

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, LAKHIMPUR,
NORTH LAKHIMPUR**

Present: Sri Akhtabul Ala, AJS,
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Misc. Case No. 173/2018

U/s 125, Code of Criminal Procedure

Musstt. Malati Topno Petitioner/1st party

-Vs-

Md. Jewel Barla O.P/2nd party

Date of 1st party evidence : 24.06.2019, 30.08.2018, 02.09.2019

Date of 2nd party evidence : 04.10.2019.

Dates of argument : 06.02.2020

Date of judgment/order : **02.03.2020**

Advocates appeared in this case:

Mrs. Jyotika Devi, learned Advocate for the 1st party

Mr. Uttam Kr. Phukan, learned Advocate for the 2nd party

J U D G M E N T / O R D E R

1. This petition under section 125 of the Code of Criminal Procedure arose out of the petition filed by the petitioner Smti. Malati Tapno against her husband Sri Jewel Barla seeking maintenance from him.

2. The brief story of the petitioner's case as sketched in her said petition is that she was married to the O.P Sri Jewel Barla about 4 (four) years back and out of this wedlock has a son and a daughter who are presently 3 (three) years and 1½ years respectively. The O.P since after her marriage with him had been demanding dowry from her and had been subjecting her to physical and mental atrocities which she had to bear looking at the face of her two children. The O.P often used to drive out the petitioner from his house as she could not comply with his demand of dowry and again after 3/4 months the O.P again used to bring her back to his house and in this way after marriage the O.P had

driven her out of his house 3/4 times. On 12.04.2018 the O.P after driving out the petitioner from his house had entered into a negotiation agreement swearing to keep her well but after taking her to his house again resorted back to his atrocities of demanding dowry from her. He also didn't provide her food and on 19.09.2018 the O.P had drive her out of his house along with his children. She thereafter took shelter in the house of her parents and had been residing there since then. She in this regard had also lodged an ejahar at the Khelmati Police Outpost. The petitioner has no income of her own and due to her two children living with her she is also not in a position to do any daily wage work for earining. The O.P on the other hand is a mason and also a contractor. He is an able bodied man and earns about Rs. 25,000/- per month. He also has agricultural land which he cultivates. The petitioner as such prays for allowing her monthly maintenance allowance of Rs. 15,000/- for her and her two children.

3. On receiving the said petition u/s 125 of the Code of Criminal Procedure the same was registered as a Misc. Case and notice was issued to the O.P to appear and show-cause as to why an order of maintenance allowance should not be passed against him as claimed by the 1st party. The O.P accordingly on receiving the notice had entered his appearance and had filed a written statement. The O.P in his said written statement besides admitting the fact of his marriage with the petitioner and having two children out of this wedlock had denied all the rest of the averments made in the petition of the petitioner. The O.P stated that he never had driven out the petitioner from his house but she in fact on her own will had left his house and that on earlier occasions too had left his house as such without any reason. He has stated that the petitioner on 18.07.2018 had obtained loan from the Bandhan Bank and had left her parental house without telling anyone and the O.P on coming to know about it had lodged an ejahar in that regard as he was supposed to return the said loan amount. He stated that later after the verbal negotiation the case was withdrawn but the 1st party didn't return to his house and had filed the instant case u/s 125 of the Code of Criminal Procedure against him. He further states that he is earning his livelihood as a day wage labourer

and he gets works only 4/5 days in a week and with that meagre amount he had to look after his old parents. He further states that he has no landed property as stated by the petitioner. The petitioner in fact is an able bodied lady and works in the garden as well as does tailoring works for her livelihood. He states that the 1st party without any reasonable cause had left his house causing mental agony to him for the separation he had to face from his two children. The O.P as such states that the petitioner is not liable for any sort of maintenance from him and prays for rejecting the petition of the petitioner.

4. The petitioner in support of her case had examined as many as 3 PWs viz. Smti. Friska Topno as PW-1, her own evidence as PW-2, and that of Sri Stephen Lakra as PW-3. The petitioner side didn't exhibit any document. The O.P on the other hand had adduced the evidence of two DWs i.e. himself as DW-1 and that of Smti. Barnali Gogoi as DW-2.

