

IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS, KOKRAJHAR.

C.R. Case no. 4(M)/2014

U/S 125 Cr. P.C.

Smti. Soma Sarkar

..... petitioner

Vs

Sri Monojit Mazumadar

.... 2nd party

Present :- Sri N. Boro,

J.M. 1st Class, Kokrajhar

For the petitioner :- Sri C. Mukherjee and Sri N. Roy, advocates

For the second party :- A.K. Miah & A.G. Sheikh, advocates

Evidence recorded on :- 16/6/2014, 2/7/2014, 10/9/2014

Argument heard on :- 19/9/2014

Judgment delivered on :- 8/10/2014

JUDGMENT

- 1) Petitioner's case, in brief, is that she married to second party namely Monojit Mazumdar on 1/2/2013, according to hindu rites and custom. At the time of marriage of petitioner, father of petitioner gave Rs. 80,000/- in cash and other articles to second party. After marriage, petitioner started joint life with second party in her matrimonial house. On 2/4/2013, at about 5 p.m., second party and his mother stated to father of petitioner that second party had taken a loan amounting Rs. 3,00,000/- from SBI, Runikhata branch and due to non-payment of loan amount by the second party, it became Rs. 4,50,000/- with interest. According to petitioner, second party and his mother demanded her father to repay loan amount of second party as dowry. Father of petitioner refused to pay Rs. 4,50,000/- and thereafter, second party, his mother and brother used to torture petitioner demanding Rs. 4,50,000/-. On 25/8/2013, second party with the help of his mother and brother harassed petitioner severely and petitioner informed her father regarding torture of second party upon her. On 26/8/2013, petitioner's father came to Kokrajhar and took petitioner in his house.

Since then petitioner has been living in her father's house and second party has not taken care of well being of petitioner. Second party is a businessman and owner of 'Neha Electric' shop situated at RNB road, Kokrajhar. Second party earns Rs. 40,000/- monthly. Petitioner has no income of her own and unable to maintain herself. Therefore, petitioner prayed to pass an order directing second party to pay Rs. 8,000/- monthly as her maintenance allowance.

- 2) On receipt notice second party appeared in the court and filed written statement. The case of second party, in brief, is that petitioner has no cause of action to file this petition against second party seeking maintenance allowance from him and petition is liable for dismissal. Denying the allegations leveled against him by the first party, second party stated that on 26/8/2013, father of petitioner had come to his house and took petitioner to his house for some days. He is not owner of 'Neha Electric' shop and he is an employee of 'Neha Electric' shop. He get Rs. 6,000/- per month as his salary and he has to look after his old sick mother and mentally ill brother. He never neglected petitioner and he is always ready to start conjugal life with petitioner.

POINTS FOR DETERMINATION :-

- a) whether the petitioner is unable to maintain herself ?
- b) whether the second party being the husband of petitioner and having sufficient means neglected or refused to maintain petitioner ?
- c) whether the petitioner is entitled to get maintenance from second party ?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF :-

- 3) First point, Soma Sarkar (p.w.-1) testified that after marriage with Monojit Mazumdar (second party), she started conjugal life with the second party in her matrimonial house and after the marriage with second party, her joint life with second party passed good about two months. According to p.w.-1, one day second party, his mother and brother had called her father in their house and second party asked her father to repay Rs. 3,00,000/- at the SBI, Runikhata branch which second party had taken as loan from the bank. P.w.-1 stated that her father refused to repay loan amount of second party expressing inability to pay and therefore, second party and his mother rebuked her filthily, deprived her from food and ill-treated. P.w.-1 stated that on 25/8/2013, she informed her father about increase of torture upon her by second party and requested her father to take her from second party's house. She stated that on 26/8/2013, her father came and took her from the house of second party and since then she has been living in her parents' house. She stated that second party has not taken care of her well being and her father is maintaining her. P.w.-1 stated that she has no income of her own and she is unable to maintain herself. Nripendra Sarkar (p.w.-2) and Raju Sarkar (p.w.-3) also supported the fact that p.w.-1 has no income of her own and unable to maintain herself. P.w.-2 stated that petitioner has been living in his house and second party has not provided maintenance allowance to petitioner.
- 4) Monojit Mazumdar (d.w.-1) and Satya Ranjan Sarkar (d.w.-2) did not say in their evidence that petitioner has income of her own and able to maintain herself. Hence, it is held

that petitioner has no income and unable to maintain herself.

