

IN THE COURT OF THE
CHIEF JUDICIAL MAGISTRATE ::BAKSA.

MR Case No. 2 of 2022

Under Section : 125 Cr.PC.

Present :- Smti. D. Boro, AJS,
Chief Judicial Magistrate, Baksa.

1st Party : Dipali Barman

Vs

2nd Party : Ajit Biswas

Evidence recorded on :- 19-05-2022, 06-06-2022,
28-06-2022.

Argument heard on :- 22-07-2022.

Judgment delivered on :- 25-07-2022.

Advocate Appeared :-

Mr. **Nur Alam**..... Advocate for the 1st Party.

Mr. **Balen Ch. Boro**Advocate for the 2nd Party.

J U D G M E N T

1. The gist of the maintenance application is that both parties got married on 29-03-2020 according to Hindu social rituals. Three months passed happily after marriage. After that, both 2nd party and his father started physical assault, torture on the 1st party to bring Rs. 1,50,000/-, better furniture, motor

cycle etc. The 2nd party kept illicit relation with other girl and asked the 1st party to leave his house. On 21-11-2021 at about 10.30 PM the 2nd party came consuming wine and scolded the 1st party using indecent words. The 2nd party brought kerosene oil gallon to kill her by burning. When the 2nd party wanted to pour kerosene oil on her, the 1st party somehow fled away and took shelter at the neighbour's house. Being unable to burn the 1st party, the 2nd party burnt all the cloths of the 1st party. On 23-11-2021 at about 8.30 AM, her mother-in-law called her back to the house. Thereafter, her father-in-law scolded her using indecent language. Her father-in-law had assaulted her, pounce on her chest and threatened to kill her in future. On 25-11-2021, the 1st party has lodged FIR at Kumarikata OP against the 2nd party and his father and Tamulpur PS case No. 459/21 is registered in this respect. The 2nd party has never taken any information about the 1st party and has not come to take her back to his house.

2. The 2nd party has capacity to pay maintenance allowance and has negligently not paid any maintenance allowance to the 1st party. The 2nd party is a goldsmith and has own shop at Darrangamela. Besides that, he has betel-nut garden of four bigha land. He has ten bigha residential and agricultural lands. He has pond, own house in the village. The 2nd party earns about 50,000/55,000/- from all these sources per month. After driving out the 1st party, the 2nd party has

married Champa Sarkar and is living happy married life. The 1st party has prayed for Rs. 20,000/- from the 2nd party as monthly maintenance allowance.

3. The 2nd party has submitted written statement. The WS in brief is that the 1st party forcefully married the 2nd party. Soon after the marriage, the 1st party started showing disinterest in married life. The 1st party did not care to show any respect towards the family members of the 2nd party. The 1st party many times made quarrell with the 2nd party and his family members. The 1st party would leave the matrimonial house and the 2nd party had to bring her back. The 1st party used to leave the matrimonial house at her own will. The 2nd party brought her back after many requests. Whenever the 2nd party requests the 1st party to come back, she would scold the 2nd party using dirty language. The 1st party complained of stomach ache. After medical check-up she was found to be totally healthy. The 1st party and her family members requested the 2nd party to send the 1st party to the parental house for taking care of the 1st party due to illness. The 2nd party agreed and sent her to her parents' house. The 1st party stayed in her parent's house for four months. The 2nd party advised the 1st party not to roam around and take rest. But the 1st party used to quarrel with the 2nd party on such advice. The 2nd party found the mobile phone of the 1st party busy for considerable time. Hence, the 2nd party came to bring the 1st

party back two times, but the 1st party refused to go. Thereafter, there was no communication for almost three months. Some family member of the 1st party along with some villagers brought the 1st party to the matrimonial house. The 1st party stayed few days in the house of the 2nd party. During these days, the 1st party remained busy with her phone most of the time and even till midnight. Hence, the father of the 2nd party advised the 1st party not to remain too busy with the phone. At this, the 1st party made quarrell with her father-in-law and thereafter she lodged FIR against the 2nd party. She again left the matrimonial house and stayed at her parent's house till date.

4. The 2nd party had jewellery shop earlier but same is not functioning at present. Hence, he has no income from that shop. The 2nd party is maintaining his family by working as a labour (mason). The 2nd party has only four bigha of land of which one bigha is residential land. This four bigha land is going to be divided between the 2nd party's father and uncle. The younger brother of the 2nd party is still unemployed. The 2nd party has prayed to dismiss the application of the 1st party.

5. POINTS FOR DETERMINATION:

- 1) Whether the 1st party is unable to maintain herself?
- 2) Whether the 2nd party has neglected the 1st party?
- 3) Whether the 2nd party has sufficient means?

6. DISCUSSIONS, REASONS & DECISION THEREFOR

7. Point No.1, 2 & 3:

- 8.** PW1 Parbati Barman is the mother of the 1st party. On 29-03-2020 Dipali and Ajit socially got married. After marriage Dipali stayed in the house of Ajit. First three months passed well. Thereafter, Ajit tortured Dipali asking for goods, motor cycle and Rs. 1,50,000/-. It was learnt later on that Ajit had relation with other girl. The name of the girl is Champa Sarkar. Ajit has married that girl now.
- 9.** PW1 also said that the 1st party came to her house due to torture. PW1 had kept back Dipali at the house of Ajit with the help of the society. But Ajit did not keep Dipali well thereafter. The 1st party was assaulted every day and once she was tried to be burnt after physical assault. At this, the 1st party ran away to the house of paternal uncle of Ajit. Ajit burnt the wearing garments of Dipali. Next day, the 1st party was taken back by her mother-in-law. But after coming to the house, the 1st party was beaten by her father-in-law. Dipali telephoned the PW1 saying that her condition is bad. Then PW1 went to the house of Ajit and finding bad condition of Dipali got her admitted in medical. Dipali stayed in the medical for two days. Thereafter, they went to Kumarikata OP and Dipali filed a case.
- 10.** PW1 further said that since thereafter Dipali is staying in her house. Ajit has not taken any information about the 1st party and has not paid any money. Ajit is a goldsmith and he has own jewellery shop. He has betel-nut garden of four

bigha, has agricultural land. He earns about Rs. 50,000/-- 55,000/- every month. Ajit and Dipali are not divorced. Dipali has no income of her own. PW1 is maintaining Dipali.

