

**IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS
LAKHIMPUR, NORTH LAKHIMPUR**

**Present: SMT. SWEETY BHUYAN,
Judicial Magistrate First Class,
Lakhimpur, North Lakhimpur.**

**MISC CASE NO. 172/2018
(U/s 125 of Cr.P.C)**

Parties :

Smt. Krishna Rai 1ST PARTY

VERSUS

Sri Surya Kumar Rai2ND PARTY

Appearances:

For the 1st Party : Mrs. Chitralekha Chutia

Date of evidence : 12.09.2019

Date of Ex-parte Hearing : 02.03.2020

Date of Judgment : 07.03.2020

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

- 1.** This case has been arisen out of a petition filed by Smt. Krishna Rai (hereinafter called as the first party) under section 125 of the Code of Criminal Procedure claiming maintenance of Rs.20,000/- per month for herself and her daughter from Sri Surya Kumar Rai (herein after called as the second party).

2. The case of the first party, in brief, as revealed from the petition is that the second party is the husband of the first party and their marriage was solemnized on 01.02.2004 in accordance with Hindu rites and ceremonies and on 24.11.2004 a daughter was born to them, namely, Shivani Rai. In the month of June, 2005 the second party without informing the first party went away to another place and since that day the second party neither contacted the first party nor gave any maintenance to her and their daughter. At present it has come to the knowledge of the first party that the second party has been residing with another woman at Jonai Dhemaji, namely, Padma Rai and he has been in contact with his paternal house. Their daughter has been studying in Class IX in the Morning Global School at Boginadi. The first party works as a tailor in her house and earns Rs.500/700 per month and out of the said income, it is not possible for her to look after herself and her daughter. The educational expenses of her daughter are carried by the uncles. The first party has two brothers and they have their own family and, as such, they cannot maintain the first party and her daughter. The second party is a rich person and having enough land. He also works as a contractor and earns about Rs.50,000 to 60,000/- per month and in spite of that he does not maintain the first party and their daughter. The first party is a poor woman, and therefore, she has lodged this case, seeking Rs.10,000/- for herself and Rs.10,000/- for her daughter and for cost of the case.

- 3.** The second party received the notice and thereafter, he appeared and sought for time for submitting written statement on 12.04.2019 and he continuously sought for time for submitting written statement, and as such, last chance was given to him vide order dated 19.06.2019 and the next date was fixed on 12.07.2019 for written statement, but on 12.07.2019 the second party again sought time for submitting written statement in spite of giving last opportunity to him, hence, vide order dated 12.07.2019 the case proceeded ex-parte against him.
- 4.** The first party and her witness were examined ex-parte thereafter. She examined herself as PW1 and two other witnesses, namely, PW2 Sri Gobinda Magar, as such, the first party evidence was closed, and thereafter after ex-parte hearing, the ex-parte judgment/final order is passed.
- 5.** Heard the learned counsel for the first party.
- 6.** After perusing the pleading of the first party, the following **points** for determination are framed for arriving at a definite finding in this case :

POINTS FOR DETERMINATION:

- (i) Whether the first party is the wife of the second party.
- (ii) Whether the first party is unable to maintain herself and the second party having sufficient means neglects or refuses to maintain the first party?
- (iii) Whether the first party is entitled to any maintenance?

DISCUSSION, DECISION AND REASON THEREOF:

7. Now let us discuss the materials on record and try to arrive at a definite finding as regard to the issues of this case.

POINT FOR DETERMINATION NO . (i) :

8. *Whether the first party is the wife of the second party?*

The first party stated in her petition that the second party is the husband of the first party and their marriage was solemnized on 01.02.2004 in accordance with Hindu rites and ceremonies and on 24.11.2004 a daughter was born to them, namely, Shivani Rai.

The first party stated in her evidence as PW1 that her marriage with the second party solemnized on 01.02.2004 in accordance with Hindu religious rites and ceremonies. After marriage, she started residing with her husband at his house. On 28.11.2004 she gave birth to a girl child.

The PW2 also deposed that the marriage of the first party with the second party solemnized on 01.02.2004 in accordance with Hindu religious rites and ceremonies. After marriage, she started residing with her husband at his house. In the year 2004 she gave birth to a girl child.

