- D. D.W-4: Smt. Anu Baruah.

**IV. Respondent Exhibits:** Nil

Mrs. Priyanka Hazarika Nair

Sub Divisional Judicial Magistrate (M),

Biswanath Chariali, Sonitpur.