

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

M.R. CASE No. 34/2017

**Md. Ainul Hoque
S/O-Late Mainuddin
Village-Borigaon
P.S- Morigaon
Dist-Morigaon, Assam**

..... First party

Vs.

**Musstt. Seema Begum
W/O-Sri Niku Deka
Village-Gerakhuwa Dhaldhapara,
P.S- Morigaon
Dist-Morigaon, Assam**

.....Second party

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon

For the first party: Mr. B.C. Saikia, Mr. H.K. Bora, Advocates

For the second party: Md. A. Hannan, Musstt. N. Begum, Advocates

Application u/s 127 of CrPC filed on: 2-5-2017

Written statement filed on: 6-4-2018

Evidence recorded on: 7-5-2018,13-6-2018, 18-7-2018, 21-2-2019,
and 5-9-2019

Argument heard on: 16-9-2019 & 30-9-2019

Final order delivered on: 15-10-2019

FINAL ORDER

1. This final order goes to dispose of the application filed under section 127 of CrPC by the first party above named, seeking cancellation of the order of maintenance passed in favour of the second party above name, on 3-3-2016 in MR case no.109/2014 directing the first party above named to pay Rs.4,000/-, per month, to the second party above named.

2. The first party has stated in his application that the second party above name was his wife but due to discord between them, the second party left the first party and filed the case bearing MR No.109/2014 in the court of Chief Judicial Magistrate, Morigaon seeking maintenance. In that case, on 3-3-2016, the first party herein was directed to pay Rs.4000/-, per month, to the second party herein. In terms of the said order dated 3-3-2016, the first party has been paying the maintenance amount. However, the second party above named eloped from the house of her parents with one Sri Nikumoni Deka, son of late Atul Deka of Gerakhua Dhaldhapara, under Dandua Mouza and resided with him as his wife. Therefore, there is no reason for the first party to continue to pay the maintenance amount to the second party. Therefore, he has prayed to the court for taking necessary steps under section 127 CrPC. A photocopy of a certificate issued by a local village headman was also annexed with the petition. Therefore, he has prayed for cancellation of the order of maintenance passed in MR Case No.109/2014 under section 127 CrPC.

3. On receipt of the application, notice of the same was issued to the second party on several occasions in the address indicated by the first party in the petition. However, notice was returned reporting unserved and it was decided to issue notice to the second party in the address of her parents. Subsequently, the mother of the second party appeared and submitted to court on 15-12-2017 that she has no contact with her daughter who left her house and she did not maintain any contact with her daughter. In view of the said statement made in the petition by the mother of the second party, it was decided to proceed ex-parte against her vide order dated 15-12-2017. However, on 15-2-2018, the second party appeared and on the basis of her petition, the ex-parte order was vacated and she was allowed to take part in the further proceeding of the case.

4. Thereafter, the second party contested the application filed by the first party by filing written statement. In her written statement, the second party admitted of passing of the order dated 3-3-2016 in MR Case No.109/2014 whereby the first party above named was directed to pay Rs.4000/- per month to the second party. According to her, there has been an arrear of Rs.1,00,000/- which has become due but the first party has failed to pay the same. She has denied the allegations leveled

against her regarding the marriage with Sri Nikumoni Deka. According to her, in order to avoid payment of maintenance as per order in MR Case No.109/2014, the first party has filed this false case against her. Therefore, she has prayed for dismissal of the application filed by the first party.

5. The first party has adduced evidence of three witnesses namely the evidence of his own i.e. Md. Ainul Hoque as PW-1, Md. Anowar Hussain as PW-2 and Sri Gunendra Kr Nath as PW-3. The first party has exhibited three exhibits, out of which exhibit-X was issued by PW-3 and exhibit-Y was issued by PW-1. Exhibit-Z was a photocopy of a minutes of a village meeting. The second party also adduced evidence of her own as DW-1. The witnesses were cross-examined by the respective learned counsels and were discharged.

