

**IN THE COURT OF THE ADDL.CHIEF JUDICIAL
MAGISTRATE ,GOLAGHAT.**

Misc Case No.58/13

Smti.Rupali Kakati - 1st party

-vs-

Sri Lakhi Saikia - 2nd party

U/s 125 Cr.P.C

Present :Smti.M.Dutta,
Addl.C.J.M.
Golaghat.

COUNSELS APPEARED :

For the 1st party : Miss.A.Nath,Advocate,Golaghat.

For the 2nd party : Mrs.M.Nath,Advocate,Golaghat.

Evidence recorded on : 19.08.13,30.08.13,18.09.13,
31.10.13,

Argument heard on : 11.11.13 13.11.13

Judgment delivered on : 18.11.13

J U D G M E N T

1. This Misc. case has arisen out of a complaint petition filed by the complainant,Smti Rupali Bora (here-in-after referred as 1st party) against the her husband, Sri Lakhi Saikia (here-in-after referred as 2nd party).
2. The factual matrix as unfolded in the complaint petition by the 1st party in nut shell is that the marriage between the 1st party and the 2nd party was solemnized on 25.04.12 in accordance with Hindu social customs and rites and since then both of them have been living as husband an wife in the house of the 2nd party. On the next

day of their marriage the 2nd party started to torture her and on 13.05.12 the 2nd party assaulted the 1st party on the ground of a cup of a tea and tried to stab with a dao. Then the 1st party informed about it to her parents and they brought her to their house. After one month the 2nd party brought back her to his house promising not to torture her again. After a few days the 2nd party again started to torture the 1st party and demanded a bike. Finally on 12.04.13 the 1st party was again assaulted and chased her out of his house not to come again to his house. And since then the 1st party has been living at her parents house.

3. The 1st party has also stated in her complaint petition that her parents financial condition is not so sound to provide her maintenance and she has also no source of income of her own and hence she is in need of financial help. But the 2nd party is an able bodied person and is having 5 Bigha tea plantations, 2 pura land of cultivation besides various business sources and his monthly income is of Rs.15,000/-. Therefore, the 1st party prays before the court to grant her maintenance allowance of Rs.5000/- per month for her from the 2nd party. Hence this case stands for trial.

3. Upon issue of process from the court, the 2nd party has appeared before the court and contested the case by filing W.S.

4. The 2nd party by filing W/S has admitted their marriage. The 2nd also further reiterated in his written statements that he had not tortured the 1st party since after marriage and that he has also not promising to torture her. He has stated that the 1st party has filed any case against him for assaulting her and to increase the demand of the complaint petition, the 1st party has mentioned that bike was demanded by him.

5. The 2nd party has stated in WS that he is religious, easy going, pious man and daily wage earner. He has never chased the

1st party and he always try his best to return her to his house. The 2nd party stated that the actual fact is that the 1st party is a lazy, suspicious lady. It is also pertinent to mention in the WS that no physical relation was taken place between them after their marriage. The 1st party liked to away from it on different causes, which was informed to the parents of the 1st party by the 2nd party. He also stated that after one month of marriage, the 1st party requested him to return her back to her parents house and the 1st party physically tortured the 2nd party.

6. The 2nd party stated that the 1st party has no knowledge about his income and that he does not earn Rs.15000/- per month and stated that he has no cultivable land and he is a daily wage earner, he has to maintain one unmarried elder sister of his own, and he is not able to provide maintenance as stated by the 1st party.

7. Hence 2nd party has prayed before the court for dismissal of the petition of the 1st party.

8. **UPON PLEADINGS OF BOTH THE PARTIES,**
THE FOLLOWINGS POINTS ARE FRAMED
FOR JUST DECISION OF THE CASE:

(i)Whether the 1st party is legally married wife of the 2nd party ?

(ii)Whether the 1st party has sufficient means to maintain herself ?

(iii)Whether the 2nd party has sufficient means to maintain his wife ?

(iv)Whether the 1st party has any justifiable reason to live separately from her husband ?

(v)Whether the 2nd party has neglected or refused to maintain his wife ?

(vi)Whether the 1st party is entitled to maintenance as

prayed for, if so, what amount ?

DECISION AND REASONS :

6. I have perused the case record and gone through the evidence on record thoroughly. The 1st party has examined two witnesses including herself and while the 2nd party has also adduced three witnesses including himself. My finding issues are given below.
7. **Point No.1:** There is no dispute at bar that the 1st party is the wife of the 2nd party. The 2nd party has admitted that the petitioner is his wife. Thus, the present issue requires no further discussion. The fact what is admitted need not be proved. Therefore, under the facts and circumstances of the present case, this issue is decided in affirmative.
8. **Point No.2:** While deciding the Point No.2 I have gone through the evidence of the Pws and it is seen that the 1st party has no source of income of her own. The 2nd party i.e. her husband failed to establish the contrary inspite of the submission of the 1st party regarding her income. He has failed to place any material to see that his wife i.e. the 1st party has any earning source. The 2nd party has not submitted any document or evidence where it can be concluded that the petitioner/ 1st party has income of her own. Section 125(1)(a) of Cr.PC states that if any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself. In this present case, there is no evidence to show that the petitioner/1st party has any means of earning. Keeping in view of section 125(1)(a) Cr.PC, the point can safely be decided in negative.
9. **Point No.3:** As per provision enumerated in section 125 Cr.PC if a person is otherwise able-bodied, healthy and capacity to earn he cannot be avoid his liability u/s 125(1) Cr.PC even he has no tangible real property or income. Means does not signify only the

