

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

**Misc. Case No.59/2013.**

U/S.125 CrPC.

**Smt. Anjana Ray.....1<sup>st</sup> Party.**  
**-Vs-**  
**Sri Ranjit Ray.....2<sup>nd</sup> Party.**

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

**Advocates appeared:-**

For the 1<sup>st</sup> party- **Smt. J. R. Barman.**  
For the 2<sup>nd</sup> party- **Sri Debabrata Das.**

Argument heard on: **16.07.2014.**

Judgment pronounced & delivered on: **21.07.2014.**

**J U D G M E N T**

1. This is a petition U/S.125 CrPC filed by the 1<sup>st</sup> party Smt. Anjana Ray claiming monthly maintenance of Rs.5000/- from the 2<sup>nd</sup> party Sri Ranjit Ray.
  
2. The 1<sup>st</sup> party's case in brief is that, on 20.06.2011, her marriage was solemnized with the 2<sup>nd</sup> party Ranjit Ray at the Maa Bagheswari Temple at Bongaigaon. Since then, the 1<sup>st</sup> party has been living with the 2<sup>nd</sup> party in his house as husband and wife. The first wife of the 2<sup>nd</sup> party was childless and therefore with the permission

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of his family, 2<sup>nd</sup> party married the 1<sup>st</sup> party. After a few months of marriage, the 2<sup>nd</sup> party asked the 1<sup>st</sup> party to bring Rs.20,000/- from her house for her fertility treatment. Then, poor mother and brother of the 1<sup>st</sup> party gave Rs.3000/- to her. Thereafter, again, the 2<sup>nd</sup> party asked the 1<sup>st</sup> party to bring money from her house. When her mother and brother failed to give money the 2<sup>nd</sup> party started to torture the 1<sup>st</sup> party physically and mentally. On 02.09.2012 the 2<sup>nd</sup> party and her first wife assaulted the 1<sup>st</sup> party and drove her out from her matrimonial house. Then, the 1<sup>st</sup> party took shelter in the house of her mother. The 2<sup>nd</sup> party has neither enquired of her nor provided with maintenance. The 1<sup>st</sup> party has stated that the 2<sup>nd</sup> party is a teacher of private school. He also earns money as an agent of LIC and from his cultivation. The total income of the 2<sup>nd</sup> party is Rs.45,000/-. Hence, the 1<sup>st</sup> party has filed the instant petition claiming monthly maintenance.

3. The 2<sup>nd</sup> party has filed written statement denying the case of the 1<sup>st</sup> party. Denying the statement that the 1<sup>st</sup> party is his wife the 2<sup>nd</sup> party has stated that he did not marry the 1<sup>st</sup> party and as such she is not entitled to get any relief. 2<sup>nd</sup> party has stated that he is a private school teacher and his monthly income is not more than Rs.1000/-. He has no other source of income. Hence, he has prayed for dismissing the maintenance petition filed by the 1<sup>st</sup> party.

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

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

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**:- DECISION AND REASONS THEREOF :-**

5. In the instant case, 1<sup>st</sup> party has adduced evidence of three witnesses. PW1 is the 1<sup>st</sup> party Anjana Ray. In her evidence PW1 has deposed that her marriage was solemnized at the Bagheswari Mandir, Bongaigaon. After marriage she started living with the 1<sup>st</sup> party in his house as husband and wife, but she was tortured by the 2<sup>nd</sup> party in demand of money and finally she was driven out from her matrimonial house by the 2<sup>nd</sup> party. Then, she took shelter in her parents house.

In cross-examination, PW1 has denied the suggestion that her marriage was not solemnized with the 2<sup>nd</sup> party. She has also denied that she filed the case in order to harass the 2<sup>nd</sup> party.

6. PW2 Surobala Barman is the mother of the 1<sup>st</sup> party. PW2 has also adduced evidence corroborating the evidence of PW1.

In cross-examination, PW2 has also denied the suggestion that there was no marriage between the 1<sup>st</sup> party and 2<sup>nd</sup> party.

7. PW3 is Narendra Barman who is an uncle of the 1<sup>st</sup> party. In his evidence PW3 has deposed that the 1<sup>st</sup> party is his niece. In the year 2011, marriage of the 1<sup>st</sup> party was solemnized with the 2<sup>nd</sup> party at the Bagheswari Mandir. PW3 was present in the said marriage. Ext-1 is the Pratigya Patram and Ext-1(1) is the signature of PW3. PW3 has also deposed that after one year of marriage the 2<sup>nd</sup> party drove the 1<sup>st</sup> party out from his house as she has no issue.

In cross-examination, PW3 has denied the suggestion that the 2<sup>nd</sup> party did not marry the 1<sup>st</sup> party.

