

:: IN THE COURT OF THE SESSION JUDGE, NALBARI ::

Present: Smti S. Bhuyan.
Session Judge,
Nalbari.

(Criminal Revision Case No. 18/19)

**Revision against the judgment and order dated 05/02/19
passed by Learned JMFC, Nalbari in connection with Misc
Case No. 214^M/2017 u/s 125 CrPC.**

Jakir Ali

S/o- Lt. Mahim Ali

R/o- Vill- Madhapur

P.O- Morowa

P.S.- Mukalmua

Dist - Nalbari, Assam.....Petitioner

-versus-

Resma Begum

D/O- Samsul Haque

W/O- Jakir Hussain

R/o- Vill- Paisara

P.O- Ghograpar

P.S.- Ghograpar

Dist - Nalbari, Assam.....Opp. Party

Advocates appeared:-

For the Revisionist :- None appeared

For the Opp. Party :- R. Begum

Date of argument :- 11/06/2020

Date of Judgment :- 25/06/2020

JUDGMENT

1. This revision petition u/s-397/399 of CrPC is filed by Jakir Ali S/o- Lt. Mahim Ali with a prayer to set aside and quash the

order dated 05/02/2019 passed by the Learned JMFC Nalbari, in connection with case No. 214^m/2017 directing the revisionist petitioner to pay an amount of Rs. 1,000 to Resma Begum and Rs. 1,000 each to her daughters per month from the date of order.

2. The fact leading to this revision petition is that Opp. Party Reshma Begum as first party filed a petition u/s 125 CrPC before the Learned CJM Nalbari, with a prayer to accept her petition and passed order directing second party Mr. Jakir Hussain, the present revisionist to pay monthly maintenance of Rs. 5,000 in her favour and Rs. 5,000 each to her both the daughter total Rs. 15,000. The case of the first party is that she is a simple village lady. Seventeen years back her marriage was solemnized with second party and denmohar fixed Rs. 1,00,000/- (one lakh) and gave Rs. 101/- (one hundred one) as first installment. After the marriage she and second party started their conjugal life at the house of second party. She gave birth to two girls out of their wedlock, they are aged 16 years and 11 years and their name are Mamoni Begum and Samaira Begum. After 2/3 years of their marriage her husband started torturing her in demand of dowry and second party had driven out her from his house for several times. Their family members counsel them and drop her at his house and in the year 2015 when first party was suffering from acute abdominal pain, family members of her father took her to Guwahati Medical College hospital where she had under-gone gall bladder operation and her fathers family members beard the cost of her operation. Her husband was contacted but he did not give any response and neglected her and refused to keep her at his house and since then she is staying at her parents house and her elder daughter Mamoni Begum is suffering from nerve diseases for which she is now physically disabled and her second daughter is a student of Class-VI of Bishnujyoti H.S School and she is unable to maintain and bear the medical bill

of her eldest daughter and second party is not looking after them. She is unemployed whereas second party is a driver by profession earn Rs.20,000/- (twenty thousand) and apart from this second party is having landed property.

3. On receiving the court notice second party appeared before the trial court and contested the proceeding by submitting written statement wherein he denied all the statement made by the first party in her petition and stated that it is second party who bear all the medical expenses of first party and because of this he is not able to pulled up his economic condition. First party is very luxurious and self centered lady and never respected second party. She and her family member want second party to stay at first parties parents house leaving his aged mother. Second party never refused to accept first party. He is ready to accept her if she come to his house. He is earning Rs.2,000 to 3,000 per month by driving vehicle temporarily.

4. Both sides adduced evidence in support of their pleadings. Learned trial Magistrate after hearing the counsel for the parties delivered judgment directing second party to pay monthly maintenance of Rs. 1,000 per month to the first party and her daughters from the date of passing the order until first party gets re-married and daughter becomes major as per provisions of law.

5. The point for determination in this revision is whether order of maintenance granted by the learned trial court is based on proper appreciation of evidence and in accordance with the provisions of law and whether the quantum of maintenance granted is too excessive on the shoulder of second party i.e. revisionist.

6. This case is taken up in the virtual court in view of pandemic corona virus (COVID-19) disease. None represented the petitioner. I have heard learned counsel for the opposite party through 'jitsi' platform. Learned counsel of the opposite party submitted that learned trial court rightly granted the maintenance and second party has the capacity to pay the maintenance and first party prove that she is legally married wife of second party and second party is the father of her children and he neglect them without any just and reasonable cause and first party is unable to maintain her and her minor daughters. The learned trial court rightly delivered the judgment granting maintenance in favour of first party Resma Begum by rightly appreciating the evidence on record.

7. I have scrutinized the record to arrive at the just decision of this revision. The first party i.e. opposite party of this revision Resma Begum adduced her evidence as PW-1. Her evidence pointed that she is married wife of second party Jakir Hussain and their marriage solemnized 17 years back and after marriage they started their conjugal life and are blessed with two children. Her witness PW-2 Samsul Haque corroborated her this statement. DW-1 is the Jakir Hussain, his evidence is that first party is his wife. Their marriage solemnized in the year 1999 and they are having two children. The first part of the section 125 CrPC is that first party is the wife of second party and second party is the father of the children of the first party is established on admission of second party/ revisionist.