POINTS FOR DETERMINATION

5. On the above pleadings and the facts admitted by the parties, the points for determination in this case are as follows:

(i) Whether the 1st party/petitioner Smti. Malati Topno, being the legally wedded wife of 2nd party/O.P has the just reason to live separately from her husband i.e. the O.P Sri Jewel Barla ?

(ii) Whether the O.P having sufficient means has neglected or refused to maintain his wife and his minor daughter and son ?

(iii) Whether the petitioner i.e. the 1st party has no source of income of her own as claimed by her and is unable to maintain herself and her minor son and daughter ?

(iv) Whether the petitioner/1st party is entitled to get maintenance from the O.P and, if so, what will be the quantum ?

DISCUSSION, DECISION AND REASONS THEREOF:

6. To arrive at a reasonable conclusion for determining the aforesaid points of determination, let us have a scrutiny of the evidence on record.

7. Taking up the evidence of the petitioner i.e. Malati Topno, the PW-2, it can be seen that she testified that she was married to the O.P as per social rites about 5 years back and out of this wedlock has a son and a daughter. After her marriage the O.P didn't provide her proper food and clothes and she had to work in people's house or hotel to feed herself. The O.P used to work in the Lakhimpur Town and used to come home only after a week. He gave all his earnings in the hands of his mother and used to tell the PW-2 that he could not earn any money. He further demanded her to bring money and properties as well as utensils from her parental house. He along with his mother and elder brother used to beat her for which she had lodged an ejahar.

8. PW-2 further stated that it has become highly inconvenient for her to maintain herself and her children for which she has filed this maintenance case. She stated that her husband is working as a labourer of mason and earns about Rs. 10,000/- per month as he always goes out to work.

9. The PW-2 in her cross-examination stated that when she left for her mother's home the O.P was not present that time in the house. She also stated in her cross-examination that when she works in other's house she only gets meal and rice but does not get any money. She further stated that her husband works as a labourer of mason.

10. The PW-2 also stated in her cross-examination that the father of the O.P is an old man and cannot work and earn by himself. She stated that she has not submitted any document to show that the O.P is having any land in his name.

11. Now taking a look at the evidence of other PWs it can be seen that Smti. Friska Topno the PW-1 testified that the 1st party and the O.P are husband and wife married as per Christian rituals and they have two children out of this wedlock. The age of the son is 3½ years while

the age of the daughter is 1½ years. The informant at the time of marriage was not given with any 'stridhan' articles for which the O.P out of a grudge often used to beat her and drive her out of his house. The 1st party in that way was driven out about four times from the house of the O.P. Since the parents of the 1st party have grown old so they cannot look after her and it is she who looks after the 1st party as such. In the year 2018 also in the month of April the 2nd party had sent the petitioner back to her parental house but later after making an agreement had taken her back to his house. The O.P, however, despite of making a written agreement of keeping the petitioner well had failed to abide by the terms of the said agreement and continued with his atrocities on the 1st party demanding dowry from her and had driven her out of the house. The 1st party when she lived in the house of the O.P used to inform the PW-1 over phone that she does not have money to maintain herself and even used to take money from her. About two months back the 1st party after leaving the house of the O.P came to her house but since she herself does not have sufficient income of her own and earns her livelihood by doing day wage earning so she is somehow looking after the petitioner and her child. PW-1 further testified that the O.P is having landed properties and also works as a mason and that after the petitioner came to her house the O.P didn't send any money for her maintenance.

12. PW-1 in her cross-examination stated that she had not seen the O.P working as a mason and she does not know that how much land the O.P has or in fact whether he has or not any land properties in his name. She also stated that the age of the parents of the O.P is about 60 years.

