

**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. 140/2017**  
**(U/s 125 of Cr.P.C)**

**Parties :**

**Morjina Begum ..... 1<sup>ST</sup> PARTY**

**VERSUS**

**Abdul Hamid ..... 2<sup>ND</sup> PARTY**

**Appearances:**

For the 1<sup>st</sup> Party : MR. A.H. BHUYAN  
For the 2<sup>nd</sup> party : MR. NUPUR KUMAR GOGOI  
Date of evidences : 05.06.2018, 18.07.2018, 14.12.2018  
Date of Argument : 12.03.2019  
Date of Judgment/final order : 28.03.2019

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

1. This Misc. case has arisen out of the petition filed by the petitioner/ first party, Morjina Begum, against her husband/the second party, Abdul Hamid, u/s 125 CrPC praying for granting monthly maintenance at the rate of Rs.11,000/- from the second party, i.e., Rs.8000/- for herself and and Rs.3000/- for her son.

2. The 1<sup>st</sup> party in her petition for maintenance, inter alia stated that her marriage with the second party took place about three years ago in accordance with Islamic rites and ceremonies. After marriage a son was born to them, who was born differently able. After marriage the second party tortured the first party mentally and physically. That the second party wanted to sell the first party at Arunachal Pradesh. That when the second party took the first party for selling her, the first party came back to her parental house and in this connection she lodged a case in the police station. That it is not possible for the first party to co-habit with the second party as because the second party will sell her. That the first party is a poor woman and has no source of income. The second party is a rich person having landed properties, cultivating fields and other properties and earns Rs.20,000/- per month and he is a healthy person. Hence, the first party has filed this case seeking maintenance from the second party at the rate of Rs.11,000/-, i.e., Rs.8000/- for herself and Rs.3000/- for her son.
  
3. The second party appeared before this Court and filed his written statement, and the second party in his written statement stated that the second party is a daily wager and has no permanent income and dependent on his father's income for livelihood. That the second party denied the allegations of the first party and that he never forced the first party to leave his house and the way is always open for her to live with him and has prayed to dismiss the prayer of the first party.

4. During trial, the first party examined three witnesses to prove her case. On the other hand, the second party examined two witnesses in support of his case.
5. I have heard the arguments of the first party and the second party.
6. After such hearing as well as after going through the case record, the following points for determination are framed:
  - (i) Whether the first party has sufficient grounds to refuse to live with the second party?
  - (ii) Whether the first party is unable to maintain herself and her son?
  - (iii) Whether the second party, having sufficient means neglects or refuses to maintain the first party and their son?
  - (iv) Whether the first party and her son are entitled to any maintenance?

**7. DISCUSSION, DECISION AND REASONS THEREOF:**

Now let us discuss the materials on record and try to arrive at a definite finding as regards the points for determination.

8. **The first point for determination is whether the first party has sufficient grounds to refuse to live with the second party?**

The first party stated in her petition that after her marriage with the second party, the second party tortured her mentally and physically and that he wanted to sell her at Arunachal Pradesh, and as such, she cannot co-habit with the second party. The first party stated

in her evidence as PW1 that after about 5-6 months of her marriage, the second party started torturing her and assaulting her and demanded dowry from her and that he assaulted her day and night. The second party assaulted her and threw her out of his house. After seven months of her child, the second party suddenly appeared in her house and falsely told her to accompany him to Laluk as because he will give her money and to keep the child at home, and as such, the first party accompanied the second party, but the first party came to know that the second party was preparing to sell her at Arunachal and knowing the same she lodged the case.

The PW2 Mofizuddin, who is the father of the first party, stated in his evidence that after about one year of the marriage of the first party, the second party started torturing her and assaulting her and demanded dowry from her and Rs.5000/-, Rs.20,000/- from her and sent her back to her parental house after every 2-3 days. That when the first party was 8 months pregnant, the second party called him and asked him to take her back to his house as because she quarreled with his family and that the second party will go out for work. After that the PW2 went to Dolohat Tiniali, where the second party brought the first party and then brought her back to his house. After the first party was discharged from hospital after child birth, the PW2 took her back to his house and told him that he was going to bring/earn money and then he will return and thereafter, he went away and never returned. After 6-7 months the second party came to his house and told him that he received a cheque of Rs.95,000/- and

that he is going to pay the money to his daughter, i.e., the first party and asked the first party to accompany him and thereafter, she was taken to Laluk State Bank Centre and after that he forcefully tried to take her to Banderdewa saying her that he will meet a contractor and the first party denied, and as such, there was a quarrel between both and the first party rang the PW2 and within half an hour the PW2 reached there and asked the second party to show the paper, but he stated that there were no such paper, and as such, the PW2 went to the police station to lodge the case.

