

GAHC010023632020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.Rev.P./234/2020

BULBULI SAIKIA
W/O SRI JADAV SAIKIA,
R/O ADIALENGI,
P.S.-GAURMUR, MAJULI,
ASSAM, PIN-785105

VERSUS

JADAV SAIKIA
S/O LATE TULSI SAIKIA,
R/O VILL-NOTUN DEUDIAATI,
P.S.-GARMUR, MAJULI,
ASSAM-785104

Advocate for the Petitioner : MR. A DUTTA

Advocate for the Respondent : MR. K K BHATRA

BEFORE
HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing: 21.04.2022.

Date of judgment: 17.05.2022.

JUDGEMENT AND ORDER

Heard Mr. A. Ganguly, learned counsel appearing for the petitioner/wife. Also heard Mr.

R.K. Bhatra, learned counsel representing the respondent/husband.

2. By filing this petition under Section 397 read with Section 401 of the CrPC, the petitioner has challenged the judgment dated 26.09.2019, passed by the learned Sub-Divisional Judicial Magistrate (M), Majuli in Jorhat, in Misc. Case No.12/2017, filed by the petitioner/wife, under Section 125 of the CrPC, rejecting her prayer for maintenance by the impugned judgment.

3. The case of the parties in short is that the petitioner/wife was married with the respondent/husband on 10.03.2016, as per the social rites and ritual. Exactly after 3 months of their marriage, the family members of the respondent started to torture the petitioner, both physically and mentally, demanding 5 lakhs as dowry but as she could not fulfill their demand, the respondent abused the petitioner. The further case of the petitioner is that the sister-in-law of the respondent, namely Dipamoni Saikia used to abuse the petitioner by using filthy language every time she leaves/enters and assault her by pulling her hair, prevent her from talking with her husband/respondent by entering into their room, in absence of the respondent and assaulted her for talking with the respondent/ husband.

4. On 09.01.2017, at around 8 A.M., said Smti Dipamoni Saikia entered her room with a "dao" in her hand in the absence of her husband and seeing that the petitioner is talking with her husband and physically assaulted the respondent/wife and also threatened her with dire consequences and forced her to sign an agreement written on a stamp paper, compelling her to write as per her direction. The petitioner/wife informed the matter to the respondent/husband but he did not pay any heed to the same. Being aggrieved by the behavior of her husband, she lodged an FIR in the Garmur Police Station, which was

registered as the Garmur P.S. Case No.01/2017 but on assurance of the family members of the respondent that they will not harass her in future, she compromised the case and the respondent agreed to let her stay at her parental house until completion of her studies and also agreed to bear her educational expenses. But the respondent never provided any maintenance nor contacted with her any more, whereas the petitioner does not have any income of her own, it became very difficult on her part to bear her daily expenses and her studies also suffered a lot. On the other hand, respondent/husband is serving an assistant teacher in a L.P. School and his monthly salary is Rs. 22,000/-.

5. With such grievances, the petitioner filed the petition under Section 125 CrPC, before the learned SDJM (M), Majuli for granting Rs.10,000/- per month as maintenance towards her daily needs and educational expenditures and Rs.8,000/- per month as interim monthly maintenance and Rs.5,000/- as cost of litigation, vide Misc. Case No.12/2017.

6. The respondent/husband contested the case by filing written statement, wherein he has admitted his social marriage with the petitioner but denied all the allegations made against him and other family members. He also admitted that he is working as an elementary TET teacher and he purchased a scooty and gave the same to the present petitioner for commuting her to college. Denying the allegations raised by the petitioner, it is stated that on 09.01.2017, the petitioner, after attending her classes in the Majuli College, went to parental house. As regards the case filed by the petitioner, it is stated that there was an agreement between the parties. Further it is stated that the petitioner got married with the second party on the pressure from her parents and in fact, she wanted to marry another person, which is reflected from her private diary. The respondent further submitted that the present case has been filed on the basis of concocted story and she is not entitled to any maintenance.

7. The learned trial Court took three points for determinations, which were:

i) Whether the 2nd party, being the husband of the 1st party, neglected or refused to maintain the 1st party?

ii) Whether the 1st party is unable to maintain herself?

iii) Whether the 2nd party has sufficient means to pay maintenance to the 1st party and if so, what is the amount?