13. The PW-3 Stephen Lakra again in his evidence testified that the petitioner and the O.P were married about 4 years back and they have a son and a daughter out of this wedlock. The O.P along with his elder brother and mother used to demand dowry from the O.P and in furtherance of that used to physically assault her. She was driven out 4/5 times by the O.P from his house. A village meeting was also held to settle their dispute and the O.P used to come and take the petitioner to

his home but then again resorted to commit atrocities on her and didn't provide her food properly. The 1st party on 19th September 2018 due to the atrocities of the O.P came back to her parental house and had been staying there since then. They tried to negotiate the matter between both but the O.P never inquired about her. The PW-3 stated that the O.P works as a mason and he heard about the O.P having paddy land.

14. The PW-3 in his cross-examination stated that he had not seen the O.P working as a mason nor had seen him doing cultivating any paddy land. He further stated that a day wage labourer gets wage of Rs. 300/- per day but they didn't get work everyday.

15. The O.P again leading evidence to counter the case of the petitioner had adduced the evidence of himself as DW-1. He in his evidence testified that he works as a day wage labourer and gets a daily wage of Rs. 300/-. But he manages to get work of only 3/4 days in a week and if the weather goes bad he many a times doesn't get any work. His father is having 4 bighas of paddy land and he along with his brother does 'Shali' rice cultivation in the said field. His father is about 70 years old and while his mother is about 50 years of age and they cannot work. His father also had an eye operation. Further he also has an elder brother and he has to look after his parents and elder brother.

16. DW-1 further stated that he never assaulted his wife i.e. the petitioner and in fact the petitioner had taken Rs. 40,000/- on loan from the Bandhan Bank and thereafter left to her mother's house without his knowledge taking along with her the loan amount of Rs. 40,000/-. When she left his house he was not present at home as he went to work. DW-1 further stated that he has to pay monthly an amount of Rs. 500/- to the Bandhan Bank which his wife had taken which he pays from his earnings and as such he is not liable to pay any maintenance to the petitioner.

17. PW-1 in his cross-examination stated that with the crops which they gets cultivating the 4 bighas of their father's land, their family runs for about 4/5 months.

18. DW-2 Smti. Barnali Gogoi in her evidence testified that the O.P is her nephew and the 1st party is his wife. She has a Bhandhan 'Goot' and in the 'Goot' the petitioner is a member and she with the O.P had taken an amount of Rs. 40,000/- from their Bandhan 'Goot' as loan. The O.P is repaying the said loan by paying Rs. 500/- per month. She further stated that the O.P is a daily wage labourer but does not get work everyday. The father of O.P is having 4 bighas land and the O.P and his brother cultivates the said land. The O.P is looking after his old parents.

19. DW-2 in her cross-examination stated that the distance between her house and that of the O.P is about half a mile. The petitioner after taking Rs. 40,000/- from the Bandhan 'Goot' had went to her mother's house and earlier also she left like that to her mother's house.

20. So from the evidence on record it transpires that the petitioner and the O.P are husband and wife a fact which is not denied by the O.P and it is also admitted that they have two children out of this wedlock. Now the petitioner in her evidence as PW-2 corroborating the version of her petition has stated that the O.P used to demand dowry from her along with his elder brother and mother and often used to beat the petitioner for that. The PW-2 and PW-3 have also corroborated to the said fact. The PWs have also stated that the PW-2 i.e. the petitioner was driven out of the house 3/4 times by the O.P. The DW-1 and DW-2 have also stated the fact that the petitioner on 3/4 times had left for her parental house. Though the DW-1 has stated that the petitioner took away Rs. 40,000/- along with her but could not substantiate the same by adducing cogent evidence. The DW-2 in her evidence didn't state anything about the petitioner taking away Rs. 40,000/- with her. Now the PW-1 has stated that she had lodged an ejahar in the police station regarding the atrocities of the O.P and his family members on her. The other PWs also corroborated the said fact.

21. From the materials on record it can be seen that things were not going well between the petitioner and the O.P during their conjugal life and it can be seen that the O.P used to commit atrocities on the

petitioner for which she on 4/5 occasions had to leave her matrimonial house and took shelter in her parental house along with her children. It may be inferred as such that the petitioner had sufficient reasons to leave the house of the O.P. So the 1st point of determination is held in affirmative as it is found that the petitioner had just reasons to live separately from her husband i.e. the O.P.

