

IN THE COURT OF THE JUDICIAL MAGISTRATE, 1ST CLASS, SONITPUR

Misc Case No. 179/11

Mstt. Maleka Begum.....Petitioner

-v-

Md. Basuruddin.....Opposite Party

PRESENT : Panchali Shyam,
Judicial Magistrate, 1st Class,
Sonitpur.

For the Petitioner : Majaharul Islam, Advocate

For the Opposite Party : Sri Bipin Kotoky, Advocate

Date of Hearing : 18-01-12, 15-03-12, 30-04-12, 04-06-13,

Date of Argument : 07-10-13

Date of Order : 17-10-13

ORDER u/s 125, CrPC

1. The case of petitioner is that she got married to the opposite party eight years ago as per Muslim laws of Shariat. Petitioner is the third wife of the opposite party. Within the wedlock the petitioner gave birth to a girl child. Her name is Majida Khatoon and her age is eight months. It is stated that after one and a half years of marriage the opposite party on being instigated by his first wife,

started to torture the petitioner mentally. The opposite party started to quarrel with the petitioner on petty matters. It is stated that the opposite party demanded money from the petitioner as dowry and threatened to divorce her on her failure to meet the said demand. Petitioner tolerated all atrocities hoping for something good. But that did not happen and things turned worst. After four years of marriage, one day the opposite party demanded Rs 5000/- as dowry from the petitioner and drove the petitioner out from his house. On being driven out, the petitioner went to her mother's house and told her mother about the demand of money. It is stated that that her mother collected Rs 4000/- from somewhere to give it to the opposite party. Petitioner stated that the opposite party continued to torture her even after receiving the money and had driven petitioner out from his house four five times. On 25-05-11 the opposite party tortured the petitioner in demand of money and drove her out from his house along with her child and they had to spend the whole night on the footpath. It is further stated that one week prior to this incident, the opposite party made the petitioner starve for three days as punishment in respect to a fight between them over filter water. It is stated that after being driven out the petitioner took shelter in her mother's house and since then she is residing there with her daughter and is passing her days in great pain with her child. Opposite party has not provided maintenance to petitioner and her child. Petitioner has no source of income. On the other hand opposite party practising local herbal medicine (Kabiraj) and has three-four bighas of cultivated land. He has eight-ten cows and is also a money lender. Opposite party earns rupees nine to fifteen thousand rupees per month. The petitioner claimed Rs. 4,000/- for herself and her child, per month, from the opposite party and hence, the instant case.

2. The opposite party contested the case by filing written statement, wherein he stated that he had never committed any atrocities on the petitioner. He stated that the petitioner left her matrimonial home voluntarily after conflict took place between him and the petitioner over some petty household matter. The opposite party alleged that the petitioner in has stolen his money in his absence and a case has been filed against her to that effect. It is stated that the petitioner has left her matrimonial home voluntarily and therefore not entitled to maintenance from the opposite party and hence prayed to dismiss the case.

ISSUES FOR DETERMINATION

3. During hearing of the case, the petitioner led evidence of four witnesses while the opposite party examined two. The issues which arise for determination are as follows:-
 - (i) Whether the opposite party neglected to maintain the petitioner and the children, who are his wife and daughter ;
 - (ii) Whether the petitioner is unable to maintain herself and the child ; and
 - (iii) Whether the petitioner deserves maintenance for herself and the child from the opposite party?

4. DISCUSSION, DECISION AND REASONS THEREOF:

ISSUE NO1

The petitioner, Maleka Begum, presently resides in her matrimonial home with her daughter. She reiterated the same facts stated in the petition. She denied that she voluntarily left her matrimonial home.