8. The petitioner examined four witnesses in support of her case, whereas the respondent examined three witnesses in his support and after hearing argument of both the parties and perusal of the materials and considering the evidence of the parties, dismissed the petition for maintenance vide judgment on 26.09.2019, which is assailed by the petitioner, in the present petition, on the grounds, inter alia that:

i) The learned trial Court has committed grave error and illegality by passing the impugned order dated 26.09.2019, which has caused grave prejudice to the petitioner.

ii) The learned trial Court has failed to appreciate the matter in proper perspective of law and the findings are contrary to the evidence on record and hence perverse.

9. According to the learned counsel for the petitioner, such a finding of the learned trial Court, while dismissing the claim for maintenance palpably wrong in as much as the Court has contradicted its own finding. Attention has been drawn to the finding of the learned trial Court vide para 25 and 26 of the judgment, wherein the learned trial Court held as follows:

“25. Further, during argument stage, Ld’ counsel for the 2nd party had taken the plea that as the 1st party was living in adultery, based upon the findings of the exhibits adduced in this

Court, which are supposedly the feelings expressed by the 1st party in her diary and note book and that the 1st party shall not be entitled to maintenance. It needs mention in this regard that to bring into operation the provision of Sec. 125 clause (4) Cr.P.C., it must be expressly proved that the 1st party is living in adultery or that she is refusing to live with her husband without sufficient cause or that they are living separately by mutual consent.

26. In the instant case, the uncorroborated testimony of the 1st party and her witnesses have established the fact that the 1st party was subjected to torture in her matrimonial house which gives her sufficient ground to leave separately from the 2nd party. With regard to the exhibits brought before this Court by the 2nd party to prove the fact that the 1st party was living in adultery, I would like to state that even if forensic reports have confirmed that the handwriting from the diary and the notebook belongs to the 1st party, yet the same does not in itself go to establish the fact that the 1st party was committing any act after her marriage with the 2nd party which goes to show that she was leading an adulterous life or that she was living in adultery. The notes which have been exhibited before this Court might be the expressions of the 1st party but that does not constitute an act falling within the etymological term of adultery so as to attract Sec.125(4) Cr.P.C.”.

10. On the other hand, the learned counsel for the respondent/ husband has submitted that there is no irregularity in the order so passed by the learned trial Court in as much as the petitioner herself resided in parental house, admittedly by making an agreement that during her stay, her maintenance will be borne by her parents. It has also been contended that while the petitioner choose to remain in her parental house to complete her education with an undertaking that the cost will be borne by her parents, the respondent/husband cannot be

held liable for neglecting his wife, as has been contended.

11. Due consideration has been given to the submission made before this Court as well as gone through the pleadings between the parties and the evidence adduced before the Court.

12. The evidence of the informant as well as her other witnesses including her father and two neighbours, it reveals that since 09.01.2017, the petitioner is residing in her parental house and the respondent/husband has not provided any maintenance to her while she was still a college going student. Peculiarly, the respondent/ husband in his cryptic written objection has not narrated any detail as to under what circumstances, the petitioner began to reside in the parental house and as to why the FIR was also filed against him and simply it is stated that the matter has been settled between the parties. Such an evasive denial on the part of the husband itself indicates that he has not taken proper care of his wife, while she was in her parental house. Since after filing of the FIR, she began to reside in her parental house and that does not itself absolve the respondent/husband to provide maintenance to his wife, even though her parent might have maintained her.

13. Expanding the plea that was not taken in the written objection, respondent/husband has stated in his evidence that he is liable to maintain his mother and he is the only bread earner of the family and he cannot pay any maintenance to the first party, if she do not stay with him, whereas his own witnesses have stated that his brother and sister, all are in service and they have their own source of income. The plea of the respondent itself reveals that he has not bothered to maintain his legally married wife, rather has taken a lame excuse to avoid the responsibility, while admittedly his wife is a college going student, having no source of income of her own. More so, her husband did not even hesitate to raise the plea of

adultery, simply on the expression she recorded in her diary that she had some inclination to another person, prior to her marriage and the learned trial Court has also rightly appreciated this aspect in para 25 of the judgment, quoted above.

