

IN THE COURT OF SESSIONS JUDGE :: NALBARI

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

Criminal Revision Case No. 11/19

(Revision against the Judgment & order dated 29-11-2018 passed by learned Addl CJM, Nalbari in Misc Case No. 34^M/16 u/s- 125 CrPC.)

Sri Sankar Baishya

S/o- Sri Dharanidhar Baishya

R/o- village Marowa, PS- Nalbari

Dist- Nalbari, Assam Revisionist/ 2nd Party

-Versus-

Smti Upama Barman

D/o- Sri Kamal Barman

R/o- village Koihati, PS- Belsor

Dist- Nalbari, AssamOpp. Party/ 1st party.

Advocates appeared : None appeared

Judgment delivered on : 09-08-2021

JUDGMENT

1. The instant revision has been preferred u/s-397/399 CrPC by Sri Sankar Baishya being aggrieved with the impugned judgment and order dated 29-11-2018 passed by learned Addl CJM, Nalbari in connection with Misc Case No. 34^M/16 u/s- 125 CrPC.

2. Fact leading to the revision petition is that 1st party/ Opposite party Smti Upama Haloi filed a petition u/s- 125 CrPC before the learned CJM, Nalbari praying for grant of monthly maintenance allowance in her favour amounting Rs. 4,000/- and later on, she filed an amended petition with a prayer to grant of maintenance allowance amounting Rs. 2,000/- in favour of her minor child too, which was allowed by the learned trial court. In her petition it is stated that her marriage was solemnized with the 2nd party/ revisionist on 07-09-2012 as per Hindu rituals and out of their marriage wedlock she gave birth to a female child who is 4 years old at the time of filing the petition. After six months of her marriage 2nd party used to insult her on the ground that her stree-dhan articles are of inferior quality and demanded cash amount of Rs. 30,000/- as dowry but as her parents failed to fulfill demand of 2nd party he started mental torture upon her and even did not allow her to visit her parents house. On 16-01-2013 2nd party physically tortured her and driven her out from his house and since then she has been living at her parents house. It is stated that 2nd party is a driver of 108 Ambulance, he earns Rs. 12,000/- per month as salary, he has 7 bighas of cultivable land and earns about Rs. 50,000/- per year from cultivation and she prays for grant of monthly maintenance allowance in her favour and in favour of her minor children.

3. On receipt of the petition, learned CJM, Nalbari registered a case vide Misc Case No. 34^M/16 u/s- 125 CrPC and transferred the case to the court of learned Addl CJM, Nalbari for trial and disposal. Accordingly, learned Addl CJM, Nalbari took up the case and issued notice to the 2nd party. On receipt of notice 2nd party submitted written statement where he denied all the statements made by the 1st party in her petition except his marriage with 1st party. He denied paternity of the minor child of 1st party. He denied that he has 7 bighas of cultivable land and he earns Rs. 50,000/- per year. Though he admitted that he works as contractual driver of 108 Ambulance but he denied that he earns Rs. 12,000/- per month as salary and prays for dismissal of the petition filed by 1st party.

4. 1st party to establish her case adduced her evidence as PW-1 and evidence of PW-2 Smti Renu Barman and exhibited two documents vide Ext-1 and Ext-2. 2nd party adduced evidence of himself as DW-1 and evidence of DW-2 Smti Jeuti Baishya in support of his claim. Learned trial court after recording evidences of both the parties and hearing learned counsel for both the parties delivered judgment granting maintenance allowance in favour of the 1st party @ Rs.1500/- per month and Rs. 1000/- per month each in favour of the minor children of the 1st party in total Rs.2,500/- from the date of passing the order by learned trial court.

5. On the date of argument, none appeared to move the case at the time of taking up. As this is a revision against judgment and order passed in misc case u/s- 125 CrPC and pending since 2019, case is posted for judgment and both the parties were given opportunity to submit their written argument within 10 days from the date of argument but both the parties failed to avail the opportunity.

6. Points for determination

- i) Whether the learned trial court has rightly granted monthly maintenance in favour of the 1st party and her minor child?

