

**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. 65/2018
(U/s 125 of Cr.P.C)**

Parties :

Ashma Khatoon 1st party

VERSUS

Md. Robiul Ali2nd Party

Appearances:

For the 1st Party : Md. Toyabur Rahman

Date of evidence :27.02.2019

Date of Ex-parte Hearing : 25.03.2019

Date of Judgment : 02.04.2019

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 Ashma Khatoon (hereinafter called as the first party) under section 125 of the Code of Criminal Procedure claiming maintenance of Rs.7,000/- per month for herself from Md. Robiul Ali (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

took place on 17.01.2018 on a mehrana of Rs.2,00,000/- in accordance with Islamic religious rites and ceremonies and after marriage both the parties started residing together as husband and wife. After 15 days of the marriage, the second party started demanding dowry from the first party and tortured her mentally and physically. As dowry he demanded Rs.1,00,000/-, motorcycle etc. and assaulted the first party. On 10.03.2018 the second party assaulted the first party and at about 10 A.M. chased the first party out of his house and since then the first party has been taking shelter in her parental house. Since then the second party neither contacted the first party nor gave her maintenance. The second party is a healthy person and has the capacity to give maintenance to the first party still he did not give any maintenance to her. The second party has a big grocery shop at Bihpuria Town, a broiler farm, 8/9 bighas cultivable land and a big fishery and earns Rs.30-35,000/- per month. That the father of the first party is an old person and has no source of income. Hence, the first party has prayed to pass on order requiring the second party to pay Rs.7,000/- per month for herself.

- 3.** The second party received the notice and submitted his written statement stating that there is no cause of action for instituting the case and denies the allegations of the first party in her petition. He also denies the fact of marriage between both the parties. That the second party is a minor and his date of birth is date of is 10.02.2002, and as such, he is not a person capable of earning. As the second party is a

minor, as such, this case is void and should be dismissed. That the second party is dependent on the income of his father and mother and has prayed to dismiss the prayer of the first party.

4. After submitting the written statement, the second party remained absent without any steps, and as such, vide order dated 04.02.2019 the case proceeded ex-parte against him.
5. The first party was examined ex-parte thereafter. She examined herself as PW1 and one other witness as PW2, namely, Zarina Khatoon, as such, the first party evidence was closed, and thereafter after ex-parte hearing, the ex-parte judgment/final order is passed.
6. Heard the learned counsel for the first party.
7. After perusing the pleadings of both the parties, 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 has sufficient grounds to refuse to live with the second party?*
- (iii) *Whether the first party is unable to maintain herself?*
- (iv) *Whether the second party having sufficient means neglects or refuses to maintain the first party?*
- (v) *Whether the first party is entitled to 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 issues of this case.

POINT FOR DETERMINATION NO . (i) :

9. *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 took place on 17.01.2018 on a mehrana of Rs.2,00,000/- in accordance with Islamic religious rites and ceremonies and after marriage both the parties started residing together as husband and wife.

The first party stated in her evidence as PW1 that the second party is her husband and they have been married since one year in accordance with religious rites and ceremonies and after marriage, they co-habited together in the house of the second party as husband and wife.

The PW2 Zarina Khatoon stated in her evidence that the first party married the second party about one year ago and they both co-habited for two months.

The second party in his written statement denied the fact of marriage with the first party, but he could adduce any evidence in his support nor he cross-examined the PWs to rebut the claim of the first party that the second party is her husband. On the other hand, the first party by her evidence and the evidence of PW2 has sufficiently proved that both the first party and the second party married and co-habited

together as husband and wife and the said fact could not be derailed by the second party. Hence, it can be held that the first party is the wife of the second party.

POINT FOR DETERMINATION NO . (ii) :

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

The first party stated in her petition that after 15 days of the marriage, the second party started demanding dowry from the first party and tortured her mentally and physically. As dowry he demanded Rs.1,00,000/-, motorcycle etc. and assaulted the first party. On 10.03.2018 the second party assaulted the first party and at about 10 A.M. chased the first party out of his house and since then the first party has been taking shelter in her parental house.

The first party stated in her evidence that after her marriage with the second party, he demanded Rs.1,00,000/- and one bike from her. He asked her to fulfill his demands from her parental house and as she could not fulfill his demands, the second party assaulted her and chased her out of his house.

The PW2 in her evidence stated that the second party assaulted the first party and demanded Rs.1,00,000/- and a bike from her. As the father of the first party is a poor person, she could not fulfill his demands and the second party assaulted her and chased her out of his house.

The second party denied the allegations of the first party, but failed to produce any evidence on his support while the first party has sufficiently proved by her evidence and the evidence of the PW2 that she has sufficient cause for refusing to live with the second party as the second party demanded dowry and tortured her. **Hence, this issue is decided in positive.**

POINT FOR DETERMINATION NO . (iii) :

11. Whether the first party is unable to maintain herself?

The first party stated in her petition that the second party chased her out of his house and she has been taking shelter in her parental house. That her father is old and has no source of income.

The first party stated in her evidence that her father is a poor person earning as a daily wage labourer and that she has been residing in her parental house since the month of March, 2018 as she was chased out of the house of the second party.

The PW2 stated in her evidence that since last 7 months, the first party has been residing in her parental house. That the parents of the first party are old and poor.

The second party denied the fact that the first party has been residing in her parental house as because he demanded dowry and chased her out of his house.

The first party as already held in Point for Determination No.1, is the wife of the second party and from her evidences, it can be known

that she has been residing in her parental house as she was chased out of the house of the second party and that her father is old and poor. As the first party is residing in her parental house, and as such, her parents have to look after and the second party did not raise any point in his written statement specifically that the first party has a source of income. Hence, considering the evidences of the first party and the fact that she is dependent on her father for her livelihood, it can be held that the first party has no source of income and is unable to maintain herself.

Hence, this point is decided in positive.

POINT FOR DETERMINATION NO. (iv) :

12. Whether the second party having sufficient means neglects or refuses to maintain the first party?

The first party stated in her petition that the second party has a big grocery shop at Bihpuria Town, a broiler farm, 8/9 bighas cultivable land and a big fishery and earns Rs.30-35,000/- per month.

The first party stated in her evidence that the second party has a grocery shop at Bihpuria Town, and a big pond and a broiler farm. He also have 20 bighas of land and earns Rs.30-35,000/- per months.

The PW2 stated in her evidence that the second party has a big shop at Bihpuria, 10 bighas of land and a fishery.

The second party denied in his written statement the fact of his earning source as claimed by the first party. However, he could not establish the said fact and remained absent. On the other hand, the first

party by her evidences could sufficiently show that the second party has sufficient means and has been earning.

The first party also stated in her petition that since her stay in her parental house, the second party has neither contacted her nor maintained her. The first party stated in her evidence that since her stay in her parental house, the second party did not give any maintenance to her.

The PW2 stated in her evidence that she never saw or heard about any maintenance given by the second party during the stay of the first party in her parental house.

Hence, it can be seen that the second party has been neglecting to maintain the first party although it is his duty to maintain her. Moreover, he could not show by adducing evidence that he has been maintaining the first party during her stay in her parental house.

Hence, considering all that have been discussed above together, it can be held that the second party having sufficient means neglects or refuses to maintain the first party. **This issue is decided in positive.**

POINT FOR DETERMINATION NO. (v) :

13. Whether the first party is entitled to any maintenance from the second party?

From the result of the points for determination as discussed above, it can be held that the first party is 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.6,000/- per month from the second party. The second party shall also pay the cost of the proceeding. 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 2nd day of April, 2019 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: Ashma Khatoon
2. PW2: Zarina Khatoon

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
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