14. After going through the entirety of the matter, it is found that the petitioner entered into marriage in her tender age, while she was a college going student and due to some household conflict, the relation between the parties turned sour, as a result of which she returned to her parental house and also filed an FIR. In that conjuncture, it was the bounden duty of the husband to settle the matter amicably but the same was not done. The petitioner continued to remain in her parental home for years together and no any maintenance was provided by her husband. The pleadings as well as the defence evidence itself reveals that they never went to bring back her and all the above amounts to neglect towards the legally married wife by her husband.

15. In the given facts and circumstances, appreciation of the evidence by the learned trial Court appears to be perverse, while holding that there is nothing on record to show that the respondent has refused or neglected to maintain his legally married wife. The findings of the learned trial Court has recorded in para 26 of the judgment that the first party was subjected to torture in her matrimonial home, which was sufficient ground to live separately, itself made out a case in favour of the petitioner.

16. The learned counsel for the petitioner has relied upon the decisions of the Hon'ble Supreme Court in *Bai Tahira A vs. Ali Hussain Fissalli Chothia and another*, reported in 1979 AIR 362 and *Rajathi vs. C. Ganesan*, reported in (1999) 6 SCC 326 and the decision of the Bombay High Court in the case of *Ranjit Kaur vs. Pavittar Singh*, reported in (1992) CriLJ 262

and in the case of *Ramchandra Laxman Kamble vs. Shobha Ramchandra Kamble and another*, reported in (2019) 1 AIRBomR (Cri) 698, wherein it has been held that even if the right to claim maintenance was voluntarily waived by the wife, that itself is not a bar by the wife, seeking maintenance under Section 125 CrPC, if she is unable to maintain herself even after waiving the rights, irrespective of her personal law.

17. Several other decisions can be referred in this regards are: (1) *Shahnaz Bano vs. Babbu Khan*, reported in (1985) MhLJ 853, (2) *Tejaswini and another vs. Chandrakant Kisanrao Shirsat and another*, reported in (2005) 3 MhLJ 137 and (3) *Rajesh R. Nair vs. Meera Babu* reported in (2013) CriLJ 3153, wherein it is consistently held that maintenance is a statutory right which can't be denied by executing an agreement.

18. In *Ranjit Kaur (Supra)*, the Division Bench of Punjab and Haryana High Court held that maintenance is a statutory right, which the legislature has framed irrespective of nationality, cast or creed of the parties. The statutory liability under Section 125 is, therefore, distinct from the liability under any other law. Therefore, the statutory right of a wife of a maintenance cannot be bartered, done away with or negated by the husband by setting up an agreement to the contrary. Such an agreement in addition to it being against public policy would also be against the clear intendment of this provision. Therefore, giving effect to an agreement, which overrides this provision of law, that is, Section 125 of Cr.P.C. would tantamount to not only giving recognition to something, which is opposed to public policy, but would also amount to negation of it. The law makes a clear distinction between a void and illegal agreement and void but legal agreement. It has also been held that an agreement by which the wife waived her right to claim maintenance would be a void agreement as against public policy.

19. Going by the provisions of the Act and the pleadings and evidence on record and legal proposition, it can be held that the respondent/husband has not been able to prove that he has no sufficient means to discharge his obligation and that he did not neglect or refused to maintain his wife, whereas the petitioner/wife has been able to prove that there is neglect on the part of the respondent/ husband to maintain his legally married wife.

20. Accordingly finding of the learned trial Court is hereby quashed and set aside, with a direction to pass a fresh judgment by awarding adequate maintenance, after hearing both the parties, at the earliest and preferably within two months from the date of appearance of the parties. The respondent/husband will produce relevant salary certificate before the trial Court, at the time of hearing and the learned trial Court can taken notice of status and income of the husband, while deciding the quantum of maintenance.

21. Both the parties are directed to appear before the learned trial Court on 14.06.2022, to receive further order from the Court.

22. Return back the LCR along with a copy of the judgment to the learned Court below.

JUDGE

Comparing Assistant