

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

:::::DIBRUGARH:::::ASSAM:::::

**Ref. : Misc. 09M/ 2018
u/s 125 Cr.P.C**

Petitioner :- Smti. Sangita Chakraborty.

-Versus-

OppositeParty :- Sri. Bijoy Chakraborty.

Present : **MR. A. K. BARUAH, LL.M, AJS**
Chief Judicial Magistrate,
Dibrugarh.

Advocates appeared :-

For petitioner : Mrs Swarnali Borgohain &
Sri M.L.Kejriwal

For Opposite party : Sri V. Kumar.

Evidence recorded on : 21.08.2018, 05.11.2018,
10.01.2019.
01.04.2019.

Argument heard on : 26.04.2019.

Date of Judgment : 08.05.2019.

JUDGMENT

- 1.** This case is filed by the petitioner Mrs. Sangita Chakraborty, claiming maintenance under section 125 Cr PC from her husband Mr Bijoy Chakraborty (Opposite Party).

2. The case of petitioner in brief is that she got married with the Opposite Party on 11.12.2016, at Moran, Dibrugarh according to Hindu Rites and Customs. After THE marriage , the O/P took the petitioner to his house at Gangapara, Dibrugarh, where they resided for quiet sometime. Smti. Basana Chakraborty, used to torture the petitioner both physically as well as mentally. As such, the O/P took the petitioner to a rented house at Lachit Nagar, after 3 (three) months of their marriage and they both stayed there for about 11 months and the petitioner became pregnant and the petitioner was carrying 3 (three) months pregnancy. On 11.02.2018, Smti. Basana Chakraborty took away the O/P to her house at Gangapara, leaving the petitioner alone in the rented house. The O/P is not maintaining the petitioner, nor providing food, shelter and medicines to her. The O/P is working in M/S Amco Furnitures, Jyotinagar and was getting salary of Rs 10,000/- (Rupees Ten Thousand) per month and hence, he is capable of maintaining his wife. Hence, petitioner has claimed maintenance @ of Rs 5,000/- (Rupees Five Thousand) per month from the Opposite party.
3. The Opposite party appeared and filed Written Objection against the petition filed by the petitioner. The OP denied the allegations of the petitioner by stating that the petitioner tortured his widow grandmother namely Basana Chakraborty and the petitioner willingly left the house of the OP without any reason and hence she is not entitled to get any maintenance from the OP.
4. The petitioner examined herself and her sister as PWs and the OP also examined himself as DW.
5. **Point for determination :-**

 - i. Whether the petitioner is entitled to claim maintenance from the Opposite party ? If yes, what is the amount of maintenance, the petitioner is entitled to ?

DECISION AND REASONS FOR THE DECISION

6. PW1 (Sangita Chakraborty) deposed in her evidence that she has filed this case against her husband asking for maintenance allowance. She got married with opposite party on 11/12/2016. After marriage, she stayed in his residence at Gangapara under Dibrugarh PS. In the matrimonial house, she stayed with her husband and his grandmother. After the marriage with her husband, she could stay with him only for 3 months in the aforesaid house. In these 3 months, the grandmother of OP and OP caused physical as well as mental torture upon PW1. After 3 months, PW1 along with her husband took a rented house in Lachit Nagar area of Dibrugarh and stayed separately from his grandmother. In the rented house also, the OP caused torture upon PW1. He did not maintain her properly. They stayed together in the rented house for about 9 months. The mother of PW1 paid rent of the said house. After 9 months, one day, the husband of PW1 sent her to her parental residence and he went away to his own house leaving the rented house. Because of the torture caused by her husband, PW1 miscarried the baby in her womb. Her husband works in a furniture house at Jyoti Nagar area. He earns Rs.10,000/- per month. PW1 prayed for Rs 5,000/- per month as her maintenance allowance. She has no income source. Because of the torture caused by the grandmother of her husband, she/PW1 was compelled to stay separately.

