

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE : BONGAIGAON.

MISC. CASE NO. 74/2012.

U/S.125 CrPC.

Musstt. Munni Begum.....1st Party.

-Vs-

Md. Mehboob Alam @ Bapan....2nd Party.

Present: Sri A.U. Ahmed, AJS
Chief Judicial Magistrate,
Bongaigaon.

Advocates appeared:

For the 1st party: ***Mrs. Krishna Das.***

For the 2nd party: ***Mr. N.I. Siddique.***

Argument heard on: ***10.04.2013.***

Judgment pronounced & delivered on: ***23.04.2013.***

J U D G M E N T

1. It is a case under section 125 CrPC filed by a wife against her husband claiming separate maintenance from him for herself at the rate of Rs.4000/- and for her minor daughter at the rate of Rs. 3000/- per month totaling Rs. 7, 000/-.

2. The case of the 1st party in brief is that on 15.05.2006 she was got married to the 2nd party as per Islamic Shariat socially through registered Kabinnama. Thereafter she was taken to the house of the 2nd party where she started living with him as husband and

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wife. From their wedlock one female child was born named Jesmina Khatun- aged about 5 years. After the birth of the said child, the 2nd party started torturing her on demand of dowry and also rebuked her with slang language from time to time. On 25.09.2011 the 2nd party asked her to bring Rs. 3000/- as dowry from her brother but she somehow managed Rs.2500/- and gave the same to the 2nd party. Due to non-payment of the rest amount the 2nd party started torturing on her and after assaulting her with an iron rod, wooden stick etc. kept her confined in the room. Thereafter, her maternal aunt came there knowing the fact from others and took her (the 1st party) to her house. In this regard a case was lodged with the Dhaligaon Police Station. Since then she has been staying along with her minor daughter in the house of her maternal aunt. During her stay there 2nd party neither kept any relation with her nor provided any maintenance to her for herself and her minor child. She has no source of income to maintain herself and her minor child. On the other hand, the 2nd party is a mechanic by profession where he earns Rs. 10, 000/- per month. Hence this case has come up.

3. On receipt of notice, the 2nd party has appeared and contested the case by filing written statement denying all allegations

with legal pleas that there is no cause of action and that the case is not tenable in law and fact.

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4. The case of the 2nd party in brief is that he never demanded any dowry from the 1st party. He was acquitted in the case U/S.498-A IPC which was filed against him by the 1st party. He is motor mechanic by profession and has been living with his aged mother. He has been suffering from neurological problem since long. Due to financial hardship he could not pay his electricity bill for the last three months. 1st party asked him to be domesticated husband (Ghar Jamai) to which he never agreed. Hence the case of the 1st party brought against him under section 125 CrPC is liable to be dismissed.

5. During the trial 1st party has examined 2(two) witnesses in support of her case. The 2nd party only has examined himself in support of his case.

6. : **POINTS ARE TO BE DETERMINED :**

- a) *Is the 1st party legally married wife of the 2nd party?*
- b) *Is the child legitimate or illegitimate children of the 2nd party?*
- c) *Is the 1st party unable to maintain herself and her minor children?*
- d) *Is the 2nd party having sufficient means refusing or neglecting to provide maintenance to the 1st party for herself and her minor children?*
- e) *Is the 1st party entitled to getting separate monthly maintenance for herself and her minor children from the 2nd party as prayed for? If so, what would be suitable quantum?*

7. : **DECISION AND REASONS THEREOF :**

I have very carefully gone through the arguments duly advanced by the Ld. Lawyers of both sides as well as evidence on record. For convenience of discussion, point wise discussion would be made.

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Point (a) & (b)

8. It has been stated in the petition filed by the 1st party that she is the legally married wife of the 2nd party and their marriage was solemnized as per Islamic Shariat socially. It has been also stated in the petition that from their wedlock a female children was born who is staying with the 1st party. The aforesaid facts are not denied and challenged by the 2nd party rather he admitted the same. It is the established principle that admitted fact does not need to be proved. Hence, it can be held that the 1st party is the legally married wife of the 2nd party. It is also held that the child is legitimate child of the 2nd party. There is no dispute regarding age of the children. Hence it can be held that the child is minor.