5. PW2, Phulbhanu Begum, is the mother of petitioner. She reiterated the same facts narrated in the petition. She stated that she sold of her cows to meet the demand of the opposite party. She denied that the opposite party had not tortured the petitioner and had not driven her out from his house.
6. PW3, Amiruddin the uncle of the petitioner. He too stated narrated the same facts stated in the petition. PW4, Jallauddin, who is a neighbour of the parties, supported the story narrated by the petitioner.
7. Opposite party in support of his contention adduced evidence of two witnesses. DW1 Basiruddin is the opposite party. He admitted that he has not maintained the petitioner after she started residing in her parental home. He admitted that the petitioner is his third wife. He stated that one wife resides with him, while the other one stays in a different house. He stated that he is a cultivator and had cows and goats. DW1, the opposite party stated that the petitioner brought jewellery from her house and the box contained those jewelleries.
8. DW2, Tara Bhanu is the sister of the opposite party. She stated that the parties often used to fight, but she does not know the reason for the fights. She admitted that the petitioner is presently residing in her mother's house. She admitted that the petitioner has no source of income. She further admitted that the petitioner complained to her about the opposite party torturing her and does not return home on many occasions. She admitted that the opposite party is practising local herbal medicine (Kabiraji) and also is a cultivator and has two three cows and goats.
9. From the above evidence what transpires is that after marriage the parties happily started their conjugal life. But it did not last long as after one and a half years of marriage opposite party begun to torture petitioner by demanding money. This is confirmed by DW2, the sister of the opposite party who admitted that the petitioner complained to her about the atrocities meted out to her by the opposite party. That apart, DW1 himself admitted of not fending the petitioner.
10. The opposite party has not been able to prove that petitioner left his house of her own volition to satisfy her whims and fancies. At the same time, the opposite party has also not been able to dislodge testimony of petitioner that she was forced to leave his house on account of cruelty, physical and mental, inflicted on her. Hence, the opposite party is responsible for petitioner not being in his house presently. Along with it, he has not been able to show in any manner that he has provided for his child or his wife in any manner whatsoever.

Infact, DW1 himself admitted of not fending the petitioner The petitioner and the child with her are being taken care of in her parental home by her family members. There has been no contribution of opposite party in fending for them. Hence, this issue is decided in the affirmative.

ISSUE NO2.

11. The petitioner has been living with her parents ever since she had been driven out of her matrimonial home by the opposite party. It has not been brought about in evidence that the petitioner is working somewhere or earning anything. The opposite party has also not denied that the petitioner is not working or that she has no source of income. Hence, this issue is also decided in the affirmative.

ISSUE NO3

6. The law binds a man to maintain his wife, children and parents. There are no two ways about it. Therefore, with issues no. 1 and being decided in the affirmative, it is absolutely clear that the petitioner deserves maintenance from the opposite party for herself and her child and it is also essential that the opposite party should provide maintenance to them. Having married the petitioner, it is the bounden duty of the opposite party to maintain her and his child. It is a responsibility which he has undertaken under the vows of marriage and an obligation which he has to shoulder. It is not a joke that a man will marry a woman and then leave her on the breadline with his children simply because she was unable to remain in his house and keep suffering the torture inflicted on her. The opposite party, who is father of the child with the petitioner, has also not shouldered any responsibility of being a father. There is no excuse for that, Sec.125, CrPC, is quite clear that any person, with sufficient means, has to maintain his wife and child, who are unable to maintain themselves. The petitioner and her child definitely deserve maintenance from the opposite party, who is husband of the petitioner and father of said child. This issue, therefore, is decided in the affirmative as well.

7. The cumulative effect of decisions in all these issues are that the case of petitioner is proved by preponderance of probabilities.

8. The petitioner has stated that the opposite party is a businessman and has landed properties. He earns Rs 15,000/- per month. DW-2, sister of opposite party admitted opposite party doing practice of local herbal medicine and also does cultivation and owns cows and goats. DW 1 admitted that his first wife is residing with him and second wife stays in a different house and the petitioner is the third wife. That being so, a man who can have three wives at the same time, shows his capacity to fend them there is no doubt that opposite has enough to fend for his second wife. The question therefore, is why the petitioner and her child feel deprived of what they are entitled to as per law? Be that as it may, the opposite party is bound to maintain his wife and children. He cannot escape that responsibility. Keeping all aspects in consideration, a monthly maintenance allowance of Rs. 2,001/- for the petitioner and of Rs. 1,501/- for child, i. e a total of Rs. 3,502/- per month appears sufficient in this case to meet the ends of justice.

9. With the aforesaid observations, I hereby direct that the opposite party, Basiruddin, shall pay maintenance allowance towards his wife @ Rs. 2,001/- per mensem and @ Rs 1,501/- per month towards his child residing with the

petitioner, ie Rs 3,502/- per month in total, with effect from the date of this petition.

10. Petition of Msstt. Maleka Begum, the petitioner, is, therefore, allowed.

11. Given under my hand and the seal of this court on this, the 19th day of October,2013.

Judicial Magistrate,
1st class, Sonitpur