In her cross examination, PW1 further stated that the age of the grandmother of her husband is about 65 years. The owner of the house situated in Gangapara is the grandmother of the husband of PW1 in which she stayed along with her husband. As per her/PW1s advice and direction her husband took a rented house. PW1 denied the suggestion that in the petition she did not mention that the rent of the rented house was paid by her mother. While she lodged this case, she was

pregnant and she mentioned such facts in her petition. She miscarried the baby after filing of this case. PW1 denied the suggestion that she aborted the baby at her own will. PW1 denied the suggestion that she did not mention in her petition that after sending her to her parental house, her husband went away to his own residence quitting the rented house. PW1 denied the suggestion that along with her family members she got him/the OP out from the rented house and filed this case only to harass her husband/OP. The LED TV, in her/PW1s residence was purchased by her. PW1 denied the suggestion that the LED TV was purchased by her husband. Initially PW1 was involved in a petty business that is selling of gold imitation ornaments, but now she does not do this. PW1 denied the suggestion that her husband only earns Rs.4000/- per month. She/PW1 is ready to stay with her husband but not with his grandmother. It is correct that the said grandmother adopted and rearing her/PW1 s husband in his childhood.

7. PW2 (Priyanka Nag) stated in her evidence that Sangita Chakraborty is her sister. She lodged this case against her husband Bijoy Chakraborty. Because of the physical torture in her matrimonial house, her/PW2s sister lodged this case. Last year, they/the parties got married. After marriage, PW2s sister started to stay in the matrimonial house. However, after three months, they started to stay in rented house at Lachit Nagar. In the matrimonial house, Bijoy and Sangita stayed with the grandmother of Bijoy. During her stay in the matrimonial house, the grandmother of Bijoy caused physical torture upon Sangita. The grandmother of Bijoy is aged about 60/65 years. After few days, in absence of Sangita, Bijoy Chakraborty left the rented house and went to his original house. When Sangita got the information about such fact, she came to Dibrugarh from her parental house and noticed that some other persons were occupying that rented house. PW2 does not know whether during stay with Bijoy, Sangita was properly maintained or not.

However, she knows that the rent of the rented house was given/paid by her mother. At present, Sangita is staying with her parents. Bijoy works at a Furniture house. PW2 does not know what is his salary at present. At the time of marriage his salary was 7,000/- (seven thousand) per month.

In her cross-examination, PW2 further stated that after marriage, they visited the original home of Bijoy Chakraborty at Gangapara. For only one occasion, she/PW2 visited his house. Her sister informed her over phone that she was tortured by her husband Bijoy. PW2 denied the suggestion that she falsely disclosed that at the time of marriage, Bijoy was earning 7,000/- per month. Once, in her/PW2s presence her sister was physically tortured by Bijoy, she saw such assault. On that day, they went to Jagannath temple together. Initially Sangita was involved in business of selling cosmetic. Now she left it.

- 8.** D.W.1 (Bijoy Chakraborty) deposed in his evidence that Sangita Chakraborty is his wife. He got married with the petitioner on 11-12-2016. From his childhood, DW1 was staying with his grandmother. She has reared him. His grandmother's name is Basana Chakraborty. He is earning his livelihood by working in AMCO Furniture situated at Jyoti Nagar, as Helper of the carpenters. He is earning Rs. 4,000/- per month. Ext.A is his salary slip to show his monthly income as identified by him. After marriage, they/both the parties stayed together with his/DW1's grandmother for 3 months. Subsequently, she developed a conflict with his grandmother. She did not follow the vow of married life. She did not look after his grandmother and always remained busy with her phone, having chat with another person. Because of her attitude, DW1 became compelled to stay separately with his grandmother. The 1st party compelled him/DW1 to stay with her in a rented house separately from his grandmother. She demanded articles for extravaganza that he could not afford. The applicant is having income from her business of cosmetic items. She always demanded him to take

her out to have food in restaurant . When he failed to fulfill her demand, she started **quarreling** with him. On 11-02-2008, the applicant's sister, namely Priyanka Nag came to their rented house and with the help of applicant assaulted him. Thereafter, they **sent** him to his original residence and one day, in his absence, they vacated the rented house and went away to her parental house. At the time of leaving the rented house, she took away all his necessary articles. The applicant is not entitled for the allowance as she is a lady having sufficient income.