- 5) Second point, p.w.-1 and p.w.-2 stated in their evidence that second party is owner of 'Neha Electronics' shop situated at hospital road, Kokrajhar and earns about Rs. 40/50 thousands per month. During cross-examination, p.w.-1 and p.w.-2 stated that they did not furnish any document as to substantiate of the fact that second party is owner of 'Neha Electronics' shop. P.w.-1 and p.w.-2 denied the suggestions made by the counsel for second party that second party is an employee of 'Neha Electronics' and earns Rs. 6,000/- per month as his salary. Monojit Mazumdar (d.w.-1) stated in his evidence that he repairs T.V., Radio etc. in the 'Neha Electronics' shop and earns Rs. 6,000/- per month as his salary. Satya Ranjan Sarkar (d.w.-2) supported regarding of the fact that second party works at 'Neha Electronics'. During cross-examination, d.w.-1 stated that he did not furnish any document in the court regarding of the fact that he is an employee of 'Neha Electronics' and get salary Rs. 6,000/- from his employer. D.w.-1 denied the suggestion that he is owner of 'Neha Electronics' and earns about Rs. 40,000/- per month, D.w.-1 denied the suggestion that 'Neha Electronics' has been registered in his name under Kokrajhar Municipality office. D.w.-1 denied that he has sufficient means to pay Rs, 8,000/- per month to petitioner as maintenance allowance.
- 6) In view of the above discussion of evidence of both sides, it has appeared that petitioner claimed that second party is owner of 'Neha Electronics' and second party denied the same. Second party also did not say in his evidence about name of his employer and did not furnish any document to the effect that he is working at 'Neha Electronics'. However, it has cleared from the evidence of second party that he earns Rs. 6,000/- per month and second party is healthy and able bodied person, possess the means to support his wife. Second party is already earning about Rs. 6,000/- per month and so, it can be said that he has sufficient earning capacity.
- 7) P.w.-1 stated that her father could not pay Rs. 3,00,000/- to second party as had been demanded by second party as dowry for repaying bank loan of second party and therefore, second party and his family members used to torture and deprived her from food. P.w.-1 stated that gradually torture upon her by second party increased and became unbearable. Therefore, on 25/8/2013, p.w.-1 had called her father on phone and stating about torture of second party upon her requested to take her from the house of second party. On 26/8/2013, father of petitioner had arrived at Kokrajhar and petitioner left her matrimonial house with her father. P.w.-2 corroborated in his evidence the fact stated by p.w.-1. P.w.-2 stated that petitioner is staying in his house and second party has not met petitioner. P.w.-2 stated that he is maintaining petitioner and second party has not provided maintenance. Monojit Mazumdar (d.w.-1) stated that after marriage with petitioner, their conjugal life passed good for some days and later, petitioner asked second party to arrange a domestic helper or to arrange separate kitchen. D.w.-1 stated that petitioner refused to eat and drink and used to rebuke his mother. D.w.-1 stated that if petitioner stays in his house for 10 days then rather she used to stay 15 days at Fakiragram. D.w.-1 stated that one day, his father-in-law came in his house and took petitioner in his house. D.w.-1 stated that when he went to bring back petitioner then petitioner refused to return with him. According to d.w.-1, he also sent his family members for bringing back petitioner but petitioner rebuked them. D.w.-1 stated that he did not torture petitioner and he is always ready to start conjugal life with petitioner.

- 8) P.w.-1 stated that since 26/8/2013, she has been staying in her father's house and second party has not taken care of her well being. P.w.-2 also supported p.w.-1 regarding the fact that second party has not taken care of well being of petitioner and he is maintaining petitioner. During cross-examination, p.w.-1 denied the suggestion that second party had gone to bring her to start joint life with her again but she refused to return. On the other hand, d.w.-1 stated that he went parents' house of petitioner to bring back petitioner but petitioner refused to return with him on the ground that second party failed to become separate from his family. During cross-examination, d.w.-1 denied the suggestion that he had not mentioned in his written statement of the fact that he went to bring petitioner to start joint life again. As such, second party (d.w.-1) did not state in his evidence that he had been looking after and providing maintenance allowance to petitioner therefore, it can be said that second party refused or neglected petitioner. Further, petitioner would not have filed this case against second party if second party had been maintaining petitioner. So, it is held that second party has neglected petitioner and refused to maintain.
- 9) Third point, there is no dispute of the fact that petitioner is legally wedded wife of second party. Second party did not state in his evidence that petitioner is able to maintain herself and earns money. Second party is ready and willing to start conjugal life with petitioner and ready to maintain petitioner provided that petitioner agrees to live with second party. During cross-examination, p.w.-1 clearly stated that she will never return to her matrimonial house even if second party wished to start joint life with her. However, petitioner, in her evidence, did not disclose ground of her reluctant not to start joint life with second party again. Of course, it can be said that petitioner might have feared repeat of ill-treatment in her matrimonial house if she returns. Thus, it can be inferred that behaviour of second party and his family towards petitioner was not good during her stay in her matrimonial house. So, petitioner is entitled to maintenance from second party.
- 10) Thus, in view of the above discussion and observation, it is held that petitioner is entitled to maintenance from second party and considering all aspects, second party is hereby directed to pay @ Rs. 2,000/- (two thousand) per month to the petitioner as maintenance allowance from the date of this order.

Given under my hand and seal of this court on this 8th day of October, 2014.

Typed and corrected by :-

(Sri N. Boro)