The first party through her evidence has proved that she is the wife of the second party and they stayed together as husband and wife. While the second party in spite of having knowledge of the fact that the first party has lodged this case against him, he failed to give any objection to the claim of the first party although he was given ample

opportunity. As such, the fact that both the parties are husband and wife could not be rebutted by the second party. While the evidence of the first party shows that both the parties are husband and wife. **Hence, it can be held that the first party is the wife of the second party.**

POINTS FOR DETERMINATION NO . (ii) :

- 9. *Whether the first party is unable to maintain herself and the second party having sufficient means neglects or refuses to maintain the first party?***

The first party claimed that in the month of June, 2005 the second party without informing the first party went away to another place and since that day the second party neither contacted the first party nor gave any maintenance to her and their daughter. At present it has come to the knowledge of the first party that the second party has been residing with another woman at Jonai Dhemaji, namely, Padma Rai and he has been in contact with his paternal house. Their daughter has been studying in Class IX in the Morning Global School at Boginadi. The first party works as a tailor in her house and earns Rs.500/700 per month and out of the said income, it is not possible for her to look after herself and her daughter. The educational expenses of her daughter are carried by the uncles. The first party has two brothers and they have their own family and, as such, they cannot maintain the first party and her daughter.

The first party stated in her evidence as PW1 that in the month of June, 2005, her husband went out of the house in search of work, but thereafter, he did not return and no whereabouts of him could be known. About two years ago from that day, she heard that he married another woman and is residing with her at Jonai. At present her daughter is studying in Class X and she is looked after by the first party. She is studying in a private school. Presently the first party is residing in the house of the second party and they are looked after by her brothers. One of her brother got married recently and another is going to marry very soon. As such, there is no other person to look after her and her daughter. The first party is a tailor and earns Rs.600-700/- per month, which is a very meagre amount and she also have to look after her daughter, who is studying in Class X and her expenses are increasing.

The PW2 stated in his evidence that in the year 2005, the husband of the first party, i.e., the second party went out of the house in search of work, but thereafter, he did not return. Later on, it came to be known that he is residing with his second wife at Jonai. The first party is residing at the house of the second party with her daughter and has been looking after herself and her daughter by stitching clothes of other persons. At present her daughter is studying in Class X and she is looked after by her. Initially her brothers used to help her, but now they got married and they have stopped looking after her. As such, it is very difficult for the first party to look after herself and her daughter.

From the above, it can be known that the first party is looking after herself and her daughter by stitching clothes of other persons and somehow earning her livelihood as because the second party has stopped contacting her or maintaining her and he married another woman and is residing with her at Jonai. There are no evidences on record, which could rebut the said fact claimed by the first party. However, the evidences of the first party have sufficiently proved that the first party is somehow earning her livelihood and that the second party has left her. As such, it can be held that the first party is unable to maintain herself to such standards as is required by any woman to live with all the necessities of life.

It can also be known that the second party is a rich person and having enough land and also also works as a contractor and earns about Rs.50,000 to 60,000/- per month. The same can be known from the evidence of the first party as well as her witness. The second party, on the other hand, could not give any objection to the said fact claimed by the first party. As such, it can be held that the second party has sufficient means and from the evidences, it can also be known that he left the first party in his house and thereafter, stopped contacting her or maintaining her, as such, he has been neglecting to maintain her in spite of his ability and duty to maintain his wife, i.e., the first party and his daughter. Hence, it can be held that the second party having sufficient means has been neglecting to maintain the first party.

POINT FOR DETERMINATION NO. (iii) :

10. Whether the first party is entitled to any maintenance?

From the points for determination as discussed above, it can be held that the first party and her daughter are entitled to receive monthly maintenance from the second party.

(Contd....)

ORDER

In view of discussions made above and the decisions reached in the foregoing points for determination, it is held that the first party is entitled to maintenance at the rate of Rs.8,000/- per month, i.e., Rs.4000/- for herself and Rs.4,000/- for her daughter, from the second party. It is hereby further directed that the order of maintenance would be effective from this month and the maintenance for this month would be payable within the first seven days of the next month and similarly for other months likewise.

Furnish free copy of the judgment to the first party.

The case is disposed of ex-parte with cost.

Given under my hand and the seal of this court on this the 7th March, 2020 at North Lakhimpur.

(SMT. SWEETY BHUYAN)
JUDICIAL MAGISTRATE 1ST CLASS
LAKHIMPUR, NORTH LAKHIMPUR

Dictated & Corrected by me:

(SMT. SWEETY BHUYAN)
JMFC, NORTH LAKHIMPUR

Transcribed & typed by me:

Kumar Gaurav (Stenographer)

APPENDIX

1st Party Witnesses

1. PW1 : SMT. KRISHNA RAI
2. PW2 : SRI GOBINDA MAGAR

Documents Exhibited by the 1st party

NIL

2nd Party Witnesses

NIL

Document Exhibited by the 2nd party

NIL

(SMT. SWEETY BHUYAN)
JUDICIAL MAGISTRATE 1ST CLASS
LAKHIMPUR, NORTH LAKHIMPUR

Dictated & Corrected by me:

(SMT. SWEETY BHUYAN)
JMFC, NORTH LAKHIMPUR

Transcribed & typed by me:

Kumar Gaurav (Stenographer)