In his cross examination DW1 further stated that his monthly salary is Rs.4,000/- only. DW1 denied the suggestion that he married the petitioner by saying that his monthly salary is Rs.7,000/-. DW1 denied the suggestion that he never gave any money to the petitioner. DW1 denied the suggestion that his house rent was paid by his mother-in-law. DW1 denied the suggestion that when the petitioner was pregnant, he never took her to the doctor. DW1 denied the suggestion that due to his torture, the miscarriage to the petitioner took place while she went to her mother's house. DW1 denied the suggestion that he kept the articles of the petitioner in his house. DW1 denied the suggestion that his maternal grandmother tortured the petitioner and burnt her clothes.

- 9.** The learned advocate for the petitioner submitted in her argument that from the evidence of the PWs, it appears that the petitioner is entitled for the maintenance from the O.P. Again, the learned advocate for the O.P. submitted in his argument that the O.P. has monthly income of Rs 4000/- only . The learned advocate also submitted that as the petitioner has her own business and she willingly left the O.P. and hence the petitioner is not entitled to get maintenance from the O.P.
- 10.** I have carefully perused the entire evidence on record and I am of the view that from the evidence of PW1 and PW2, it is established that the O.P. and his grandmother tortured the

petitioner in her matrimonial house and for the O.P., the petitioner had to go to her parental house where she is staying now. From the evidence of the PWs, it is also established that the OP is not maintaining the petitioner having his own source of income.

- 11.** Although the OP being DW1 deposed in his evidence that the petitioner quarreled with him and his grandmother and it was the petitioner who sent DW1/ the OP to his original house from the rented house where the OP stayed with the petitioner, but the OP failed to prove the same by producing any reliable evidence . Hence, I am not inclined to accept the plea of the OP that the petitioner willingly left the OP or the petitioner is living apart from the O.P. without any just cause.
- 12.** The OP also took the plea that the petitioner has her own income from her business, but the OP has failed to prove the income or business of the petitioner by any convincing evidence. Hence, I am not inclined to accept this plea of income of the petitioner taken by the OP.
- 13.** Considering the above discussion, I am not inclined to hold that the 1st party left the house of the O.P. without any just reason. In **2012 (5) GLJ 209 Mofidul Islam Vs. Morshida Begum** ,it was held by hon'ble Gauhati High Court that "since the object of section 125 Cr. PC is to prevent vagrancy and destitution ,it has a civil purpose to fulfill and in arriving at any finding in relation to an application thereunder , Courts must look to substances rather than to form and it must avoid strict technicalities of pleadings and proof. It must make a realistic approach to material available on record , so that purpose aforesaid is not frustrated.

Admittedly the 1st party is living apart from the O.P. and there is no evidence to show that the O.P. is paying any maintenance to the 1st party . Hence, I hold that the O.P. is paying no maintenance to the 1st party .

The O.P. has his own job as admitted by him. Hence, I am of the view that the O.P. has sufficient means of income to maintain the 1st party who has no income or who is unable to maintain her.

- 14.** From the above discussion, I hold that the O.P. having sufficient income is neglecting or refusing to maintain the 1st party who has no income and hence I hold that the 1st party is entitled to get maintenance from the O.P.
- 15.** In order to decide the quantum of maintenance to be paid by the O/P to the petitioner, I have again gone through the entire evidence on record and considering the income of the O/P, standard of living of both the parties, liability of the O/P, I direct the O/P to pay a monthly maintenance allowance of Rs. 3000/- (Rupees three thousand) to the petitioner from the date of filing of the case.

Let a free copy of the judgment be furnished to the petitioner.

Given under my hand and seal of this court on the 8th day of May, 2019

(A.K. Baruah)
Chief Judicial Magistrate,
Dibrugarh::ASSAM

Appendix

Petitioner's Witness :-

PW1 :- Smti.Sangita Chakraborty

PW2 :- Smti. Priyanka Nag.

Opposite party witness :-

D.W.1 :- Shri. Bijoy Chakraborty

Exhibits :-

Petitioners exhibits :-

Nil

Opposite party exhibits :-

Nil

Court witness :- None.

Court exhibits :- None.

CJM, Dibrugarh