

IN THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS, NALBARI

Case No. 41m /2018

AISA SIDDIQUI

-Vs-

ABDUL MUSA

Present: RUBINA YASMIN, A. J. S.
JMFC, Nalbari

Advocates appeared:

Mrs. Dipali Baruafor the petitioner.

Mr. Anisur Rahmanfor the respondent

Evidence recorded on - 5-07-18, 20-8-18

Date of argument – 05-09-18

Date of judgment – 24-09-18

JUDGMENT and ORDER

1. The instant proceeding has been drawn out on the petition filed by Mrs. Aisa Siddiqui (hereinafter called 1st party) u/s 125 of Cr.P.C. against her husband Abdul Musa (hereinafter called 2nd party) for monthly maintenance of Rs. 5000/- per month each for her and her child from her husband.
2. The case of the 1st party in brief is that, she was married with the 2nd party as per Muslim Shariot customs. After marriage, both of them started to live together at the house of the 2nd party. It is alleged that when the 1st party was in her trimester pregnancy 2nd party started torturing her physically and has also driven her out of her matrimonial home. The 1st party has also filed an ejahar against the 2nd party regarding this matter but 2nd party took her with him after promising that he would not repeat the same. It is also mentioned that the 2nd party neglected her at the time

of her delivery and has always abused her alleging that she is physically ill and again drove her out of her matrimonial home. Later on 10/10/17 when 1st party along with their family went to 2nd party's house they refused to take her back and finding no alternative she had to take shelter in her parental home. It is further mentioned that the 2nd party did not bother to ask about the condition of the 1st party and now, the first party is staying in her parental house and that, she has no income. Hence, this case.

3. The 2nd party contested the case of the 1st party by filing written statement contending inter-alia that there is no cause of action of the case. The 2nd party has admitted the fact of marriage and denied all allegations put against him. He stated that 1st party left her matrimonial home at her own wish and refused to come back even when his family member attempted to bring her back. The 2nd party stated that he is not a carpenter as alleged and that he is a daily labour.
4. In order to establish the respective cases, the 1st party adduced evidence of two witnesses whereas the 2nd party tendered evidence of three witnesses.
5. Arguments of both parties are heard.

POINT FOR DETERMINATION:

- a. Whether the 1st party being a wife of 2nd party is living separately from the 2nd party without any sufficient cause?
- b. Whether the 2nd party neglects or refuses to maintain the 1st party who is unable to maintain herself?
- c. Whether the 2nd party is entitled to maintenance? If so what is the quantum of Maintenance?

DISCUSSION, DECISION & REASONS THEREOF:

6. **Point No. I:**

There is no dispute between the parties regarding marriage. The 2nd party has admitted that the 1st party is his first wife and that one a daughter is born out of their wedlock. So far, the allegation of the 1st party for living separately from her husband is concerned it is alleged by the 1st party that the 2nd party has subjected her to physical torture when she was in her trimester pregnancy and was driven out of her matrimonial home. She also stated that 1st party along with his father has

abused her alleging that she has disease. Pw 2 also corroborated the same. Whereas the 2nd party stated that 1st party always remained busy in her phone and whenever he asked her to do household chores she used to intimidate him saying she would leave the house.

However on further perusal of the evidence it is seen that 1st party refused to come back as 2nd party never went to take her back and 2nd party admitted that he never went to take her back and it was his family member who did so. Nor 2nd party has filed any case for restitution of conjugal right. This indicates that 2nd party was least bothered to bring her wife back home. Furthermore, the 2nd party has also failed to put forth any material to suggest that Pw1 and her mother Pw 2 would falsely implicate the 2nd party and thereby ruin their conjugal life. Hence, in the said circumstance it is sufficient for a wife to live separately from her husband.

7. Point No. II and III are clubbed together

The petitioner/1st party in her evidence stated that she has no any source of income which is corroborated by other prosecuting witness. 2nd party has also admitted in his cross that 1st party has no source of livelihood and also that he has not provided any maintenance to 1st party. This reveals that the 2nd party has failed to provide maintenance to her wife when she needed. The section 125 of Cr.P.C. provides that a person against whom the order of maintenance is claimed, it is necessary that such person must have sufficient means. The 2nd party in his written statement as well as in his evidence has stated that he is a daily labor. Whereas, the 1st party has stated in her evidence that the 2nd party is earning Rs. 20,000/- per month from as he is a carpenter and also has cultivated land in his name. Though 2nd party has submitted a certificate issued from the village headmen as Exhibit 1 that he is a daily labor but Dw 2 and Dw 3 has admitted in their cross that they have certain cultivated land also. Dw 3 stated that Dw1 and Dw 2 does all the cultivated work.

Moreover, from the perusal of the materials available on record, it is seen that the 2nd party is an able bodied person and able bodied husband is bound to maintain his wife. If a man is healthy and able bodied he must be taken to have means to support his wife and he cannot take the plea of not having sufficient means. Every able bodied person who marries a woman would be undertaking the minimum responsibility of maintaining his family at bare subsistence level. In this instant case not only the 2nd party is an able bodied one but also earns his income through daily labor and also does cultivating work. Thus, the failure of the 2nd party to provide

maintenance to the 1st party clearly establishes that he having sufficient means neglected and refused to maintain her.

In view of the above discussions and decisions, it is held that the 1st party and her daughter is entitled to get maintenance from the 2nd party, as prayed for.

ORDER

In the result, maintenance allowance is granted to 1st party Aisa Siddiqui @ Rs. 1000/- per month and Rs. 500/- per month to the daughter Sneha Sultana from the 2nd party w.e.f. date of passing of this order i.e. 24.09.18 until the 1st party gets remarried and children becomes major or as per provision of law.

A free copy of this judgment be given to the parties forthwith.

This Misc case is disposed of on contest accordingly.

Rubina Yasmin
JMFC, Nalbari

Annexure

1. Petitioner's witness

Pw1 Aisa Sidduiqi
Pw2 Md. Rahman Ali

2. Respondents' witnesses

Dw1 Abdul Musa
Dw2 Md. Makhleswar Rahman
Dw3 Md. Wazed Ali

3. Exhibits by petitioner

Nil

4. Exhibits by respondent

Exhibit 1 – gao burha certificate

Rubina Yasmin

JMFC Nalbari