6. I have heard the argument of Mr. Bulan Ch. Saikia, assisted by Mr. Hiranya Kr. Bora, learned counsels for the first party and the argument of Md. Abdul Hannan, assisted by Musstt. Narzu Begum, learned counsels for the second party. I have also perused the case record and considered the same.

7. The point for determination is whether there has been any change of circumstances requiring cancellation of the order dated 3-3-2016, passed in MR case No.109/2014?

8. The first party, as PW-1, in his evidence has reiterated his contention made by him in his application that the second party has married Sri Nikumoni Deka as per Hindu marriage rites and the marriage was solemnized on 22-1-2017 at Dondua Puranibori. He was informed about the said marriage and subsequently he obtained the exhibit-X-1 certificate from Sri Gunendar Kr. Nath, who was the village headman of village Dandua Puranibori Lat No.2. The said exhibit-X-1 is a certificate issued by PW-3 wherein it was indicated that the second party, above named, resided as wife of one Sri Nikumoni Deka. PW-1 was cross-examined by the learned counsel for the second party; however, his cross examination could not demolish the evidence given by him in his examination-in-chief. Rather it was reiterated by PW-1 in his cross-examination that Musstt. Sima Begum i.e. second party herein and Sri Nikumon Deka did not solemnized marriage socially but they married secretly at a mandir. It has also been reiterated by PW-1 in his cross-examination that he has not given divorce to the second party. Though he admitted that he was not present at

the time of the marriage of the second party; however, his statement that the second party Sri Nikumoni Deka married at Mandir remained uncontroverted in his cross-examination. The said PW denied the suggestion that the exhibit-X-1 was a fake certificate prepared by PW-1 himself. This denial of PW-1 that the said certificate is a fake, appears to be correct in view of the fact that the PW-3 Sri Gunendra Kr. Nath deposed before the court that it was him who issued the said certificate and he also confirmed his signature in the said certificate. Therefore, issuance of the exhibit-X-1 certificate by PW-3 is found to be true and the said certificate is duly proved.

9. PW-3 Sri Gunendra Kr. Nath corroborating the statement of PW-1 has stated that Sri Nikumoni Deka is a resident of Dandua Puranibori village under his jurisdiction. He further stated that on 13-8-2017 a village meeting was convened wherein a minutes of the meeting was prepared and in the said minutes, the signatures of Nikumoni and his mother was obtained. According to the said PW-3, in the said village meeting, Sri Nikumoni Deka and his mother stated that Musstt. Seema Begum was the newly married wife of Sri Nikumoni Deka. He has also stated that as Sri Nikumoni married a girl from another community, therefore, Nikumoni and his family was ostracized by the society. He has confirmed that Musstt. Seema Begum was married by Sri Nikumoni and she, earlier, was the wife of Md. Ainul Hoque i.e. the first party. It has also been indicated by him that Nikumoni and his family members has not been accepted by the society because of the said marriage. Though the photocopy of the minutes of the said meeting was exhibited as exhibit-Z; however, the same was objected to by the learned counsel for the second party on the ground that the same was a photocopy and the same was exhibited without having any personal knowledge of PW-3. So far as the ground of the said exhibit being a photocopy is concerned, this court is of the view that the objection of the learned defence counsel is well founded in view of the fact that photocopied document is not a secondary evidence. Therefore, exhibit-Z is inadmissible in evidence and hence, the same is excluded from consideration.