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8. It appears from the evidence of the 1<sup>st</sup> party that according to the 1<sup>st</sup> party, in the year 2011 her marriage was solemnized with the 2<sup>nd</sup> party at Bagheswari Mandir, Bongaigaon. The evidence of PW1, 1<sup>st</sup> party is corroborated by PW2 & PW3, her mother and uncle respectively. PW3, the uncle of the 1<sup>st</sup> party has also exhibited the Pratigya Patram issued by the temple authority of the Bagheswari Temple, Bongaigaon with regard to the solemnization of the marriage of the 1<sup>st</sup> party with the 2<sup>nd</sup> party. Though the 2<sup>nd</sup> party in his written statement denied the fact that his marriage was solemnized with the 1<sup>st</sup> party, but in support of his contention he failed to adduce any evidence in the instant case. Thus, from the evidence on record, it appears that on 20.06.2011 the marriage of the 1<sup>st</sup> party was solemnized with the 2<sup>nd</sup> party Ranjit Ray as per rites and rituals of Hindu religion. In the decision reported in **1970(1) SCWR 589 Sethu Rathinam Vs. Barbara**, the Hon'ble Supreme Court laid down that, if there was affirmative evidence on the aforesaid points, the Magistrate would not enter into complicated question of law as to the validity of the marriage according to the sacrament, element or personal law and the like, which are questions for determination by the Civil Court. In a decision reported in **AIR 1999 SC 2374 Rajathi Vs. C. Ganesan**, the Hon'ble Supreme Court also laid down that in a case under Section 125 of Code of Criminal Procedure, the Magistrate has to take prima-facie view of the matter and it is not necessary for the Magistrate to go into matrimonial disparity between the parties in detail in order to deny maintenance to the claimant-wife. In the

decision reported in (2011) 12 SCC 189 Pyla Mutyalamma @ Satyavathi Vs. Pyla Suri Demuda and Anr., the Hon'ble Apex Court stated that, Section 125 of Code of Criminal Procedure

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proceeds on de facto marriage and not marriage de jure. Thus, validity of the marriage will not be ground for refusal of maintenance if other requirements of Section 125 of Code of Criminal Procedure are fulfilled”.

9. In the instant case, the 2<sup>nd</sup> party has failed to discharge his burden of proof that the 1<sup>st</sup> party's marriage was not solemnized with him. On the other hand, from the evidence adduced by the 1<sup>st</sup> party, it is clear that there is a prima-facie proof of marriage between both the parties. Hence, I am of the considered view that the 1<sup>st</sup> party is the legally married wife of the 2<sup>nd</sup> party. Accordingly, the first point for determination is decided in affirmative and in favour of the 1<sup>st</sup> party.

10. With regard to the second point for determination, it appears from the evidence on record that, the 1<sup>st</sup> party was driven out from her matrimonial house by the 2<sup>nd</sup> party and thereafter she has been taking shelter in the house of her mother. The 2<sup>nd</sup> party has neither enquired about the 1<sup>st</sup> party nor provided with maintenance to her. The 2<sup>nd</sup> party has also denied the marriage with the 1<sup>st</sup> party. It is also found from the evidence on record that the 2<sup>nd</sup> party is a Teacher of venture school. He has landed property and he is also earning money by doing tuition. Therefore, it is found that the 2<sup>nd</sup>

party has sufficient source of income, but despite having sufficient source of income, he has not provided with maintenance to the 1<sup>st</sup> party. Hence, from the evidence on record, I am of the considered view that the 2<sup>nd</sup> party despite having sufficient source of income, has refused to

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maintain the 1<sup>st</sup> party. Accordingly, the second point for determination is decided in affirmative and in favour of the 1<sup>st</sup> party.

**11.** With regard to the third point for determination, it appears that the 1<sup>st</sup> party is the legally married wife of the 2<sup>nd</sup> party. The 2<sup>nd</sup> party has driven out her from the matrimonial house. 2<sup>nd</sup> party also used to torture the 1<sup>st</sup> party. Therefore, the 1<sup>st</sup> party has the reasonable ground to live separately from the 2<sup>nd</sup> party. The 2<sup>nd</sup> party is an able-bodied person and he has source of income. As such, being a husband of the 1<sup>st</sup> party the 2<sup>nd</sup> party is under statutory obligation to provide maintenance to the 1<sup>st</sup> party who has no source of income and unable to maintain herself. Hence, in my considered view, the 1<sup>st</sup> party is entitled to get maintenance from the 2<sup>nd</sup> party. Accordingly, the third point for determination is decided in affirmative and in favour of the 1<sup>st</sup> party.

**12.** 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.1200/- to the 1<sup>st</sup> party would meet the ends of justice. Further, the 2<sup>nd</sup> party has not made any arrangements for the maintenance of the 1<sup>st</sup> party since the

date she was driven out from the house of the 2<sup>nd</sup> party. Hence, considering plight of the 1<sup>st</sup> party, I am of the considered view that the 1<sup>st</sup> party is entitled to get maintenance from the date of filing of the petition. Accordingly, the 2<sup>nd</sup> party is directed to pay monthly maintenance of Rs.1200/- (Rupees One thousand Two hundred) to the 1<sup>st</sup> party from the date of filing of the instant petition.

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13. Let a copy of the judgment be supplied to the 1<sup>st</sup> party at free of cost.

Given under my hand and seal of this Court on this 21<sup>st</sup>  
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 :**

The 1<sup>st</sup> Party examined:

- a) **PW1** – Smt. Anjana Ray.
- b) **PW2** – Smt. Surobala Barman.
- c) **PW3** – Sri Narendra Barman.

The 1<sup>st</sup> Party exhibited:

- a) **Ext.1** – Pratigya Patram.

The 2<sup>nd</sup> Party examined: Nil.

The 2<sup>nd</sup> Party exhibited: Nil.

**Magistrate**

**Sd/-**  
Smt. N. Talukdar  
**Chief Judicial**

**BONGAIGAON.**

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