

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS AT JORHAT

Reference: Misc Case No.57/11 u/s 125 of the CrPC

Smt Phulmoni Bora

.....Petitioner/1st Party

Versus

Sri Thaneswar Bora

.....Opposite Party/2nd Party

Present: Sri Bhupen Kumar Nath, Bsc., LL.B., B.C.J., A.J.S.

For the Petitioner: Smt Bijulata Das, Advocate

For the Opposite Party: Mr. Hari Kanta Bora, Advocate

Evidence recorded on: 03.09.2011, 08.09.2011, 15.09.2011,
30.09.2011, 17.11.2011,

Argument heard on: 08.12.2011

Final Order delivered on: 19.12.2011

ORDER

1. By this order, I shall dispose of Misc Case No.57/2011. The Petitioner, Smt Phulmoni Bora, has filed a petition under 125 Cr.P.C praying for an order directing the Opposite Party (hereinafter referred to as the OP) to pay a monthly allowance of Rs 5,000/- (Rupees five thousand only) for her maintenance and Rs 5,000/- (Rupees five thousand only) for maintenance of her child, on the basis of which, the instant case is registered.

The case of the petitioner in a nutshell as understood from her petition:

2. The OP is the husband of the Petitioner. On 05.05.1990, the marriage between the Petitioner and the OP was solemnized socially. A male child was born out of the wedlock of the Petitioner and the OP on 12.11.1992. After the marriage, for 1 ½ years the Petitioner and the OP lived peacefully. From the time of the pregnancy of the Petitioner, the OP has stopped maintaining the Petitioner. In absence of the OP, the Petitioner had to bear torture at the hands of his brother and sister-in-law. The OP lived in Arunachal Pradesh for his service. He did not send money for maintenance of the Petitioner. On 29.05.1993, brother and sister-in-law of the OP assaulted the Petitioner. The Petitioner informed about the said incident to the Gaon Burha and left for her parents' house with her child. From then, the OP has not given any maintenance to the Petitioner and her son. The OP is a physically fit employee of C.P.W.D. Department and he earns approximately Rs 30,000/-(Rupees thirty thousand only) per month.

The case of the OP in a nutshell as understood from his written statement:

3. The OP has admitted that he is the husband of the Petitioner. In absence of the Petitioner, his brother and sister-in-law did not torture the Petitioner as alleged. Despite taking all cares, the Petitioner left the house of the OP, taking advantage of his being in Arunachal Pradesh in the demand of his service and gave birth to a child at her parents' house on 12.11.1992. The OP bore all expenses of the child birth. Thereafter, the OP came to his house, brought the Petitioner back to his house and after making all necessary arrangement, left for Arunachal Pradesh. On 29.05.1993, keeping the OP in darkness, at her own will, the Petitioner left the house of the OP with her son for her parents'

house. The OP himself as well as with the help of the others tried to bring the Petitioner back to his house; but the Petitioner did not come. The Petitioner has a beauty parlor and a LIC agency. She earns a lot and she has been maintaining herself as well as her son with her own earnings until now. The son of the Petitioner has crossed 18 years of age and hence, he is not entitled to any maintenance under section 125 CrPC. The OP did not earn Rs 30,000/- (Rupees thirty thousand only) per month as alleged.

The evidences brought forth by the parties:

4. The petitioner has examined as many as 3 PWs including herself. The OP has examined 3 DWs including himself and exhibited 2 documents, namely, and details of his salary and Certified copy of deposition of the Petitioner in (M) T.S. 65/09 respectively.

The Point for determination:

5. I have perused the materials on record and heard arguments advanced by the learned counsels for the petitioner and the OP. The points for determination in this case are:

- (I) Whether the Petitioner is entitled for monthly allowance for her and her child's maintenance from the OP?
- (II) What should be the quantum of such allowance?

Discussion, Decision and Reasons thereof:

Point (I) Whether the Petitioner is entitled for monthly allowance for her and her child's maintenance from the OP?:

6. The opposite party has admitted that the Petitioner is his wife and a male child was born out of their wedlock. The OP has resisted the claim of the petitioner for maintenance only on the following grounds:

(A) The Petitioner left his house with her son for her parents' house at her own will, keeping him in darkness,

(B) The son of the Petitioner is a major and hence he is not entitled to any maintenance and

(C) The Petitioner has sufficient means to maintain herself.

Thus, in order to dispose of the case at hand, my only quest would be to find out the justifiability of the above grounds.

7. The PW1, Smt Pulmoni Bora, is the Petitioner herself. She has deposed that the OP had been in Arunachal Pradesh in connection with his service and he used to come to his residence at the interval of 6 months. In absence of the OP, his brother and sister-in-law tortured the PW1 physically and mentally. The PW1 informed about the same to the OP; however, he cold-shouldered to her. Therefore, at the advice of the Gaon Burah, she left for her parents' house, where she gave birth to her child. The OP did not come to her even knowing the birth of his child. The father of the PW1 bore the expenses of the nursing home at the time of her child birth. After one month of the child birth, she went to the house of the OP. At that time, although the OP was at his residence on leave, he paid no attention to the PW1 and her child. However, she stayed 6 month at her matrimonial home. During the period of her stay, the brother and sister-in-law of the OP again tortured her. During that period, the OP did not bore any expenses of the PW1. Hence, in helplessness, she left for her parents' house with her child. From then, the OP has not paid any amount to the PW1.

In the cross-examination, the PW1 has stated that although the brother and sister-in-law of the OP tortured her, she did not lodge any case in that regard. The PW1 has denied the suggestion that after the child birth the OP paid importance to her.