- 11.** PW2 Dipali Barman (1st party) said that on 29-03-2020 she socially got married with 2nd party Ajit. They carried on conjugal life in the house of Ajit. 4/5 months passed well. Thereafter, Ajit could not tolerate her. He used to assault her. He kept relation with other girl. She suffered due to physical assault and for not giving food. She fell sick. Then instead of giving medical treatment to her, Ajit sent her to her parent's house. Her parent's caused her medical treatment. Ajit did not take any information about her. After some days, she got information that Ajit had brought one girl by elopement. The society once kept her at the house of Ajit saying that to err is human. After that, her husband assaulted her consuming wine and could not tolerate her. At one night, when she was assaulted, she stayed in the house of her husband's paternal uncle. Her mother-in-law called her home saying that she would give her meal. When she came home, Ajit wanted to burn her by pouring kerosene oil. As Ajit could not burn Dipali, he burnt all the cloths of Dipali of her marriage. Thereafter he went away somewhere else. She fled to the house of paternal uncle to save her life when kerosene oil was poured on her. She is also tortured by her father-in-law and mother-in-law. Her father-in-law comes to assault her at night. Having no option, she went

away to her parent's house for the tortures. Thereafter she filed case at the PS. After 15 days of filing case at the PS, Ajit brought a girl by elopement and married her. Her name is Champa Sarkar. Ajit has not taken any information about her and has not given any maintenance allowance. Ajit has jewellery shop and 10 bigha of land. He has betel nut garden of four bigha land. He earns Rs. 55,000/--60,000/- per month. Her father-in-law is a contractor. The family members of Ajit have their own income and they dine separately. She has no income of her own. Her parents are maintaining her. Her father works as electrician and as a labour. She wants Rs. 20,000/- per months from her husband as maintenance allowance.

- 12.** DW1 Ajit Biswas (2nd party) said that he has been married more than two years ago. He earns Rs. 8,000/--9,000/- per month by working as a labour. His father used to work in a shop but the shop is now closed. His father is sitting in the house for 2/2 & 1/2 years. He is maintaining the house. It is difficult to maintain the house by his income. Sometimes the money falls short. Then he is to borrow money to maintain the family.
- 13.** DW2 Gopal Biswas is the father of the 2nd party. His son works as labour. The family is somehow surviving by the income of his son. The income of his son is not sufficient to maintain the family. He gets 25 kg. rice from the fair price

shop and by this the family is maintained. Ajit has no other source of income.

14. It is found from the evidence that the 1st party is the wife of the 2nd party. The 1st party has examined her mother as PW1. The 1st party has said that due to the torture of the 2nd party, she had to leave his house and stay at her parents' house. The 1st party has filed a police case against the 2nd party and his father for the tortures on her. It has come out in the evidence that the 1st party is staying at her parents' house.

15. There is no evidence that the 1st party has any income of her own. The 2nd party has said nothing during his evidence against the allegations made against him by the 1st party. The 2nd party has simply said about his income during his evidence. There is no evidence that the 2nd party is suffering from any kind of illness. The 2nd party is a healthy person. Regarding claim of the 1st party that the 2nd party has jewellery shop, the 2nd party has admitted in the WS of having a jewellery shop earlier and has claimed that same has been closed now. In support of his claim that the jewellery shop is now shut down, the 2nd party has not examined any independent witness. The 2nd party has also admitted of having four bigha land in his WS.

16. The 2nd party has not said during his evidence as to why the 1st party is living at her parents' house instead of staying with him in his house. The father of the 2nd party, PW2 said

about the quarrelsome nature and don't care attitude of the 1st party towards the 2nd party and his family members. But I have not discussed those evidence of the DW2 as the 2nd party/DW1 has not said anything about and against the 1st party during his evidence.

17. The DW1 could not show that the 1st party is staying at her parents' house without any justification and he is ready to take back the 1st party. Rather the 1st party has justified as to why she is staying at her parents' house. Her lodging of FIR against the 2nd party and his father is her justification of staying at her parents' house.

18. From the above discussions, I find that the 2nd party has sufficient means and he has neglected to maintain the 1st party without any just reason who is unable to maintain herself.

19. In view of the above discussions, the maintenance prayer is allowed.

20. The 2nd party is directed to pay Rs.10,000/-(Rupees ten thousand) only per month as monthly maintenance allowance to the 1st party w.e.f. date of order.

21. Given under my hand and seal of this Court this 25th day of July, 2022.

Typed by me—

D. Boro
CJM, Baksa

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APENDIX

PROSECUTION EXHIBITS: NIL

DEFENCE EXHIBITS: NIL.

EXHIBITS PRODUCED BY WITNESSES: NIL.

COURT EXHIBITS: NIL.

PROSECUTION WITNESSES :

PW1- Parbati Barman.

PW2- Dipali Barman.

DEFENCE WITNESSES :

DW1- Ajit Biswas.

DW2- Gopal Biswas.

COURT WITNESSES: NIL.