The PW3 Abdul Barek stated in his evidence that after about 8/9 months of the marriage of both the parties, the first party returned to her parental house while she was pregnant, and thereafter, she gave birth to her child while her stay at her parental house in the hospital. That the second party neither contacted her nor came to ask her about her wellbeing.

From the above evidences, it can be known that the second party tortured the first party. The second party also could not rebut the fact that he tortured the first party. The second party although in his cross-examination denied of assaulting the first party, but could not prove the same by sufficient evidence. While the first party by adducing the evidence of two witnesses and herself has been sufficiently able to prove the fact that she has sufficient grounds to refuse to live with the second party. **Hence, this point is decided in affirmative.**

9. **The second point for determination is whether the first party is unable to maintain herself and her son?**

The first party in her petition stated that she has no source of income and is a poor woman and that she has been residing in her parental house alongwith her son. In her evidence she stated that she has been taking shelter in her parental house since two and half years and that she has a handicapped child and his treatment is very expensive which she is not able to afford.

The second party, on the other hand, did not state anything about the source of income or earning capacity of the first party. Hence, as the first party has been residing in her parental house with her child and the failure of the second party to bring forth the fact that the first party is able to maintain herself and her son, it can be held that the first party is unable to maintain herself and her son. **Hence, this point is decided in positive.**

10. **The third point for determination is whether the second party, having sufficient means neglects or refuses to maintain the first party and their son?**

The first party has filed this case seeking maintenance from the second party as she has no source of income and it is difficult for her to maintain herself and her son, and that she has been taking shelter in her parental house.

The second party admitted in his cross-examination that he has been giving maintenance to the first party and her child, but when she lodged the case, he stopped giving maintenance.

The first party stated that the second party is a rich person and having landed properties and earning Rs.20,000/- per month. The PW2 stated that the second party is a contractor and earning Rs.40-50,000/- per month. He has building, samobayo dealer, two ponds and 14-15 bighas of land, business, auto rickshaw business and also has fishing business.

The PW3 stated that the second party has three fisheries, fair price shop and also works as a mason on contract at Arunachal. He also has total land of about 10/15 bighas and earns Rs.40-50,000/- per month.

The second party stated in his evidence that he earns Rs.5000/- per month and earns Rs.300/- per day if he gets works. In his cross-examination he stated that he works under a contractor who deals in constructing RCC buildings and he is engaged in such constructions.

The first party admitted in her cross-examination that the second party has no landed property of his own and stays in his father's house.

From the above evidences, it is sufficiently clear that the second party has sufficient means of earning as he has been working

and earning and from the admittance of the second party in his cross-examination, it can be known that the second party stopped giving maintenance to the first party. Hence, summing up all the discussions above, it can be seen that the second party having sufficient means has been neglecting to maintain the first party and their son. **As such, this point is decided in positive.**

**11. The fourth point for determination is whether the first party and her son are entitled to any maintenance?**

From the decisions of all the points for determination decided above and as admitted by the second party in his cross-examination that the child Abdul Muzibur is his child and that he is unable to walk, it can be held that the first party and her child are entitled to be maintained by the second party.

**(CONTD....)**

**ORDER**

In view of the 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.5,000/- per month, i.e., Rs.2000/- for the first party and Rs.3000/- 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. The second party is also directed to pay the entire cost of the case.

The case is disposed of on contest with cost.

The judgment/final order has been passed and is pronounced in the open court today.

**Given under my hand and seal of this court on 28<sup>th</sup> day of MARCH, 2019.**

(Smt. Sweety Bhuyan)  
JUDICIAL MAGISTRATE 1<sup>ST</sup> CLASS  
Lakhimpur, North Lakhimpur

Dictated & Corrected by me:

(SMT. SWEETY BHUYAN)  
JMFC, NORTH LAKHIMPUR

Transcribed & typed by me:

Kumar Gaurav (Stenographer)

**APPENDIX**

1<sup>st</sup> Party Witnesses

1. PW1 : Morjina Begum
2. PW2 : Mofizuddin
3. PW3 : Abdul Barek

Document Exhibited by the 1<sup>st</sup> party

NIL

2<sup>nd</sup> Party Witnesses

1. DW1 : Abdul Hamid
2. DW2 : Jumar Ali

Document Exhibited by the 2<sup>nd</sup> party

NIL

(Smt. Sweety Bhuyan)  
JUDICIAL MAGISTRATE 1<sup>ST</sup> CLASS  
Lakhimpur, North Lakhimpur

Dictated & Corrected by me:

(SMT. SWEETY BHUYAN)  
JMFC, NORTH LAKHIMPUR

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Kumar Gaurav (Stenographer)