

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

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

**(Criminal Revision Case No. 8/17)**

**Revision against the judgment and order dated 18/11/16  
passed by learned Addl. CJM, Nalbari in connection with Misc  
Case No. 224<sup>M</sup>/15 u/s-125 CrPC).**

**Sri Pramod Barman**

S/o- Harmohan Barman

R/o- Vill & P.S.- Belsor

Dist - Nalbari, Assam .....Revisionist/ 2<sup>nd</sup> party

-Versus-

**Smti Maikan Barman,**

W/o- Pramod Barman

R/o- Vill & P.O.- Belsor

Dist- Nalbari, Assam .....Opp. Party/ 1<sup>st</sup> party

Date of Judgment :- 18/06/2020

**JUDGMENT**

1. The instant revision has been preferred u/s-397/399 CrPC by revisionist Sri Pramod Barman being highly aggrieved and dissatisfied with the judgment and order dated 18/11/16 passed by learned Addl. CJM, Nalbari in Misc. Case No. 224<sup>M</sup>/15 u/s-125 CrPC whereby learned Addl. CJM, Nalbari granted maintenance allowance @ Rs. 3000/- per month in favour of the 1<sup>st</sup> party and Rs.1500/- per month for her minor son till he attains majority.

2. The fact relating to this revision petition is that OP of this revision Smti. Maikan Barman filed a petition u/s- 125 CrPC against the revisionist Pramod Barman before the Id CJM, Nalbari with a prayer to grant monthly maintenance in her favour and her children amounting to Rs. 15,000/- per month. Smti Maikan Barman as 1<sup>st</sup> party stated that

her marriage with Pramod Barman was solemnized 21 years ago as per Hindu rituals and after marriage they lived as husband and wife and two female child and one male child was born to them. It has been stated by the 1<sup>st</sup> party that her 2<sup>nd</sup> daughter got married. Name of her 1<sup>st</sup> child was Tiku Barman age 20 years and name of her son was Partha Pratim Barman age 14 years. It has been alleged by the 1<sup>st</sup> party that prior to 10 years of filing the petition u/s-125 CrPC, present revisionist has an illicit relationship with a girl at Rampur and when she tried to resist 2nd party, he torture her physically and from 03/08/13, 2nd party was not staying with 1st party. She further alleged that on 18/07/15, 2nd party ask 1st party to go out from his house with children and when 1st party did not go out, then 2nd party beaten her and since then 2nd party did not pay any maintenance to her. She stated that 2nd party has a bakery shop namely shivam bakery at Rampur chowk and one grocery and fair price shop at Singimari Belsor chowk bazar and 2nd party earns a healthy amount of Rs.60,000/- to 70,000/- per month.

3. On receipt of the petition, maintenance case has been registered, notice has been issued to 2<sup>nd</sup> party Pramod Barman, 2<sup>nd</sup> party Pramod Barman made his appearance before the trial court, contested the proceeding by submitting written statement. In the Written Statement he denied all the allegation made by the 1<sup>st</sup> party in her petition and stated that his marriage with 1st party solemnized 21 years ago and due to their wedlock two girls and one son were born to them. He further stated that about 15 years ago when 1st party made quarrel with 2nd party, 2nd party in the interest of 1st party left his house by dividing all his property and stayed at his present place of stay with house fishery etc. He further stated that he has a fair price shop at Singimari chowk and one bakery shop at Rampur chowk on partnership basis. 2Nd party in his WS alleged that 1st party had an illicit relationship with one Kishor Mudiar and when 2nd party came to know about this fact 1st party with children and Kishor Mudiar driven out 2nd party from his house in the year 2013 and stayed at his brother's house. He further alleged that 1st party with the help of

Kishor Mudiar taken away the daily collection money from his fair price shop. He also stated that 1<sup>st</sup> party contested the counselor election for last 2 years and on 18/07/15, 1<sup>st</sup> party with the help of Kishor Mudiar hurt him on his head and 2<sup>nd</sup> party lodged ejahar at the police station and he stated that his income is not Rs. 60,000/- to 70,000/- as alleged by 1<sup>st</sup> party and he lived like a beggar.

4. Both sides to establish their case adduced evidences. 1<sup>st</sup> party adduced her evidence as PW-1. 2<sup>nd</sup> party adduced his evidence as DW-1 and 2 other witnesses. Ld trial court magistrate after recording of evidence of both sides, hearing learned counsels for both sides delivered judgment granting maintenance in favour of the 1<sup>st</sup> party @ 3000/- per month and Rs.1500/- for her minor son until he attains majority.

5. On scrutiny of the pleadings of both sides and evidence of the 2<sup>nd</sup> party it is revealed that 1<sup>st</sup> party is the legally married wife of 2<sup>nd</sup> party / revisionist and 2<sup>nd</sup> party in his W/S and while adducing evidence admitted that he married 1<sup>st</sup> party 21 years ago as per Hindu rituals and he is the father of the 1<sup>st</sup> party's child.

6. Now points to be find out whether 2<sup>nd</sup> party willfully neglected and refused to maintain the 1<sup>st</sup> party and whether 1<sup>st</sup> party unable to maintain herself.