Discussion, Decision & Reasons Thereof

7. I have scrutinized the revision petition, trial court case record and entire materials on record to arrive at a just decision. 1st party Smti Upama Barman as PW-1 deposed that she got married with the 2nd party on 07-01-2012 and being unable to bear the physical and mental torture of 2nd party, on 16-01-2013 she left her matrimonial house and took shelter at her parents house. During her stay at parents house on 03-08-2013 she gave birth to a female child who is 4 years old now. She further deposed that she was 3 months pregnant at the time of leaving her matrimonial house. 2nd party as DW-1 admitted his marriage with 1st party and deposed that he leaded

peaceful conjugal life with 1st party for the first three months and during the first year of their marriage, they lived in rented house at Nalbari town and further deposed that he is not the father of the 1st party's child.

8. Section 112 of the Indian Evidence Act, 1872: "**Birth during marriage, conclusive proof of legitimacy.**—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

9. In the instant case, minor child of 1st party born during the continuance of valid marriage between 1st party and 2nd party. 2nd party admitted that he led peaceful conjugal life with 1st party until she left his house and during the first year of marriage both the parties lived together in rented house at Nalbari town. DW-2 Smti Jetuti Baishya, who is the mother of 2nd party, also admitted that both the parties led conjugal life peacefully and they also stayed in a rented house at Nalbari town. 1st party left house of 2nd party on 16-01-2013 when she was pregnant and she gave birth to the child on 03-08-2013. Even for the sake of argument if we assume that 2nd party had no access to 1st party after 16-01-2013, yet Ext-2 birth certificate shows that her child was born on 03-08-2013 which is

within 200 days. Mere denial of 2nd party with regard to his paternity of the child of 1st party does not satisfy the provisions of law. Rather, evidence and materials on record clearly pointed that 2nd party is the father of the child of 1st party.

10. 1st party deposed that since after 6 months of her marriage 2nd party and his family members demanded cash amount of Rs. 30,000/- as dowry and started mental and physical torture upon her, 2nd party and his family members did not allow her to visit her parents house and ultimately on 16-01-2013 being unable to bear the torture meted upon her, she was compelled to leave her matrimonial house and she took shelter at the parents house. She further deposed that she was pregnant when she left her matrimonial house and she gave birth to a female child during her stay at her parents house. 1st party also lodged a case against 2nd party at Nalbari police station with regard to torture meted upon her vide Ext-1. 2nd party in his evidence denied the statements of 1st party but I find nothing to disbelieve the testimony of 1st party as because no woman, who does not have own source of income, will put her life in risk by leaving her husband. In the case in hand 1st party does not have any income source and she was pregnant at the time of leaving her matrimonial house. It is quite transparent that 1st party was compelled to leave her matrimonial house due to the

physical and mental torture meted upon her by her husband and his family members.

11. From the aforesaid discussion it is established that 1st party is the legally married wife of 2nd party, 2nd party is the father of her minor child and there is reasonable ground to leave separately from her husband. Accordingly, I hold that learned trial court has rightly granted monthly maintenance allowance in favour of the 1st party and her minor child.

12. With regard to quantum of maintenance granted by the learned trial court, I observed that 1st party in her petition and evidence before the learned trial court claimed that monthly income of 2nd party is Rs. 12,000/- and he also have annual income of Rs. 50,000/- from cultivation but she failed to submit any evidence regarding income of the 2nd party. 2nd party admitted that he earns Rs. 7000/- per month and he denied about having any other source of income and he also failed to prove his claim. Learned trial court has granted monthly maintenance allowance of Rs. 1,500/- in favour of 1st party and Rs. 1000/- in favour of her minor child. Considering the price hike of every essential commodities in the present day society and healthy upbringing of the minor child of 1st party, I am of the opinion that the quantum of maintenance granted by the learned trial court is quite justified and proper and the same does not need any interference.

13. In view of the aforesaid discussion, I find nothing to interfere with the judgment and order passed by the learned trial Court. Accordingly, judgment and order dated 29-11-2018 passed by learned Addl CJM, Nalbari in connection with Misc Case No. 34^M/16 u/s- 125 CrPC is hereby upheld.

14. In the light of the above order, revision petition is dismissed being devoid of merit. However, no cost to the parties.

15. Send down the trial court record with a copy of this court judgment to the learned trial court immediately.

Judgment delivered under hand and seal of this court on this 9th day of August, 2021 at Nalbari, Dist-Nalbari.

(Smti S. Bhuyan)
Sessions Judge, Nalbari.

Dictated & corrected by me

(Smti S. Bhuyan)
Sessions Judge, Nalbari

Typed by
Jitumani Talukdar, Computer Typist