

**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. 35/2018**  
**(U/s 125 of Cr.P.C)**

**Parties :**

**BIJUMONI BORA ..... 1<sup>ST</sup> PARTY**

***VERSUS***

**KRISHNA KANTA BORA ..... 2<sup>ND</sup> PARTY**

**Appearances:**

For the 1<sup>st</sup> Party : 1. MR. KHIROD KUMAR KAKOTI  
2. MR. SIRUMONI GOGOI  
3. MR. JAYANTA HAZARIKA  
4. MD. ZIAUL AHMED

For the 2<sup>nd</sup> party : 1. MR. KRISHNA KANTA TAMULI  
2. MR. KESHAV SAIKIA

Date of evidences : 19.07.2018, 31.07.2018,  
01.09.2018, 30.01.2019

Date of Argument : 28.03.2019

Date of Judgment/final order : 12.04.2019

**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, Bijumoni Bora, against her husband/the second party, Krishna Kanta Bora, u/s 125 CrPC praying for granting monthly maintenance at the rate of Rs.15,000/- from the second party for herself and her minor 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 on 24.07.2011 in accordance with Hindu rites and ceremonies. After marriage, the first party stayed in the house of the second party as husband and wife. And on 12.04.2013 a boy was born to them, namely, Abhijit Bora. After one month of their marriage, the second party assaulted the first party by demanding dowry and also mentally tortured her by being drunk. That the second party never maintained the first party and her son and when the first party demanded to be maintained, the second party scolded her and assaulted her and told her to bring money. On 11.07.2015 the second party physically and mentally tortured the first party by demanding dowry and the first party was compelled to take shelter in her parental house. At present the first party and her son are residing in her parental house. Since then the second party neither contacted her nor maintained her and her son. The first party and her son are being looked after by her parents, and as such, they are facing various difficulties. The second party is a healthy person and works as a driver of Goods Carrier. The second

party has six bighas of cultivable land and about five bighas of tea garden. He also has eight bighas of land at Dhurpang, and earns from all the sources about Rs.25,000/- per month. That the first party also lodged a case against the second party in the Naryanpur Police Station. The first party has no source of income, and as such, she has been suffering as it is difficult for her to maintain her son also. Hence, the first party has filed this case seeking maintenance from the second party at the rate of Rs.15,000/- for herself and 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 first party mentioned falsely that their marriage took place on 24.07.2011 in accordance with Hindu rites and ceremonies. But that it is true a son was born to them on 12.04.2013. That the parents of the second party are persons who are engaged in social and religious works of the society, and as such, any intoxicating drinks are barred in their family. And as such, the second party never drinks. He denied that he after about one month of their marriage demanded dowry and mentally and physically tortured the first party. That the second party never asked the first party to bring money. The second party drives a small ape vehicle belonging to Mitharam Das of Harmuti Merwil and earning Rs.3,000/- as salary per month. That he also has to look after his old parents. As the first party belongs to a rich family, she eloped with the second party and after finding the poor condition of the second party, she did not want to stay in the house of the second party. As a whole the first party eloped to her parental house for 7

times and the second party again brought her back. Last time, i.e., the 8<sup>th</sup> time the first party secretly left the house of the second party and in the evening the first party alongwith her father and another person, namely, Khagen came to the house of the second party and took her son away with her. That the second party many times went to bring the first party back, but the first party insulted the second party, and her father told that if necessary his daughter will go to Bangladesh but will not go to the house of the second party. The second party gave to his son four pairs of clothes for the four Bihus and gave money to the first party for her maintenance. Sometimes he bought meat and ate rice in the house of the first party. Both the parties were connected through phone. About three months ago, when the second party received the summon in GR Case No.1395/15, the connection between both the parties ceased. That the second party has no independent landed properties or tea garden and he does not earn Rs.25,000/- per month. That the vehicle which the second party drives is in a bad condition and he has no other vehicle to drive, and as such, has been sitting at his home unemployed. On the other hand, the first party belongs to a rich family having cultivable lands and her elder brother is a serviceman. That the first party does not want to stay in the house of the second party due to the poor economic condition. As the parents of the first party did not want the first party to marry the second party, as he was poor, the first party eloped with the second party. That the second party alongwith his parents has been residing in a Government land near

the mountain on the banks of the Dhrupang river and the second party has been somehow looking after his parents. Hence, the second party/opposite party has prayed to dismiss the case and to pass any other order/orders as may deem fit and proper.

