

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

MISC. CASE 45/2018

(U/S 125 CrPC)

PETITIONER : SMTI JUNMONI BORDOLOI

-Vs-

RESPONDENT: SRI PRADIP BORDOLOI

DISTRICT : LAKHIMPUR, NORTH LAKHIMPUR

PRESENT : Sri Jayanta Kumar Saikia, AJS

**Judicial Magistrate, First Class
Lakhimpur, North Lakhimpur**

ADVOCATE FOR THE PETITIONER : Sri Bulumoni Das

ADVOCATE FOR THE RESPONDENT: None

PW EVIDENCE RECORDED ON : 06-02-2019, 22.05.2019.

DW EVIDENCE RECORDED ON : NIL

ARGUMENT HEARD ON : 04-06-2019.

JUDGMENT DELIVERED ON : 06-06-2019.

JUDGMENT

1. This is an application filed by Smt. Junmoni Bordoloi (herein-after called as First party) under section 125 Cr.P.C. claiming maintenance for her from Sri Pradip Borkotoki (herein-after called as second party).
2. The first party averred in her plaint/complaint that the first party was married to the second party on 25.01.2016 as per Hindu rituals. Thereafter, they started living together as husband and wife at the matrimonial house of the first party. After 10 days of the marriage, the second party expressed his dissatisfaction regarding the stridhans and the marriage articles brought by the first party from her parental house and demanded a four wheeler vehicle. On her failure to meet his

demand, the second party started inflicting physical and mental torture to the first party. On 20.02.2017, the second party criminally intimidated the first party and drove her away. Thereafter, the first party took shelter at her parental house and the second party has not provided her any maintenance. The second party is a physically fit person, having a grocery shop. He has also source of income from a tea garden measuring 5 bighas of land and he has a bamboo garden measuring, 01 bigha of land. Hence, she has lodged this case praying for monthly maintenance of Rs.15000/- (fifteen thousand) from the second party.

3. Summon was duly issued to the second party and the second party appeared on receipt of summon and submitted his written statement on 24.08.2018 vide petition bearing No.4138.
4. In his written statement, the second party inter alia denied the allegation made in the complaint petition made by the first party. It is alleged that the first party brought back her matrimonial articles lodging a CR case but no allegation of dowry demand was made in any case. It is averred by the second party that the first party stayed at her matrimonial house only for 3 months and thereafter voluntarily left her matrimonial house. It is also averred by the second party that the first party started a Beauty parlour near the house of her parents and thereafter, she stopped coming to her matrimonial house. The second party is a sick person and he does not possess any movable or immovable property. The second party is maintaining himself from the pension of his widow mother. Hence, he prayed to dismiss the case filed by the first party.
5. Though the second party filed written statement and contested the case by cross-examining PW1 (first party) and PW2, but the second party was absent without step on 04.06.2019. As the second party has not appeared nor showed any cause of his absence, as the date was fixed for DW evidence on that day, it is seen that the second party is not inclined to adduce any DW evidence, hence the DW evidence was closed.

6. I have heard the argument advanced by the Learned Counsel representing the first party and perused the evidence and other materials on record.

7. POINT FOR DETERMINATION

Whether the first party is entitled to maintenance from the second party as prayed for and if yes, from when and what will be the quantum?

DISCUSSION, DECISION AND REASONS THEREOF:

8. I have perused the pleadings of both the parties and the admitted facts between the parties are : (i) the first party is the lawful wife of the second party and (ii) the first party is at present staying at her parental house.
9. The rivalry contention between the parties are that the first party says that she was drove out by the second party by demanding dowry on 20.02.2017 and from then, she is taking shelter at her parental house. The second party denied the allegation and stated that the first party voluntarily left the house of the second party after learning a course of beauty technician and she is earning her livelihood from her beauty parlour, which she has started near her parental house. It is found that the first party has adduced evidence of two of her witnesses to support her claim. The second party neither adduced evidence of any witnesses nor he has appeared at the stage of argument.
10. The first party's evidence reveals that she has lodged this case against her husband, Sri Pradip Borkotoki, praying for maintenance. She has stated that she was married to the second party on 25.01.2016 at a Siv Temple, situated at Gohpur as per Hindu rituals. After ten (10) days of the marriage, the second party started demanding dowry from her parental house. She says that the second party started scolding her. The second party also demanded a four wheeler vehicle from her. She failed to meet his demand. She says that

on 20.02.2017, the second party drove her out of her matrimonial house. She has been staying at her parental house since then. She also deposed that the second party neither communicated her nor provided any maintenance to her till date. Her evidence reveals that the second party has a grocery shop, he has a Tea garden measuring one (01) pura of land. The second party has bamboo bushes measuring, 01 bigha of land. The second party has monthly income of Rs.50,000/- (fifty thousand). She has demanded Rs.15000/- (fifteen thousand) as monthly maintenance from the second party. The second party is capable of providing her that maintenance.

