

IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE :::::::::: BONGAIGAON.

Misc. Case No.19/2012.

U/S.125 CrPC.

Party. **Smt. Mohini Nath.....1st**

-Vs-

Party. **Sri Joykrishna Nath.....2nd**

Present: **Smt. Nirmali Talukdar, AJS.**
Chief Judicial Magistrate,
Bongaigaon.

Advocates appeared:-

For the 1st party- **Smt. Lalita Barman.**
For the 2nd party- **Smt. Snigdha Saikia.**

Argument heard on: **16.07.2014.**

Judgment pronounced & delivered on: **25.07.2014.**

J U D G M E N T

1. This is a petition U/S.125 CrPC filed by the 1st party Smt. Mohini Nath claiming monthly maintenance of Rs.5000/- from the 2nd party Sri Joykrishna Nath.
2. The 1st party's case in brief is that, about 10 months back she was got married with the 2nd party by performing rites and rituals of Hindu marriage Act. After one month of marriage, the 2nd party and his sister-in-law started to torture the 1st party physically and mentally in demand of dowry. On 08.10.2011, during the time of "Durga Puja", the 2nd party assaulted the 1st party and drove her out

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from his house. Then, the 1st party somehow managed to arrive at her parental home situated at Old Bongaigaon. Since then, the 2nd party did not enquire about the 1st party. Though the family members of the 1st party communicated with the 2nd party to resolve the dispute, but they failed to keep the 1st party in the house of the 2nd party. The 1st party has no source of income. On the other hand, the 2nd party is a rich cultivator having his sufficient cultivable land and a businessman. The monthly income of the 2nd party is Rs.10,000/- per month. Hence, the 1st party filed the instant petition claiming monthly maintenance.

3. The 2nd party has filed written statement denying the statement of the 1st party. The 2nd party has stated that, he never tortured the 1st party physically or mentally in demand of dowry. The 1st party voluntarily left her matrimonial house with Kailash Nath and Tilak Nath on 29.10.2011 and since then she has been residing in her parental home. Though on several occasions the 2nd party went to the house of the 1st party to get her back, but she did not go with him. The 2nd party is willing to continue his conjugal life with the 1st party and in this regard he has also filed a case for restitution of conjugal rights. As such, the 1st party is not entitled to get maintenance from the 2nd party. The 1st party has filed the instant case with malafide intention out of grudge and in order to harass the 2nd party and his family members. The 2nd party has also stated that he has no source of income and he has no landed property as stated by the 1st party. The 2nd party is maintaining his livelihood by working as daily wage labourer. Hence, the 2nd party has prayed for dismissing the petition filed by the 1st party.

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4. **-: POINTS FOR DETERMINATION :-**

- a) **Whether the 1st party legally married wife of the 2nd party?**
- b) **whether the 2nd party having sufficient means has neglected or refused to maintain the 1st party?**
- c) **whether the 1st party entitled to get monthly maintenance from the 2nd party?**

-: DECISION AND REASONS THEREOF :-

5. With regard to the first point for determination, it appears that the 2nd party in his written statement as well as in his evidence has admitted that the 1st party is his legally married wife. Accordingly, the first point for determination is decided in affirmative and in favour of the 1st party.

6. With regard to the second point for determination, it appears that the 1st party has adduced evidence of 2(two) witnesses including herself as PW1. In her evidence, PW1 has deposed that, she was tortured by her husband and sister-in-law. They used to demand dowry from her. In the year 2011, during time of “Durga Puja”, 2nd party assaulted her and drove her out from her matrimonial home. Since then, she has been living in her parental home. PW1 has also deposed that the 2nd party is a cultivator. He earns about Rs.10,000/- to 12,000/- per month.

In cross-examination, PW1 has denied the suggestion that she voluntarily left her matrimonial home.

7. PW2 is Sri Kailash Ch. Nath, the uncle of the 1st party has also adduced evidence corroborating the evidence of PW1. He has

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deposed that since the date she was driven out from her matrimonial home by the 2nd party, 1st party has been living in the house of her mother. The 1st party has no source of income. On the other hand, 2nd party is a cultivator and his economic condition is sound.