7. 1<sup>st</sup> party PW-1 deposed that she was married to 2<sup>nd</sup> party 21 years ago. After her marriage she stayed at her matrimonial house and after her marriage she had two daughters and one son. Her daughter Lony Barman age 21 years got married, Daisy Barman age 18 years studying BA and her son Partha Pratim Barman age 17 years. She stated presently she stayed at the house of her husband but her husband not coming to his house from 03/08/13 and did not provide maintenance. She further stated that her husband used to beat her, torture her and driven out her from his house and she stated her husband had an illicit relationship with a girl and when she raised objection, her husband used to beat her. She stated her husband has a bakery shop at Rampur under Mukalmua PS, one grocery shop, fair

price shop and stationery shop at Singimari chowk and her husband has his own house and fishery and her husband has a monthly income of Rs. 70,000/- to 80,000/-

8. In cross stated that she is staying at her husband house at Singimari, Belsor and her husband constructed house, dig fishery and she is occupying the said landed property of her husband including fishery. She further stated she does not know who is Kishor Mudiari and denied illicit relationship with Kishor. She stated her husband lodged a case against her and she got bail in that case. She denied that she driven out her husband in connivance with her paramount Kishor and her son. She stated she contested the counselor post of village twice but she can't say the money spent by her in the election and she was contesting from AGP. She denied bakery was closed and she was collecting daily sale collection of fair price shop of her husband with the help of Kishor Mudiari and she denied that she tried to grab the property of her husband.

9. DW-1 Pramod Barman, revisionist of this case stated that 1<sup>st</sup> party is his wife. He married to 1<sup>st</sup> party about 21/ 22 years ago as per Hindu rites and after marriage they lived together and as a result of their wedlock two daughters and one son were born. He further deposed that his oldest daughter Noni Barman aged 21 years, 2nd daughter Daisy Barman aged 19 years who got married and his son Partha Barman aged 18 years old. He further stated after the marriage of his 2nd daughter, his wife had an illicit relationship with one Kishor Mudiari and in the year 2015, he called for a bichar in the village and in the said bichar his wife confessed that she had love affair with Kishor. He further stated his wife restrain him from entering into his house and used slang words and his wife has occupied his landed property.

10. In cross stated he stayed separately from his wife since 1 ½ years at his paternal property he pay visit to his wife and child but they did not allow him to enter the house. He denied that he did not inquire about his wife. He stated that he had a control shop at Belsor Singimari chowk. He denied that he has a bakery shop at Rampur chowk and has

an income of Rs.60,000/- to 70,000/- per month and also denied that he had an illicit relationship with a woman at Rampur. He also denied that he did not look after his wife and give proper maintenance to her.

11. DW-2, Abani Barman stated that marriage between the 1st and 2nd party solemnized about 22 years ago and due to their wedlock two daughters and one son were born and younger daughter got married. He further stated that after the marriage of 2nd daughter of 2nd party, he heard that children of 2nd party tied a rope in the neck of 2nd party and 2nd party filed a case at the police station on the incident and went to his elder brother's house to stay there and land of 2nd party has been occupied by the 1st party. 2nd party sold the bakery shop at the time marriage of his daughter and presently he has a control shop at chowk but income of 2nd party is low.

12. DW-3 Ramcharan Nath stated that 1st party is the wife of 2nd party and they had two daughters and one son. He stated that 1st party seek Rs. 1 lakh from 2nd party for the bakery shop. 2nd party has a grocery shop. After the marriage of daughter of 1st party, there was some quarrel between 1st and 2nd party and after that 2nd party came out from his house.

13. On scrutiny of the evidence on record, it is clear that 1st party is staying at her husband's house where her husband make one fishery and 1st party is enjoying the landed property along with the fishery. Evidence further pointed that she had contested election for the post of counselor twice and spent money during her election. All these facts pointed that she is not distressed lady and 2<sup>nd</sup> party make sufficient arrangement for her livelihood.

14. To corroborate the statement of 1st party that she is unable to maintain herself and 2<sup>nd</sup> party neglected her, she did not adduce any evidence whereas 2<sup>nd</sup> party adduced evidence of 3 witnesses including himself to prove that 1st party is enjoying his landed property along with the fishery of the 2nd party and it is 1<sup>st</sup> party who driven out 2<sup>nd</sup> party from his house. One criminal case is also filed by 2<sup>nd</sup> party on 1<sup>st</sup> party on the allegation of attacking him with knife on his neck by 1<sup>st</sup>

party. DWs supported that 1<sup>st</sup> party did not allow the 2<sup>nd</sup> party to stay at his own house. 1<sup>st</sup> party evidence pointed that she with her child staying at her husband's house and enjoyed the fruits of fishery and other property standing on the land of 2<sup>nd</sup> party. When 1<sup>st</sup> party able to spend money in her election, she cannot be termed as unable to maintain herself and ingredients of negligence and refuse to maintain does not come to play and therefore, 1<sup>st</sup> party not entitled maintenance u/s-125 CrPC.

15. In the light of above discussion judgment and order dated 18/11/16 passed by the Id Addl. CJM, Nalbari in Misc. Case No. 224<sup>M</sup>/15 u/s-125 CrPC is modified to the extent that 1<sup>st</sup> party not entitled maintenance u/s-125 CrPC and order of granting maintenance to the son of 1<sup>st</sup> party and quantum of maintenance in his favour does not call for interference and order of granting maintenance to the son of 1<sup>st</sup> party at the rate of Rs.1500/- per month till he attains majority is affirmed.

16. In the light of above direction Revision petition is partly allowed. However, No cost.

17. 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 18<sup>th</sup> 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  
Biswajit Bhattacharjya,  
Copyist