11. On perusal of the cross-examination of PW1, it is seen that she stayed at her matrimonial house from 25.01.2016 to 20.02.2017. She has not submitted any document for as proof of her marriage that was solemnized at temple. She deposed that she has not done any training of beauty parlour. She denied the other suggestion levied by the defence side.
12. The evidence of PW2, namely, Smt. Lakhimai Bordoloi, the sister of the first party (PW1) reveals that the first party/her sister was married to the second party, Sri Pradip Borkotoki on 25.01.2016 at a Siv Temple, situated at Gohpur as per Hindu rituals. After the marriage, her sister/ first party resided at her matrimonial house. After a few days, the second party started demanding a four wheeler vehicle from the first party. But, the first party cannot meet his demand. She has stated that the first party started physical and mental torture to the first party and he also attempted to strangle the neck of the first party. She says that on 20.02.2017, the second party drove out the first party from her matrimonial house saying that she can only return to her matrimonial house if she provides him a four wheeler vehicle. After that, the first party is residing at her parental house since then. She also stated the second party neither communicate the first party nor provided any maintenance to her thereafter. Her evidence reveals that the second party has a grocery shop, he has a Tea garden measuring one (05) bighas of land. He also has bamboo bushes measuring one

bigha of land. The second party has monthly income of Rs,50,000/- (fifty thousand) per month. The first party/ her sister has lodged this case against the second party, praying for maintenance of Rs.15000/- (fifteen thousand) per month. The second party is capable of giving the maintenance of Rs.15000/- (fifteen thousand) per month to the first party. She also deposed that the second party is a physically fit person and she is not suffering from any kind of diseases.

13. On perusal of the cross-examination of PW2, it is seen that she has never visited the house of the second party prior to that marriage, but her mother visited the house of the second party prior to this marriage. Her cross-examination reveals that she has seen one small tea garden and two brothers in the matrimonial house of the first party. There is a grocery shop owns by the second party. She also deposed that the first party is his elder sister. The mother-in-law, the second party and the brother-in-law of the first party lived in a joint family.
14. It is found that the evidences of PW1 and PW2 are consistent. Though they were subjected to lengthily cross-examination, the second party failed to illicit any material to support his claim.
15. PW2, the sister of the first party (PW1) supported the statement of the first party stating that the second party started demanding a four wheeler vehicle from the first party. It is also supported by her that the first party (PW1) was driven out from the house of the second party by the second party when the second party failed to meet the wrongful demand of the second party to provide him a four wheeler vehicle. During her cross-examination, she withstood to her statement. They have deposed in a natural way and I found no inconsistency in their evidences for not believing the same. Hence, in my considered opinion, there is sufficient enough materials against the second party that the second party is neglecting or refusing to maintain his wife i.e the first party and the first party is entitled for maintenance.
16. It is found from the evidences of PW1 and PW2 that the second party is a physical fit person. No evidence is adduced by the second party. From the evidences of PW1 and PW2, it is seen that the second

party is having a grocery shop, he has a small tea garden and a bamboo garden. However, the first party has failed to produce any concrete evidence regarding the monthly income of the first party. It is also found that there is no document in the case record to substantiate the claim of the first party that the second party earns Rs.50,000/- (fifty thousand) to 55,000/- (fifty five thousand) per month.

17. Considering all the aspects, I found Rs.3000/- (three thousand) will be a suitable amount of maintenance for the first party considering her family status and condition.

ORDER

In result, the petition filed by the first party is allowed granting an amount of Rs.3000/- (Rupees three Thousand) per month for the first party, Smt. Junmoni Bordoloi will be reasonable amount of maintenance in her favour only from the date of passing this order.

The second party has to deposit the same on or before 07th day of each month in the court or in the Bank account of the first party, which will be furnished by the first party to the second party through the court.

Give a free copy of the judgment and order to the first party immediately.

Given under my hand and seal of this Court on this 06th day of June, 2019, at Lakhimpur, North Lakhimpur.

**Sri Jayanta Kumar Saikia
Judicial Magistrate, First Class,
Lakhimpur, North Lakhimpur**

APPENDIX

PW1 : Smt. Junmoni Bordoloi (first party)

PW2 : Smt. Lakhimai Bordoloi

PW Ext. : NIL

**Sri Jayanta Kumar Saikia
Judicial Magistrate, First Class,
Lakhimpur, North Lakhimpur**