
IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BAKSA

M.R. Case No. 43 of 2019

Under Sections 125 Cr.P.C.

Bulu Kalita

.....First Party

Vs.

Dharmeswar Kalita

.....Second Party

Present: Pragyashree Chetia, AJS.

Judicial Magistrate First Class, Baksa

Evidence recorded on : 14.12.2021, 05.01.2022, 09.02.2022,
08.04.2022, 09.06.2022

Arguments heard on : 15.06.2022

Final Order delivered on : 28.06.2022

Appearing for the First Party : Sri. Gobinda Ch. Nath

Appearing for the Second Party : Sri. Nirmal Rajbongshi

FINAL ORDER

The first party namely Smt. Bulu Kalita filed a petition under Section 125 Cr.P.C. claiming monthly maintenance amount of Rs. 7,000/- against the second party namely Sri. Dharmeswar Kalita.

BRIEF FACTS

1. **First party's case in brief-** The case of the first party in brief is that the marriage of both the parties was solemnised 15th of Bohag in the year 1975 according to Hindu rituals and customs and she went to the house of the second party. Out of the wedlock, two sons Nipen and Sanjib and a daughter Madhani were born to them and after the daughter, the second party physically and mentally assaulted her for fulfilling his demand for dowry and drove her out of the house after keeping his son Nipen with himself. Having no alternative, the first party took her daughter to her parental home and took shelter there. She also filed a complaint case in the court of Hon'ble Chief Judicial Magistrate, Nalbari for the misdeeds of the second party and the custody of her son. However, the second party compromised the case and brought the first party and their daughter back to their house. In the meantime, the second party brought another woman namely Kusum Kalita as second wife. After that the second party gradually stopped looking after the first party and on a Thursday in the month

of Sait in the year 1985 at about 9 AM, the second party instigated by the second wife assaulted her inhumanely and locked the door confining her. After an hour of the incident, her youngest brother came and took her, her daughter Madhani and son Sanjib to their home and treated her at a hospital in Gandhibari. Thereafter, the first party went to Saulkuchi to work at a loom to sustain herself. She then bought a plot of land on Dwamakha and constructed a hut from that income. The first party further stated that her daughter Madhani died at the age of thirteen and the two sons live separately with their families. She is not able to work as a weaver and earn for herself now due to her age and illness and therefore, needs maintenance from her husband. The second party was a Chokidar in Latibari High School and after retirement he has been receiving Rs. 20,000/- as per month as pension. He also earns Rs. 1,20,000/- per annum from cultivation.

2. **Case of the second party-** Thereafter, notice was issued to the second party and the second party tendered his appearance and also filed his written statement. He denied the averments mentioned in the petition by the first party. He admitted that the first party is his legally married wife and three children were born to them though he denied that he demanded money from the first party or assaulted her in that regard. He also stated that the first party is a

selfish and characterless woman. She tried to keep the second party with her and never used to take care of his old parents. She always misbehaved with them and left her matrimonial house willingly breaking all marital ties with him. It is also stated by the second party that the first party filed the case to take revenge and had also filed many other false cases and his parents to harass them. It is stated by the second party that he was a fourth grade serviceman and was working for a long time on a venture school without any payment and later the school was provincialised. He is retired now and has not been able to receive his monthly pension. He is also suffering from various diseases and has to maintain himself and his family and is incapable of paying maintenance to the first party. It is claimed by the second party that the first party is rich and has sufficient income. She is also an owner of a plot of land and has started constructing a house and therefore prays to reject the petition.

3. Thereafter, the first party adduced evidence of two witnesses, including herself. The second party also adduced the evidence of himself.
4. I have heard the arguments advanced by the learned counsel for both the parties and considered the evidence tendered by them.

POINTS FOR DETERMINATION

5. Whether the second party having sufficient means neglected or refused to maintain the first party?
6. Whether the first party is unable to maintain herself?
7. Whether the first party is entitled to get maintenance as prayed for and if so, what would be the quantum of maintenance?

APPRECIATION OF EVIDENCE AND DECISION

8. All the points are clubbed together for convenience. I have carefully perused the evidence on record submitted by P.W.1 and P.W.2. P.W.1 reiterated the contents of the maintenance petition. She stated that after the birth of her daughter, the second party started demanding money from her and physically and mentally harassed her and drove her out of the house. Later when she filed a case in the court of Hon'ble Chief Judicial Magistrate, Nalbari, the second party compromised with her and brought her back to his house. But later he brought another woman namely Kusum Kalita to the house and stopped taking care of the first party. On the instigation Kusum Kalita, the second party physically

assaulted her and locked her in the house. Her brother took her to the hospital for her treatment and took her to their house. She later went to Sualkuchi to work as a weaver at a loom to sustain herself and bought a land with the income. She has stated that her sons live separately and her daughter died when she was thirteen years old. She is now aged and has illness and therefore is unable to work and earn a livelihood for herself. She has submitted that the second person was a Chowkidar at Latibari Highschool and after retirement he has been receiving Rs. 18,000/-(Rupees Eighteen thousand) only per month and earns more than Rs. 1,20,000/- (Rupees one lakh twenty thousand) only per annum from cultivation.