visible means. Mere absence of visible or real estate will not enable such a person to escape the liability to pay maintenance. It is an admitted position that the opposite party is a cultivator and earns Rs.15,000/- per month and has tea garden and business. PW-2 has also supported the evidence of PW-1 the earning source of the OP. Though DW-1, DW-2 and DW-3 have contradicted regarding the earning source of the OP by stating that the OP is a daily wage earner. The 1st party also took the plea that the OP is a person having illness but has not submitted any document to show that he is a sick person. Even the OP has not given any evidence regarding illness. Thus, it is settled law that healthy and able-bodied though not possessed of visible means must be held to be possessed of means to support his wife, children etc. It cannot be denied that the OP does not have any earning and therefore, it is clear that he has a source of earning and comes under meaning of u/s 125 Cr.PC. That being the position the point is decided in affirmative.

10. **Point Nos.4 & 5:** Neglects or refusal to maintain wife or child may be expressed or implied. Neglect or refusal can be inferred from words and conduct of the husband. In the instant case, DW-1 in his evidence stated that the 1st party is a physically weak woman and thus cohabitation between them has not been taken place. Moreover, PW-1 also left the house of the opposite party without informing him. DW-2 has stated in his evidence that the parents of the 1st party took her to their house with an allegation that the petitioner did not allow the opposite party to use cloth in bed at night. DW-3 is an independent witness and has stated in his evidence that petitioner went to her parents' house as the opposite party was having some illness. When the evidence of Pws were perused, it appears that the opposite party had

physically assaulted the petitioner in an intoxicated state at night and chased the petitioner with a dao to kill her. This evidence of PW-1 shows that the petitioner was not only physically assaulted in her house but also threatened her with dire consequences. PW-2 also supported the evidence of PW-1 regarding assault to the 1st party. Sister of the petitioner has also stated in her evidence that the petitioner had informed them regarding assault to her in her matrimonial house. Thus, the brother of the PW-1 Prasanta Kakati came and took her from her matrimonial house as she could not stay there due to torture by her husband. The opposite party also demanded one bike from the petitioner after her marriage and when demand was not being able to fulfill by the petitioner, she was physically tortured by the opposite party. From the evidence of PW-2 it is also seen that there was threat to the life of the petitioner. The VDP Secretary of the village of the opposite party had also asked the parents of the petitioner to take her from her matrimonial house. The opposite party also declared before the public gathering in his village that he does not want to keep back the petitioner in his house in future. After closing scrutiny of the evidence of PW-1, PW-2 it appears that the prosecution witnesses thus remains wholly unshaken in material particular. Therefore, from what has been discussed above, in my opinion, status of the present case are sufficient to lead the conclusion that there is neglect or refusal from the 2nd party to maintain his wife, because of which she has justifiable ground to live at her parents' residence. These points are decided in affirmative.

11. **Point No.6:** In the light of the findings of all the aforesaid points, I am considered view that the 1st party has established that ingredients of section 125(1) Cr.PC and thus entitled to receive maintenance allowance from the 2nd party for herself. Now coming

to the point fixing of quantum of the maintenance allowance, in my opinion, there are several factors to be considered, such as (a) the earning of the person bound to provide maintenance, (b) status of the parties, (c) basic requirements of the person, entitled to maintenance, (d) liability on the part of the person to provide maintenance, (e) independent source of earning of the person entitled to maintenance and its quantum and (f) value of rupees.

12. In the case in hand, evidence of prosecution witnesses do not reflect clearly exact income of the 2nd party. It is the duty of the 1st party to substantiate her claim that the income of the opposite party is Rs.15,000/- per month. In this case no document is submitted by the petitioner to show that the opposite party earns Rs.15,000/- per month. Since the petitioner has not submitted any document to prove that the opposite party earns Rs.15,000/- per month.
13. Considering the above six points regarding granting of the quantum of the maintenance allowance and going through the above evidence on record, and point No.3, I find that the 1st party / petitioner has not been able to prove that the 2nd party earns Rs.15,000/- per month, I find it prudent to allow the maintenance to the 1st party at the rate of Rs.1500/- to the 1st party.

ORDER

Accordingly the petition of the 1st party is allowed. The 2nd party/the opposite party is directed to pay an amount of Rs.1500/- per month to the 1st party/petitioner with effect from the date of passing of this order.

14. Supply a copy of judgment to the petitioner / 1st party free of costs.

15. Given under my hand and seal of this court on this 18th day of November,2013.

Dictated & corrected
by me.

Addl.C.J.M, Golaghat.

Addl.Chief Judicial Magistrate,
Golaghat.

