

**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. 24/2019
(U/s 125 of Cr.P.C)**

Parties :

SMT. PRONAMI PHUKAN GOGOI 1ST PARTY

VERSUS

SRI PANKAJ GOGOI2ND PARTY

Appearances:

For the 1st Party : MR. RAJIV PEGU
Date of evidence : 01.07.2019, 09.09.2019
Date of Ex-parte Hearing : 25.02.2020
Date of Judgment : 05.03.2020

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. Pronami Phukan Gogoi (hereinafter called as the first party) under section 125 of the Code of Criminal Procedure claiming maintenance of Rs.9,000/- per month for herself and her son, i.e., Rs.5,000/- for herself and Rs.4000/-

for her son, from Sri Pankaj Gogoi (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 solemnized in the month of Jeth, 2013 in accordance with Hindu social rites and ceremonies and after marriage both the parties started residing together as husband and wife in the house of the second party and on 16.06.2014 the first party delivered a boy child, namely, Bharat Gogoi. After 4-5 months of the birth of their son, the second party started torturing her mentally and physically without any reason and started demanding dowry from her and asked her to purchase land for him through her parents. As the parents of the first party are poor, they could not fulfill his demands and, as such, he assaulted the first party and asked her to leave his house. As the torturers of the second party continues, the first party left his house with her son when he was 11 months old. The second party neither contacted her nor gave her any maintenance. The second party is a businessman and earns Rs.15,000 to 20,000/- per month. The second party also has landed properties. The first party is a weak and helpless woman and has no source of income and it is very difficult for her to look after herself as well as her son. Hence, the first party has lodged this case seeking maintenance from the second party at the rate of Rs.5,000/- for herself and Rs.4000/- for her son per month.

- 3.** The second party appeared before this court and filed his written objection against the claim of the first party stating that there was no marriage solemnized in accordance with religious rites and ceremonies between him and the first party. In fact, the first party eloped with him and thereafter, they stayed together as husband and wife and as a result of their cohabitation, one boy was born to them. That the second party never tortured the first party mentally and physically by demanding dowry. He never chased her out of his house. The first party left his house in accordance with her own wish and started residing in her parental house. The second party alongwith the Gaonburha and two other persons went to the house of the first party to bring her back but she denied to return and her father told that the first party will not return and denied to send her back. That he will accept the first party if she returns back to him. The second party has no fixed income. He does betel nut business for three days in a week and somehow is maintaining his old parents. He has small amount of cultivable land, but the same is a dry land upon which no cultivation can be done. As such, he is not capable of giving any maintenance as prayed by the first party and prayed to dismiss the prayer of the first party.
- 4.** The first party submitted written evidence of three PWs and the second party examined two DWs in his support.
- 5.** During the stage of argument, the second party remained absent without any steps continuously for four dates, i.e., 14.10.2019 to

23.12.2019, as such, vide order dated 23.12.2019 the case proceeded ex-parte against him.

6. Heard the learned counsel for the first party.
7. 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 and her son?
- (iii) Whether the first party has sufficient grounds to refuse to live with the second party?
- (iv) Whether the first party and her son are entitled to receive any maintenance from the second party?

DISCUSSION, DECISION AND REASON THEREOF:

8. Now let us discuss the materials on record and try to arrive at a definite finding as regard to the points for determination of this case.

POINT FOR DETERMINATION NO . (i) :

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

The first party stated that she is the wife of the second party and their marriage was solemnized in accordance with Hindu religious rites and ceremonies and after marriage both the parties

started residing together as husband and wife in the house of the second party.

The second party denied the fact of social marriage between him and the first party but he admitted that the first party eloped with him and they both resided together as husband and wife and out of their cohabitation, a boy was born to them. In his cross-examination, he admitted that the first party is his legally married wife. Moreover, in a case under Section 125 of the Code of Criminal Procedure strict proof of marriage is not required. Hence, considering the above, it is held that the first party is the wife of the second party. **Hence, this point is decided in affirmative.**

POINTS FOR DETERMINATION NO . (ii) :

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

The first party claimed that she has no source of income and it is very difficult for her to look after herself as well as her son. That she and her son have been taking shelter in her parental house. The financial condition of her parental house is not good. The second party is a businessman and earns Rs.15,000 to 20,000/- per month. The second party also has landed properties.

The second party has stated in his written objection that he has no fixed income. He does betel nut business for three days in a week

and somehow is maintaining his old parents. He has small amount of cultivable land, but the same is a dry land upon which no cultivation can be done. The DW2 also deposed about the income of the second party that he is a betel nut seller. Hence, it can be known that the second party is a betel nut seller and, as such, he has an income source and as such, he has sufficient means.

Secondly, the first party claimed that since the date she has been living in her parental house, the second party neither contacted her nor gave her any maintenance.

The second party, on the other hand, has been silent about the fact of giving maintenance to the first party and his son during the time she was staying separately from him. The DW2 in his cross-examination stated that he does not know whether the second party has been giving maintenance to the first party and her son. Hence, under such circumstances, it can be presumed that the second party has not been giving any maintenance to the first party and her son.

Hence, considering the above discussions, it can be held that the second party having sufficient means has been neglecting to maintain the first party and their son. **Hence, this point is decided in positive.**

POINT FOR DETERMINATION NO. (iii) :

11. Whether the first party has sufficient grounds to refuse to live with the second party?

The first party stated in her petition that after 4-5 months of the birth of their son, the second party started torturing her mentally and physically without any reason and started demanding dowry from her and asked her to purchase land for him through her parents. As the parents of the first party are poor, they could not fulfill his demands and, as such, he assaulted the first party and asked her to leave his house. As the torturers of the second party continues, the first party left his house with her son when he was 11 months old.

The second party stated in his written objection that the second party never tortured the first party mentally and physically by demanding dowry. He never chased her out of his house. The first party left his house in accordance with her own wish and started residing in her parental house. The second party alongwith the Gaonburha and two other persons went to the house of the first party to bring her back but she denied to return and her father told that the first party will not return and denied to send her back.

The first party in support of the fact that she was tortured by the second party has adduced written evidence of two witnesses. However, the second party could not rebut the fact that he tortured the first party either by cross-examining the PWs or by giving evidence in his support.

Hence, considering the evidences of the first party, it could be held that the first party has sufficient grounds to refuse to live with the second party.

POINT FOR DETERMINATION NO. (iv) :

12. Whether the first party and her son are entitled to receive any maintenance from the second party?

From the points for determination as discussed above, it can be held that the first party and her son, who is minor son of both the parties, 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 and her son are entitled to maintenance at the rate of Rs.4,000/- per month, i.e., Rs.2000/- for the first party and Rs.2000/- for their minor son 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 accordingly.

Given under my hand and the seal of this court on this the 5th day of 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. PRONAMI PHUKAN GOGOI
2. PW2 : NITEN PAWE
3. PW3 : UNAI BORAH

Documents Exhibited by the 1st party

NIL

2nd Party Witnesses

1. DW1 : PANKAJ GOGOI
2. DEMA KANTA GOGOI

Document Exhibited by the 2nd party

NIL

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

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(SMT. SWEETY BHUYAN)
JMFC, NORTH LAKHIMPUR

Transcribed & typed by me:

Kumar Gaurav (Stenographer)