9. In her cross examination, she stated that she has not submitted any document regarding the landed properties of the second person and regarding her illness. She stated that her sons do not look after her and she lives alone at present. He had lodged a maintenance case against the second party previously but had compromised the case. But after that the second party brought another woman to the house.

10. P.W.2 who is the Manager of SBI, Nalbari Branch, in whose bank the second party has his banking account. He deposed that he brought the bank account statement of the second party bearing SBI account no.- 11004784104. The

second party is receiving his pension in the same account. He stated that the second party received Rs. 18,008/- only, as his pension in the month of November, 2021. He exhibited the account statement as Exhibit 1 and the pension slip as Exhibit 2.

11. The second party in his evidence stated their daughter Madhani died at the age of 13 years as the first party used to physically and mentally torture her and at last she attempted suicide. Her sons also live separately from her because of her behaviour. He also stated that the first party is a selfish and characterless woman. She tried to keep the second party with her and never used to take care of his old parents. She always misbehaved with them and left her matrimonial house willingly breaking all marital ties with him. It is also stated by the second party that the first party filed the case to take revenge and had also filed many other false cases and his parents to harass them. It is submitted by the second party that he was a fourth grade serviceman and was working for a long time on a venture school without any payment and later the school was provincialised. He is retired now and receives Rs. 15,000/- as his monthly pension. He has another woman Kusum Kalita with whom he has four children- two daughters and two sons. The daughters are married and one son is married and has a minor daughter. The sons of the second party are

unemployed and he has to look after them. He also submitted that he is suffering from various diseases and has to maintain himself and his family and is incapable of paying maintenance to the first party. It is claimed by the second party that the first party is rich and has sufficient income. She is also an owner of a plot of land and has started constructing a house

12. During his cross examination, he stated that he did not provide any document for proving that his pension is Rs. 15,000/- and did not provide original documents for proving his medical treatment. He denied that he did not have any illness and that is why he did not submit the original. He stated that he did not know why his daughter attempted suicide. Kusum Kalita is his second wife. He denied the suggestion that he was having affair with her and that is why he chased the first party from his house. He stated that he has around 5 bighas of land and garden land.

13. On the analysis of the evidence of both the parties, it is seen that the second party has admitted that he has another lady at his house which only strengthens the claim of the first party that while she was still at her matrimonial house, the second party brought another woman to her house. No woman can accept that her husband is having relation with another woman and thus, she cannot be accepted to cohabit

with the other woman in the same house. Thus, in view of the above discussion, it is found that the first party, being the legally wedded wife of the second party, was subjected to harassment by the second party on the instigation of Kusum Kalita, who was brought to the house by the second party and therefore, the first party had to come out of the matrimonial house. It is also noted that instead of asking for maintenance from the second party, the first party herself went to Sualkuchi to earn a livelihood for herself for all those years. The second party did not provide her with any maintenance. Now, first party being an old and aged woman is incapable of working and earning for herself and the second party is duty bound to maintain her. Therefore, the points 1, 2 and 3 are decided in affirmative n favour of the first party.

14. Now, for determining the quantum of maintenance to be awarded it is necessary to look into the income of the second party, his additional obligations, the living standard of both the parties, etc. Now, the first party has exhibited the second party's pension slip and bank account statement from where it is established that the second party is receiving a monthly pension of Rs. 18,008/- only. It is also noted that the second party had stated in his cross examination that he has around 5 bighas of landed properties. Therefore, it appears that the second party has

sufficient income to maintain the first party. It is incumbent upon every able bodied person to maintain his legally wedded wife and to provide her with basic necessities for sustaining a dignified life. The first party now has no source of income. However, it is also noted that the second party has another family with Kusum Kalita and he needs to maintain his family. The second party is also an aged man and would naturally have to meet his own medical treatments from time to time.

15. Therefore, in view of all the above points, it is my considered opinion that the first party is entitled to maintenance amount of Rs. 4000/- (Rupees four thousand) only per month as maintenance amount from the second party.

ORDER

Hence, considering the above discussion, the petition of the first party is allowed and the second party is directed to pay an amount of Rs. 4000/- (Rupees four thousand) only to the first party.

The order of maintenance is made effective from the filing of the maintenance petition and the monthly maintenance shall be paid to the first party on or before the tenth day of each succeeding month.

Accordingly, the instant case is disposed of. Furnish a copy of this final order to the first party.

The final order is delivered and pronounced by me today in the open court given under my hand and seal of this Court on this 28th day of June, 2022.

The entire final order is typed by me.

Pragyashree Chetia
JMFC, Baksa, Mushalpur.

APPENDIX

FIRST PARTY WITNESSES:

1. P.W.1: Bulu Kalita
2. P.W.2: Adil Hussain

SECOND PARTY WITNESSES:

1. D.W.1: Dharmeswar Kalita

FIRST PARTY EXHIBITS:

1. Exhibit 1: Bank account statement of second party
2. Exhibit 2: Pension slip of second party

SECOND PARTY EXHIBITS:

None

MATERIAL EXHIBITS:

None

Pragyashree Chetia
JMFC, Baksa, Mushalpur