22. It has also surfaced from the evidence on record that the parents of the petitioner were old and was not in a position to look after the petitioner and her children and it is the PW-1 who somehow maintains the petitioner and her children. It further transpires that the petitioner is not having sufficient income of her own. The PW-1, PW-2 and PW-3 in their evidence have categorically stated that the O.P is not providing any maintenance to the petitioner and her children. The O.P has not denied the said fact of not paying any maintenance to the petitioner and her children. He in fact has stated that he is not in a position to give maintenance to the petitioner.

23. The O.P in his written statement as well as in the evidence as DW-1 has admitted the fact the he is working as a day wage labourer and can also be inferred as such that he is an able bodies man. Now it is a sacrosanct duty of a man to maintain his wife and children and the O.P to is not an exceptance to that.

24. So it is concluded that the O.P is liable to pay monthly maintenance allowance to the petitioner and her two minor children. So the failure of the O.P to pay maintenance to the petitioner and her children amounts to his negligence or refusal to pay maintenance to his wife and children. Hence, in the backdrop of the discussion above both point Nos. (ii) and (iii) are held in affirmative.

25. Now the petitioner in her petition had mentioned that the O.P is having his own land and works as a mason earning Rs. 25,000/- per month but she again in her evidence-in-chief as PW-2 has stated that the O.P is working as a day wage labourer under a mason and earns Rs. 10,000/- per month. The petitioner has failed to adduce any cogent evidence to prove the income of the O.P. The O.P, however, admitted

that he cultivates the 4 bighas paddy land belonging to his father along with his brother and their family gets crops of which they can feed for about 4-5 months.

26. The O.P though stated that he gets a daily wage of Rs. 300/- and managed to get to work for only 3/4 days in a week but has failed to show any cogent evidence to prove the quantum of his income. However, from the evidence on record it can be seen that the O.P is an able bodied man and he works regularly as a day wage earner as well as the cultivator. It has also surfaced from the evidence of the DW and also has admitted by the petitioner that the parents of the O.P are old aged person with no capacity to work.

27. It also transpires from the evidence of the DWs that it is the O.P who looks after his parents. Notwithstanding of the said fact that the O.P is looking after his old parents he cannot shroud off his responsibility towards his wife and children and being an able bodied person he is required to provide their daily needs so that they survive. So the 4th point of determination is held in affirmative and after considering all aspects I am of the opinion that granting a monthly maintenance allowance at the rate of Rs. 2,000/- (rupees two thousand) to the petitioner and Rs. 1,000/- (rupees one thousand) each to the minor daughters and son of the petitioner will meet the ends of justice.

ORDER

28. In view of the above findings and decisions arrived the petition under section 125 of the Cr.P.C filed by the 1st party Smti. Malati Topno is allowed without cost. The O.P Sri Jewel Barla is directed to pay a monthly maintenance allowance of Rs. 2,000/- (rupees two thousand) to the petitioner/1st party and Rs. 1,000/- (rupees one thousand) each to her minor son and daughter which is to be effective from the date of this order i.e. 02.03.2020.

29. Let a copy of the judgment be furnished to the petitioner i.e. 1st party free of cost.

The judgement and order, as above, is delivered and pronounced in the open Court on this the 2nd day of March, 2020 under my hand and seal of this Court.

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Dictated and Corrected by me:

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

Transcribed and typed by me:
Narayan Chetri, Stenographer

(Continued (Appendix)

A P P E N D I X

WITNESSES FROM THE 1st PARTY:-

- (1) Smti. Friska Topno (PW-1)
- (2) Smti. Malati Topna (PW-2)
- (3) Sri Stephen Lakra (PW-3)

1st PARTY EXHIBITS:-

Nil

WITNESSES FROM THE 2nd PARTY:-

- Sri Jewel Barla (DW-1)
- Smti. Barnali Gogoi (DW-2)

2nd PARTY EXHIBITS:-

Nil

(Sri Akhtabul Ala)
Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur