

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE
SONITPUR :: TEZPUR.**

Criminal Revision No. 11 (S-1) 2011.

Smti Deepa Devi Gurung Revision
Petitioner

- Versus -

1. Sri Ganga Bahadur Gurung and
2. Smti Chitra Kumari Gurung Opposite Parties.

**Present : Mrs. M. Nandi,AJS,
Addl. Sessions Judge,
Sonitpur, Tezpur.**

Appearance :

For the Revision Petitioner : Sri R.R. Kalita, Advocate.

For the Opp. Party : Sri S. Das, Advocate.

Date of argument : 05-01-2012.

Date of judgment : 07-01-2012.

J U D G M E N T.

1. This Criminal revision has been filed U/s. 397/399 of the Cr.P.C. against the order dated 09-12-2010 passed by the learned Sub-Divisional Judicial Magistrate(S), Tezpur in CR Case No. 80/2010 U/s. 406/498 (A) of IPC.

2. The relevant facts leading to this criminal revision are as follows :-

The complaint case being No. 80 /2010 instituted by the petitioner on 09-03-2010 against the Opposite parties stating that the petitioner was married to one Sibur Gurung about 3 ½ years ago and after their marriage they lived together as husband and wife in a rented house of one Manash Raksid. The husband of the petitioner is a truck driver by profession. The parents of the husband Sibur Gurung i.e. the Opposite parties were against their marriage and did not allow the petitioner and her husband to enter into their house. Finding no any alternative they started to reside in the rented house of the aforesaid Manash Raksid. After 1½ years of their marriage a female child was born to the petitioner. During that period, the Opposite party never visited the rented house of the petitioner. As the ill luck would have it, the petitioner's husband died on 07-03-2009 and on the very day both the opposite party came to the petitioner's house and took them to their house with all the belongings. The employer of the petitioner's husband paid expenses of the sardha ceremony of her husband and also her parents helped her with money. After 18 days of the death of petitioner's husband, opposite party brought all the belongings of the petitioner from the rented house to their house. The petitioner cleared the rent of the house by borrowing money from her parents. After one month of the death of her husband, the opposite party started to torture her and her child physically as well as mentally and ultimately drove them out from their house. Finding no other alternative, the petitioner took shelter in the house of her parents along with her child and since then petitioner is living in her parent's house with her child. The opposite party mis-appropriated all the articles of the petitioner, as such, the petitioner was compelled to file the instant C.R. Case No. 80 of 2010 in the Court of the learned Chief Judicial Magistrate, Tezpur which was subsequently made over to the Court of learned SDJM, Tezpur. Learned SDJM fixed

the case on 09-12-2010 for necessary order. But as the petitioner could not appear in the Court due to illness of her child, the learned SDJM, Tezpur passed order disposing the case.

3. Being highly aggrieved by the said order dated 09-12-2010 passed by the learned Sub-Divisional Judicial Magistrate(S), Tezpur, the revision/petitioner Smti Deepa Devi Gurung has filed this criminal revision before this court on the following grounds :

- i) that the learned SDJM(S), Tezpur erred in law as well as in fact in declaring the criminal case filed.
- ii) that the order is illegal, unjust, improper and liable to be set aside.
- iii) that the petitioner remained absent in the court on 09-12-2010 due to unavoidable circumstances as her only child was seriously ill and nobody was with her to look after the child nor come to the Court to inform the lawyer to take step in the case.
- iv) that the impugned order will make major loss to the poor petitioner. So, revival of the case (CR NO. 80/10) is necessary.

4. I have carefully gone through the impugned order as well as the record of the original Misc. Case No. 80/2010. I have heard the arguments advanced by the learned counsel of both sides.

5. Now, this Court being the Revisional Court is to see whether the learned Magistrate committed any irregularity or illegality in passing the impugned order dated 09-12-2010.

6. From the ordersheet of CR No. 80/10 it reveals that on 14-09-2010 order was passed as follows : *"both the parties present. Documents of both parties submitted and same kept with CR. Fix 30-*

09-2010 for n/o." On 30-09—2010 the order passed by the learned SDJM as follows : *"both the parties are present. Fix 13-10-2010 for n/o."* The order of 13-10-2010 is like that "complaint absent with step. Accused present. Fixing 12-11-2010 for n/o". So, from the ordersheet it reveals that all the 3 dates 14-09-2010, 30-09-2010 and 13-10-2010 the complainant was present but it can not be ascertained why the case was fixed for necessary order. But on 12-11-2010 the complainant was absent without any step and on 12-11-2010 the order was passed as follows : *"the complainant absent without step. Accused present. Fix 09-12-2010 for n/o."* On 09-12-2010 learned SDJM passed the order - *"complainant again absent without step. It seems she is not interested to pursue case. Hence, case is filed against the accused."*

7. On perusal of the case record, it reveals that the case is at the preliminary stage and the case was filed due to absence of the complainant on 09-12-2010. The word "filed" is nowhere defined in Criminal Procedure Code but from the word "filed" it transpires that the case is not finally disposed of. There is a scope to revive in case the proceeding/case is is not finally disposed of which is for the time being subject to revival on requirement.

8. Learned counsel for the petitioner has submitted that as the case was filed, there is a scope to revive the same and the learned counsel for the Opposite party also agreed with the submission of the learned counsel for the petitioner.

9. Considering all aspects of the matter as discussed above, I am of the opinion that as the case was not finally disposed of so, there is a scope to revive the same. Hence, the order passed by learned SDJM(S),Tezpur on 09-12-2010 is set aside.

O R D E R.

10. In the result, the revision petition is allowed on contest without cost. Learned SDJM(S),Tezpur is directed to revive the case being CR NO. 80/2010 and dispose of the same according to law.

11. The parties are directed to appear before the learned SDJM(S),Tezpur to obtain necessary instruction.

12. Send down the LCR along with a copy of this Judgment to the court below.

13. Given under my hand and seal of this Court on this 7th day of January, 2012.

(M. Nandi)
Addl. Sessions Judge ,
Sonitpur ,Tezpur.

Dictated and
corrected by me.

(M. Nandi)
Addl. Sessions Judge ,
Sonitpur ,Tezpur.

Typed by me.

(R. Hazarika)
Steno.