In cross-examination, PW2 denied the suggestion that on 29.10.2011 he and Tilak Nath took the 1st party back to her house from her matrimonial home.

8. The 2nd party has denied the allegation levelled by the 1st party and pleaded that the 1st party left her matrimonial home on her own volition. In support of his contention, 2nd party has examined himself as DW1 and deposed that in his absence, Tilak Nath and Kailash Nath visited his house and the 1st party left her matrimonial home with them. Though DW1 went to the house of the 1st party to get her back but she refused to come with him. DW1 has also deposed that he is a daily labourer and he has filed a case for restitution of his conjugal rights.

In cross-examination, PW1 has denied the suggestion that on 08.10.2011 during the time of “Durga Puja” he assaulted the 1st party and drove her out from his house.

9. On appraisal of the evidence on record, it is found that the 1st party has fairly deposed that, she was tortured and driven out from her matrimonial home by the 2nd party. It is also clear from the evidence on record that the 1st party has been living in her parental home. Though DW1, the 2nd party has deposed that in his absence the 1st party left her matrimonial home with Tilak Nath and

Kailash Nath, but he has failed to show any sufficient reasons as to why the 1st party

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has left her matrimonial home. Therefore, from the evidence adduced by the 1st party, it is found that the 2nd party tortured the 1st party and finally drove her out from his house. The 1st party has been taking shelter in the house of her mother and she has not provided with any maintenance by the 2nd party. It is also found from the evidence on record that, the 2nd party is a cultivator and he has source of income. Despite having source of income, the 2nd party has not provided with maintenance to the 1st party. Therefore, the second point for determination is decided in affirmative and in favour of the 1st party.

- 10.** With regard to the third point for determination, it appears that the 1st party has the reasonable ground to live separately from the 2nd party as he tortured and drove her out from her matrimonial home. The 1st party is the legally married wife of the 2nd party. The 2nd party is an able-bodied person and he has sufficient source of income. On the other hand, the 1st party has no source of income. Despite having sufficient source of income, the 2nd party has refused to maintain the 1st party. Being the husband of the 1st party, the 2nd party is under statutory obligation to provide maintenance to the 1st party who has no source of income and unable to maintain herself. Hence, in my considered view, the 1st party is entitled to get maintenance from the 2nd party. Accordingly, the third

point for determination is decided in affirmative and in favour of the 1st party.

- 11.** In view of the above discussion, considering the economic condition, cost of living and status of both parties, I am of the considered view that monthly maintenance of Rs.1000/- to the 1st

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party would meet the ends of justice. Further, the 2nd party has not made any arrangements for the maintenance of the 1st party since the date she was driven out from the house of the 2nd party. Hence, considering plight of the 1st party, I am of the considered view that the 1st party is entitled to get maintenance from the date of filing of the petition. Accordingly, the 2nd party is directed to pay monthly maintenance of Rs.1000/- (Rupees One thousand) to the 1st party from the date of filing of the instant petition.

- 12.** Let a copy of the judgment be supplied to the 1st party at free of cost.

Given under my hand and seal of this Court on this 25th
day of July, 2014.

Magistrate

Sd/-
(Smt. N. Talukdar)
Chief Judicial

BONGAIGAON.

Dictated and Corrected by me.....

Sd/-
Smt. N. Talukdar
Chief Judicial Magistrate
BONGAIGAON.

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: A N N E X T U R E :

1st Party examined:

- a) **PW1** – Smt. Mohini Nath.
- b) **PW2** – Sri Kailsah Ch. Nath.

1st Party exhibited: **Nil.**

2nd Party examined:

- a) **DW1** – Sri Joykrishna Nath.

2nd Party exhibited: **Nil.**

Magistrate

Sd/-
Smt. N. Talukdar
Chief Judicial

BONGAIGAON.