Point (c)

9. It has been stated in the petition filed by the 1st party that she has no source of income to maintain herself and her minor daughter. In this regard there is no specific denial from the 2nd party.

Hence it can be said that the 1st party has no source of income to maintain herself and her minor daughter.

Point (d)

10. From the evidence of 1st party marked as PW1 and from the contents of her petition filed U/S.125 CrPC, it appears that

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5. she has been in her maternal aunt's house with her minor child since 25.09.2011 and during that period 2nd party neither kept any relation with her nor provided any maintenance to her for herself and her minor child. There is no evidence adduced by the 2nd party marked as DW1 showing that during stay of the 1st party in her aunt's house neither he kept relation with her nor provided maintenance to her for herself and her minor child. Even though the 2nd party has admitted in his cross-examination that during the stay of the 1st party in her aunt's house he did not pay regular maintenance to her for herself and their minor daughter. There is no dispute that 2nd party is a motor mechanic. According to 1st party the 2nd party earns Rs.10,000/- to 15,000/- per month. PW2 is Marjina Begum who is the Aunt of the 1st party has stated that the 2nd party earns Rs.10,000/- to 15,000/- per month. On the other hand, 1st party has no source of income. The 2nd party marked as DW1 has stated in his testimony that he earns Rs. 3000/- per month. The written statement filed by the 2nd party is

totally silent how much he earns in a month. Of course it is very much difficult for the 1st party to produce any documentary evidence showing the monthly income of the 2nd party. I also feel hesitation to accept that the 2nd party earns Rs.3000/- per month. In view of discussion made above without hesitation I can held that the 2nd party having sufficient means has been refusing or neglecting to provide separate monthly maintenance to the 1st party for herself and her minor child.

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Point(e)

- 11.** The 1st party has marked as PW1 has stated in her testimony that after 3 months of the marriage she became pregnant and during 7 months pregnancy the 2nd party started torturing her on demand of Rs. 3000/-from her parents' house. There after she brought Rs. 2500/- from her parents and gave the same to the 2nd party. One day the 2nd party after assaulting her with an iron rod kept confined in room. On 25.09.2011 her maternal aunt came to her matrimonial house hearing the aforesaid occurrence and took her to her house. PW2 is the maternal aunt of the 1st party who has stated in her testimony that on 25.09.2011 she came to know that the 2nd party assaulted the 1st party and there after she came there and went with her back along with her minor daughter. In view of the discussion made above it can be safely said that the 1st party is not in

a position to stay with the 2nd party under a roof and as such she is entitled to getting separate monthly maintenance for herself and her minor daughter.

There is no dispute that the 2nd party is a motor mechanics. Now-a-days a motor mechanics can earn more than Rs. 6000/- per month. Quantum of monthly maintenance of person depends upon price index of essential commodities and monthly income of the person who is asked to pay maintenance.

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O R D E R

12. *In the result, the petition filed under section 125 CrPC by the 1st party/petitioner is allowed. Accordingly, the 2nd party/opp. party is directed to pay a sum of Rs. 1500/-(Rupees One Thousand and five hundred only) for the 1st party and a sum of Rs. 500/-(Rupees Five Hundred only) for her minor child totaling amounting to Rs.2000/- (Rupees Two Thousand only) per month to her as monthly separate maintenance with effect from 01.01.2013 till further order. He is also further directed to pay cost of Rs. 400.00 (Rupees Four Hundred) to the 1st party/petitioner. Let a copy of this Judgment be furnished to the 1st party at free of cost. Accordingly, this case is disposed of on contest with the above cost. The System Officer, Bongaigaon Court is asked to up-load the Judgment in the official website.*

13. The Judgment is pronounced and delivered in the open Court on this 23rd April, 2013 under my hand and seal of this Court.

Sri A. U. Ahmed
Chief Judicial

Magistrate,

BONGAIGAON.

Dictated and corrected by me.....

Sri A. U. Ahmed
Chief Judicial Magistrate,
BONGAIGAON.