8. PW-1 in her evidence stated that second party subjected her torture after drinking alcohol and did not look after her and not providing maintenance. Her elder daughter is physically disabled and younger one is studying at Class-VII. In the year 2015 she suffered from gall bladder pain and had undergone operation. Her husband did not pay a single penny for her treatment and whole cost is bear by her father. Thereafter, she

is staying at her fathers house and since then he is not coming to meet her, not providing any maintenance. In cross she stated second party drinks everyday, did not provide her maintenance, did not look after her. He is a driver by profession and he does not go for work daily and torture her.

9. PW-2 Samsul Haque in his evidence stated that 1st party is his daughter and 2nd party is his son-in-law and 17 years back they got married. After marriage first party gave birth to two daughters. The elder daughter is physically disabled and the younger one studies in Class-VII. He also deposed that after 2/3 years of their marriage second party used to torture first party in demand of dowry. Second party neglected first party and did not bear any expense in her operation though he earns Rs. 20,000 per month and having landed property. 1st party has no earnings and prays for maintenance for her and her two daughters total Rs. 15,000/- (fifteen thousand).

10. DW-1 Jakir Hussain in his evidence stated that his wife want him to stay at her father's house and when he refused she left him and he denied being regular driver and drive on daily wage basis and earn Rs.3,000 to Rs. 4,000 per month. In cross he stated that he went to first party's parents house thrice after she left him. His eldest daughter is physically handicapped, his youngest daughter is studying in Class-VII, both are staying with their mother. His one brother is a cultivator and another is a service holder and all of them are staying at the same campus. His witness DW-2 deposed first party left second party without any reason. She suffered from ailment and told that she will return back after recovery of the ailment. Second party provide treatment to her and first party told him that she will return back when he will construct a house but she did not return. He stated second party is a driver by profession and second party is staying with is ailing mother. In cross stated that second party

is his brother-in-law and the brothers of second party is staying in the same campus but having separate kitchen and second party is driving big vehicle and his eldest daughter is physically handicapped.

7. After perusal of the evidence on record it is revealed that first party is staying with her two daughters at her father's house from 2015 after her treatment of gall bladder operation at Guwahati Medical College. Second party claim that he has provided maintenance to them but failed to produce any cogent believable evidence regarding providing maintenance to the first party and her children. It is also appeared from the statement of the parties that one of the daughter of parties is physically disabled from her childhood days and second party failed to produce any evidence to the kind of maintenance he had given to his children. The conduct of the second party clearly pointed that he refuse to maintain first party and her children without any just and reasonable case. The statement of first party pointed that second party is alcoholic, he used to drink everyday and beat her and if first party stayed at her parents house to stay away from physical violence from her husband then this cannot be termed as living separately without any just and reasonable cause. There is a cogent reason coming out from her statement of her staying at her parents house and second party without any reasonable ground refuse to maintain his wife and his children where he has both moral and legal duty of looking after his wife and children, to maintain them at par with his living standard. As second party without any just reasonable ground refuses to maintain first party and her children, she is entitled maintenance for herself and for her minor children u/s 125 CrPC and learned trial court rightly granted maintenance in her favour and for her two minor daughters after rightly appreciating the evidence on record and there is nothing to interfere with the order of granting maintenance to the first party and her children.

8. With regard to the quantum of the maintenance it is evident that second party is driver by profession, evidence of DW-1 pointed that he is driving a big vehicles which means truck, bus etc. His all the brothers are having independent income and they are living separately having separate kitchens. His mother even if stayed with him, second party is not the only son to bear the expenses of his mother. When his other brothers are economically sound and having separate kitchen it is presumed they are also looking after their mother. His sister-in-law adduced evidence for him that they are maintaining cordial relation and it is again strengthen that three sons are looking after the mother of second party. Learned trial court granted Rs. 1,000/- (one thousand) for first party and Rs. 1,000/- (one thousand) each for her two children per month total Rs. 3,000/- (three thousand) and he being driver by profession Rs. 1,000/- (one thousand) each to first party and his two daughters at todays price rise, education health is not a burden on him. Considering the present pricing of the essential commodities, illness of eldest child of the first party and other expenses I do not find any reason to interfere with the quantum of the maintenance granted by the learned trial court in favour of the first party and I hold that quantum of maintenance dos not require interference from this revisional court and learned trial court after appreciating all corner, income rightly fixed the quantum of maintenance. Accordingly, judgment and order of the trial court dated 05/02/2019 passed in Misc Case No. 214^m/17is upheld.

9. In view of my aforesaid discussion, I hold that revision being devoid of merits is dismissed, however no cost to the parties. Return LCR with a copy of judgment.

10. Send down the LCR with a copy of this court judgment to the learned trial court immediately.

Judgment delivered under hand and seal of this court on this 29th day of June, 2020 at Nalbari, District-Nalbari.

(Smti S. Bhuyan)
Session Judge, Nalbari.

Dictated & corrected by me

(Smti S. Bhuyan)
Session Judge, Nalbari.

Typed by:
Anzima Brahma
Stenographer Gr. III