

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BONGAIGAON

PRESENT: SYEDA FARIDA AFZAL ZINNAT

CASE NO: MISC. 25/2014

RUPALI SINGHA FIRST PARTY

VERSUS

GOBINDA SINGHA SECOND PARTY

U/S 125 of the Code of Criminal Procedure

FOR THE FIRST PARTY: MR. P.K.DAS, ADVOCATE

FOR THE SECOND PARTY: MR.H.DAS, ADVOCATE

EVIDENCE RECORDED ON: 9/7/2014, 26/8/2014, 1/11/2014

ARGUMENTS HEARD ON: 1/11/2014

JUDGMENT DELIVERED ON: 1/11/2014

JUDGMENT

1. This proceeding has arisen out of a petition filed by the first party under section 125 of the Code of Criminal Procedure claiming maintenance allowance of Rs. 4,000/- each per month from the second party for her and her minor son.
2. The case of the first party in brief is that she was married to the second party according to Hindu social rites about 10/11 years ago. For about six/seven months she lead her conjugal life peacefully but after that the second party demanded Rs. 75,000/- as dowry and started to inflict physical torture on the first party. As time passed the tortures increased but the first party tolerated everything giving priority to her marriage. A year after the marriage the first party gave birth to a son but the second party kept on torturing her and

unable to bear the tortures, the first party had to leave her matrimonial home and take shelter at her paternal house.

3. It is the case of the first party that the second party has not provided her and her son with any maintenance after they left his house. It is also pleaded that the second party has kept relation with various women and at present he has married a woman named Dharitri Singha and is leading his conjugal life with her. The second party is an employee of Railways and he earns about Rs. 20,000/- per month and the first party has no source of income and hence the first party has prayed for maintenance of Rs. 4000/- each per month for her and her son.
4. It is also pleaded that the first party had instituted a case for maintenance being Misc. 18/2013 but she could not take steps because of her illness and so the case was dismissed and as she was physically weak there was delay in filing this case.
5. The second party contested the case by filing written statement denying all the allegations made in the petition. It is submitted by the second party that the previously instituted case for maintenance was dismissed as the first party did not show up without any reason and hence this case is not maintainable now.
6. It is also pleaded that the first party has left her matrimonial home without any reason and is avoiding her responsibilities towards her matrimonial home and so she is not entitled to claim maintenance. The second party denied ever demanding any dowry from the first party.
7. It is alleged by the second party that the first party is an extremely jealous and envious woman and she does not pay attention to her household affairs for which the old mother of the second party has to look after cooking and the second party also cannot pay attention to his job and in the event of making any comments regarding her such indiscretions, the first party used to quarrel and leave her matrimonial home and finally on 1/12/2011 she left the matrimonial home. Although she came home after the intervention of elderly people of society but she again left home on 10/12/2011.

8. It is also alleged by the second party that the first party suffers from inferiority complex and she doubts the first party of having illicit relationship with any lady he speaks to. The second party denied that he married another woman but he admitted that he has kept a woman to look after him and his mother.
9. Second party stated that he draws much less than Rs. 20,000/- per month and that he is willing to pay Rs. 2000/- per month to his son Dipjyoti Singha. The second party has also stated that he has filed a petition for judicial separation under section 10(1) of the Hindu Marriage Act, 1955 against the first party in the Court of Hon'ble Sessions Judge, Bongaigaon, being T.S (M) 23/2014.
10. Upon perusal of the pleadings the following points are taken up for consideration:
 - 1) Whether the first party has got any just and reasonable ground for living separately from the second party?
 - 2) Whether the second party having sufficient means neglected or refused to maintain the first party?
 - 3) Whether the second party has got the ability to give maintenance to the first party?
 - 4) Whether the first party is entitled to get the maintenance as prayed for?
11. In support of her case the first party adduced the evidences of three witnesses and the second party examined himself as well as another witness. I have gone through the arguments put forward by the learned counsels of both sides and gone through the Evidence on Record.

12. DISCUSSION ON EVIDENCE, DECISION AND REASONS THEREOF:

POINT NO.1:

13. From the pleadings of the parties as well as the evidence adduced by them it is evident that the second party never disputed the status of the first party to be his legally wedded wife. First party as PW1 stated that she was married to the second party about 10/11 years ago and after about 6/7 months of their marriage the second party started torturing her in demand of Rs. 75,000/-. That, about two years ago the second party drove her out of his house after assaulting her physically and he entered into second marriage after driving her out of her matrimonial home.
14. During her cross examination PW1 stated that her husband has a son with Dharitri Singha and he also has illicit relation with women named Shefali and Monica.
15. PW2 Deepali Ray stated that the second party demanded dowry of Rs. 75,000/- after marriage and on their inability to give dowry the second party tortured the first party physically. She also stated that the second party brought women home and stayed with them in closed room in presence of the first party. She also stated that about two years ago the second party drove the first party and her son away from his home.
16. During cross examination the PW2 affirmed that the second party used to assault the first party brutally in front of her but she cannot remember the dates.
17. PW3 Hariprasad Dihidar is the brother of the first party and he stated that after Rupali i.e. the first party gave birth to her son the second party started pressurizing them for dowry and when they could not give dowry the second party started torturing the first party physically. He stated that about 2 ½ -3 years ago the second party drove the first party away from his house and at present he is living with a woman called Dharitri Singha and he also has a baby from her.
18. During cross examination PW3 stated that the second party often assaulted the first party and when the second party tortured her physically she used to come to her paternal home. He also stated that the second party tortured so

much that it was impossible on the part of the first party to stay in her matrimonial home.

19. DW1 raised the plea that the first party left her matrimonial home on her own volition because of her jealous and envious nature. Again DW2 stated that the first party took shelter at her paternal home because of some family trouble but he stated that he does not know what the problems were between the parties. The evidence of DW1 does not inspire confidence as his claims are not founded on any believable basis. Although the second party denied having any illicit relationship with the maid servant Dharitri Barman but from the admission of DW1 and DW2 it has been established that the second party has physical relation with the woman in his house whom he claims to be a maid servant and he also has fathered her son.

Thus from the evidence adduced by the witnesses there remains no doubt that the first party had to leave her matrimonial house because of the nature of the second party and his tortures on the first party. In such a situation it cannot be said that the first party left the matrimonial house without any reasonable and justifiable ground. So it is held that the first party has got just and reasonable ground for living separately from the second party. Accordingly this point is decided in favour of the first party.

POINT NO.2:

20. According to the first party (PW1) since she left the house of the second party he neither enquired about her nor provided her any maintenance. Her evidence is fully supported by PW2 and PW3. According to the PW1 the second party draws monthly salary of more than Rs. 20,000/-. DW1 has himself admitted that he has not provided maintenance to his son and wife and he has also submitted a computer generated salary slip which shows that the second party draws net salary amounting to Rs. 18,756/- per month after deduction from the gross salary of Rs. 29,674/-.
21. So it comes out that the second party has sufficient means to maintain the first party. Thus the failure of the second party to provide maintenance to the first party clearly establishes that he having sufficient means neglected to maintain the first party. This point is decided in favour of the first party.

POINT NO. 3:

22. The second party has submitted his salary slip which shows that the second party has a handsome source of income and the first party admittedly has no income of her own. Although the second party as DW1 stated that he has to look after his mother but during cross examination he admitted that his father was an employee of Railways and his mother gets family pension after his father's death. The second party is an able bodied person and is of sound health. Hence he has the ability to maintain his wife and son. This point is also decided in favour of the first party.

POINT NO. 4:

23. The second party as DW1 has stated that after a few years of their marriage the first party started misbehaving him and she used to take all his money and she used to go to her brother's house after quarrelling on minor issues. He also stated that in her absence he had to face problems because he had to go to office without eating anything when she was not there. The evidence of the DW1 itself shows that during her stay at her matrimonial home the first party did all kinds of domestic works and this is the reason why the second party faced problems during her absence. Therefore, in my considered opinion, the allegations on the first party that she was not interested in doing household works and the mother of the second party did all the works is a false and frivolous accusation which is not even supported by the mother of the second party who could have testified in support of her son.
24. In view of the discussions and decisions made hereinbefore it is held that the first party is entitled to get maintenance from the second party. But as regards the quantum of maintenance allowance it is to be noted that the son of the parties is residing with the first party. The first party is staying alone. Moreover, it is the primary duty and responsibility of the husband to

maintain his wife in the manner in which the wife was accustomed to live before she is made to leave her matrimonial home because of a second marriage by the husband or because of his illicit relationship. Hence in my considered opinion a monthly allowance of Rs. 4000/- to the first party and a monthly allowance of Rs. 3000/- to the minor son would be sufficient to meet the necessities of the first party and her son.

Order

In the result, the first party and her son is allowed maintenance allowance of Rs. 4000/- and Rs. 3000/- per month respectively from the date of this order.

This petition is disposed off accordingly.

Given under the hand and seal of this court on this the 1st day of November, 2014.

Syeda Farida Afzal Zinnat, AJS

J.M (1st CLASS) BONGAIGAON.

APPENDIX:

LIST OF WITNESSES FOR THE FIRST PARTY:

1. PW1: Rupali Singha
2. PW2: Deepali Ray
3. PW3: Hariprasad Dihidar

LIST OF WITNESSES FOR THE SECOND PARTY:

1. DW1: Gobinda Singha
2. DW2: Bhabendra Chandra Barman