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 its 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 is the wife of the second party?
  - (ii) Whether the first party has sufficient grounds to refuse to live with the second party?
  - (iii) Whether the first party is unable to maintain herself and her minor son?
  - (iv) Whether the second party, having sufficient means neglects or refuses to maintain the first party and her minor son?
  - (v) Whether the first party and her minor 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 1<sup>st</sup> party is the wife of the 2<sup>nd</sup> party?**

The first party stated that her marriage with the second party was solemnized on 24.07.2011 in accordance with Hindu rites and ceremonies. However, the second party denied the fact of marriage and stated that the first party eloped with him and that they have a son. It can also be known from the evidences of the first party and the second party that both the parties have been residing together and out of their cohabitation, a baby boy was born to them. Hence, a strict proof of marriage is not required for the purpose of determining a petition under Section 125 Cr.P.C. and as it can be known that both the parties have been residing together and they have a son, it can be held that the first party is the wife of the second party. **Hence, this point is decided in affirmative.**

**9. The second 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 and in her evidence that after about one month of her marriage with the second party, the second party tortured her physically and mentally and on 11.07.2015 the second party tortured her by demanding dowry and by being drunk, and as such, the first party was compelled to take shelter in her parental house as she could not bear anymore.

The PW2 Khagen Gogoi stated in his evidence that after the marriage of both the parties, the second party tortured the first party and as she could not bear anymore, she left the house of the second party and for about three years she has been residing in her parental house alongwith her son.

The PW3 Bolin Lahan, who is the father of the first party, stated in his evidence that the second party after their marriage often tortured the first party by being drunk. Many times the family members of both the parties tried to make the second party understand, but the second party did not understand. And the first party as she could not bear the tortures, returned to her parental house alongwith her son since three years.

The second party although denied that he tortured the first party by demanding dowry, but could not prove the same by sufficient evidences. While the first party alongwith her two witnesses could sufficiently prove that the second party tortured the first party. The second party in his evidence stated that the first party quarreled with his mother as she did not want to follow the religious customs of his family. But he did not mention about the fact that the first party did not want to stay with the second party due to his poor economic conditions, which he stated in his written statement. By cross-examining the first party witnesses, the second party could not rebut the fact that he tortured the first party. The second party also admitted in his cross-examination that a case is pending against him

relating to the tortures alleged by the first party. The second party also admitted that the first party left his house six times, but could not prove sufficiently why did she left his house so many times. Hence, considering all the evidences together, it can be held that the first party has sufficient cause for refusing to live with the second party.

**Hence, this point is decided in affirmative.**

**10. The third point for determination is whether the first party is unable to maintain herself and her minor son?**

The first party stated that she was compelled by the tortures of the second party and so, she had to take shelter in her parental house. That she and her son are being looked after by her parents and her parents are poor persons and it is difficult for them to look after her and her child. She stated that she has no source of income.

The second party although stated that the first party belongs to a rich family, but did not state anything about the capacity to earn of the first party and whether or not she has a source of living. Instead from his evidence, he repeatedly put forth the fact that her family is rich and her elder brother is a serviceman. If the first party have any source of income, then the second party would have necessarily mentioned it in his written statement as well as his evidence, but neither the second party nor his witness stated anything about the source of income or earning capacity of the first party. As such, it can be held that the second party being the husband of the first party and the father of their child is liable to maintain the

first party and her son irrespective of the financial condition of her family. Hence, it can be held that the first party is unable to maintain herself and her minor son. **Hence, this point is decided in positive.**

**11. The fourth point for determination is whether the second party, having sufficient means neglects or refuses to maintain the first party and her minor son?**

The first party stated in her petition that the second party is a healthy person and works as a driver of Goods Carrier. The second party has six bighas of cultivable land and about five bighas of tea garden. He also has eight bighas of land at Dhurpang, and earns from all the sources about Rs.25,000/- per month.

The first party stated in her evidence that the second party is a driver and has landed properties and earns Rs.25,000/- per month.

The second party, however, denies that he earns Rs.25,000/- per month and has no land of his own and that the vehicle which he drives is in a bad condition and as such, he has been sitting at his home. The second party admitted in his evidence that he is a daily wage labourer.

From the evidence of the second party, it can be known that the second party has sufficient means as he admitted that he is a

daily wager and also looks after his parents. Hence, it can be held that the second party has sufficient means.

The second party stated in his evidence that he has been giving maintenance to the first party and her son, but after he received the summons about the GR Case lodged against him by the first party, he stopped giving maintenance to them. Hence, it is admitted by the second party that he stopped giving maintenance to the first party and her son, although it is his duty to maintain them whatever may be his reasons for stopping the maintenance to them. Hence, considering these factors, it can be held that the second party has been neglecting to maintain the first party and her son.

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 her son. **As such, this point is decided in positive.**

**12. The fifth point for determination is whether the 1<sup>st</sup> party and her minor son are entitled to receive maintenance from the 2<sup>nd</sup> party?**

From the decisions of all the points for determination decided above, it can be known that the first party and her child being the minor son of the second party 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. 4,000/- per month, i.e., Rs.2000/- for the first party and Rs.2000/- for their minor son, namely, Abhijit Bora, 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 12<sup>th</sup> day of APRIL, 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 : Bijumoni Bora
2. PW2 : Khagen Gogoi
3. PW3 : Bolin Lahan

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

NIL

2<sup>nd</sup> Party Witnesses

1. DW1 : Krishna Kanta Bora
2. DW2 : Madhab Borah

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

Transcribed & typed by me:

Kumar Gaurav (Stenographer)