The PW2, Shri Gopal Chandra Bora, is the brother of the Petitioner. He has deposed that in absence of the OP, his brother and sister-in-law tortured the Petitioner. When she became unable to withstand the torture, they took her to their house.

In the cross-examination, the PW2 has stated that they did not take recourse of law, with regard to the torture unleashed upon the Petitioner.

The PW3, Niru Bhuyan has testified that she did not see (with her own eyes) the Petitioner being tortured. Thus, her evidence is hearsay and hence I keep the same beyond the purview of my appreciation.

On a perusal of the above evidences, it appears that the Petitioner (PW1) was corroborated by the PW2 to the effect that she was tortured by the brother and sister-in-law of the OP in the absence of the O.P. Thus, in view of this, presumption can be drawn in favour of the Petitioner that she did not leave her matrimonial home on her own and in fact, the tortures of the brother and sister-in-law of the OP made her leave her matrimonial home. Now let me see whether the evidences adduced by the OP can rebut the said presumption or not.

The DW1, Sri Thaneswar Bora, is the OP himself. He has deposed that in the year 1992, his son was born. In May 1993, his wife left his house for her parents' house. Having come to know about the same, the DW1 came from Arunachal and went to the house of the Petitioner's parents and tried to bring her back. Then the Petitioner told the OP that she gave birth to her child and

she would feed it with her own earning. She told that the OP had no requirement not to come.

In the cross-examination, the DW1 has deposed that after his marriage, he stayed at his home for 45 days and then went to his place of work. The DW1 has stated that at that time, his mother, brother and sister-in-law were with the Petitioner. The DW1 has denied the suggestion that, at the time of his absence, at home, his brother and sister-in-law tortured the Petitioner.

Thus, from the above statements of the OP, it appears that leaving his wife at his home, he stayed in Arunachal Pradesh in connection with his job. Therefore, the OP had not physically seen what went through the Petitioner during her stay with his brother and sister-in-law. Situated thus, although the OP has stated that his brother and sister-in-law did not torture the Petitioner in his absence, I am not persuaded to sustain the same.

The DW2, Umakanta Bora is the brother of the OP. Thus, he is one against whom the petitioner has leveled allegation of torturing her. Therefore, it is quite natural that he would negate the same and in fact, he has done the same in his deposition before this court. Therefore, in my considered opinion, it would be unsafe to reckon on his testimony.

The DW3, Sri Tulshi Bora has deposed that he does not know why the Petitioner left the house of the OP. Thus, the DW3 is quite unaware whether the Petitioner was forced to leave her matrimonial home or not.

Situated thus, the OP is found to be unsuccessful in rebutting the presumption that the tortures of the brother and sister-in-law of the OP made the Petitioner leave her matrimonial home.

8. The petitioner herself has stated in her Petition that her son was born on 12.11.1992. Thus, as on today, he is a major and hence he is not entitled to any maintenance.

9. The learned counsel for the OP has vehemently argued that the Petitioner has sufficient means to maintain herself and hence she is not entitled to any maintenance. Referring to the depositions of the Petitioner in T.S. (M) 65/09, the learned counsel for the OP has submitted that the Petitioner has a beauty parlor and a LIC agency and she earns sufficient to maintain herself. On the other hand, learned counsel for the Petitioner has submitted that right now, neither the beauty parlor nor the LIC agency belonging to the Petitioner is running properly and the Petitioner, in acute financial crisis, has approached this court seeking maintenance from the OP.

It is noteworthy here that, all along these years, the Petitioner had never approached the court seeking maintenance. Thus, from this fact, it can be inferred that had there been sufficient means for the Petitioner, presently also, she would not have sought for maintenance. I have also taken serious note of the fact that the Petitioner has a beauty parlor and a LIC agency. However, it cannot be lost sight of the fact that she had a son to feed and educate and hence, there is no option left for her except to work and feed and educate her son. Therefore, in my considerate opinion, the fact that the Petitioner has a beauty parlor and a LIC agency, would not disentitle her from getting maintenance under section 125, CrPC.

10. The learned counsel for the OP has further pointed out the delay occasioned in preferring the present Petition and submitted that owing to such delay, the Petition deserves rejection.

However, there is nothing in the law of limitation to debar the Petitioner in approaching the court in a delayed stage seeking maintenance from her husband. Hence, the contention raised by the learned counsel for the OP in this respect does not hold water.

In view of what have been discussed above, I am of the considered opinion that, the Petitioner is entitled for monthly allowance for her maintenance from the OP.

Point (II) What should be the quantum of such allowance?:

11. Now, coming to the quantum for allowance for maintenance, although the Petitioner has stated that the monthly earning of the OP is Rs 35,000/-(Rupees thirty five thousand only), the Ext B- salary details of the OP shows that the net salary of the OP is Rs 20577/- (Rupees twenty thousand five hundred and seventy seven only).

Considering the entire facts and circumstances of the case as a whole, this court is of the considered opinion that the ends of justice would be met, if the OP is directed to make a monthly allowance of Rs 4,000/-(Rupees four thousand only) for the maintenance of the Petitioner.

12. Accordingly the OP, Sri Thaneswar Bora, is hereby ordered to pay a monthly allowance of Rs 4,000/-(Rupees four thousand only) for the maintenance of the Petitioner. The said amount shall be payable from the date of this order.

13. Accordingly, the case stands disposed of on contest.

14. Given under my hand and seal of this court on this 19th day of December 2011.

(BHUPEN KUMAR NATH)
JUDICIAL MAGISTRATE FIRST CLASS
AT JORHAT