10. The second ground on the basis of which the said exhibit was objected to was that PW-3 has no personal knowledge regarding the contents of the document i.e. the exhibit-Z. It is true that the said PW-3 was not present at the said meeting;

however, holding of the said meeting and the statement given by PW-3 regarding presence of Nikumoni and his mother admitting the marriage between Nikumoni and Seema could not be demolished in his cross examination. As, when PW-3 was cross-examined, he reiterated that he issued the exhibit-X certificate on the basis of the verbal direction of the local villagers and according to the decision arrived at by the local villagers. Therefore, though the exhibit-Z is excluded from the consideration of this court; however, his verbal deposition regarding the meeting by the local villagers on 13-8-2017 got reiterated and confirmed in his cross-examination. Though he admitted that he did not see Nikumoni and Seema Begum residing as husband and wife; however, he came to know of the marriage from the said village meeting. It may be indicated that he was aware of the holding of the said meeting as he informed the villagers that due to NRC duty he would not be able to be present in the said meeting. Therefore, the deposition of PW-3 Sri Gunendar Kr. Nath appears to be entirely believable so far as holding of the said village meeting is concerned and his knowledge regarding marriage between Nikumoni and Seema is also found to be obtained from villagers who held the said meeting and as per their instruction he issued the exhibit-X certificate. Though he did not see the marriage himself; however, he issued the certificate at the instruction of the villagers who assembled in the meeting. Hence, the contents of the said exhibit-X certificate is found to be true.

11. PW-3 is not related to any of the parties and he has no any axe to grind against the second party herein. The second party as DW-1 herself stated that she has not filed any case against the village headmen Sri Gunendra Kr Nath and Md. Anowar Hussain (PW-2) of village Dandua and Rohdhala Boramara, respectively, though they have deposed against her. PW-3 being not a relative of any of the parties he has no interest in the outcome of the case. Therefore, his evidence is found to be above reproach.

12. Though PW-2 Md. Anowar Hussain also issued the exhibit-Y certificate regarding the marriage between Nikumoni and Seema Begum; however, we have found him to be an unreliable witness in view of the fact that he stated in his examination-in-chief that he saw the marriage between Seema and Nikumoni; however, while under cross-examination, he contradicted himself by stating that he

did not see the marriage. It has been further revealed by him that the date of the marriage indicated in exhibit-Y was obtained from a certificate issued by a Secretary of Boramara village. Therefore, in view of his discrepancy in preparation of the exhibit-Y certificate and contradictory statement in his examination in chief and cross-examination, we have found him to be an unreliable witness.

13. From the evidence of PW-1 and PW-3 this court is of the view that the statements given by the said two PWs were truthful and their depositions given in examination in chief could not be demolished in their cross-examination.

14. Against the backdrop of the said deposition of PW-1 and PW-2, the second party, as DW-1, only stated in her examination in chief that the first party has filed the present case in order to avoid payment of the maintenance amount in terms of MR Case No.109/2014 and according to her, the first party has lodged this false case against her. While under cross-examination, she admitted that she has not filed any case against the two village headmen i.e PW-2 and PW-3 for deposing against her. It has also been revealed by her that she has no enmity with the village headman Md. Anowar Hussain (PW-3). Though she denied in her cross-examination that because of her marriage with Sri Nikumoni Deka, he was ostracized by his own villagers for which he has to reside at a rented house at Sonarigaoni, however, we have found from the evidence of PW-3 that Nikumoni Deka was, in fact, ostracized by his co villagers because of the said marriage. Therefore, this denial by DW-1 is not believable and found to be false.

15. Further, though DW-1 has deposed in her examination-in-chief that she has been residing in her parents' house; however, we have noticed earlier that it was her own mother who filed a petition bearing No.7171/2017 dated 15-12-2017, wherein her mother stated that she has no contact with the second party who has left her house has and not maintained any contact with her daughter. Therefore, the statement by DW-1 that she has been residing at her parental house also appears to be false in view of the above petition filed by the mother of the second party herself. This court is not unaware of the fact that the said petition was neither exhibited nor tested by cross examination and therefore, strictly, not a piece of evidence. However, the same is referred to in order to further show that DW-1

cannot be relied upon. She failed to reliably rebut the evidence led by the first party.

16. Further, PW-1 in his cross examination stated that he did not divorce the second party. There is no statement to show that the second party has obtained talak from the first party. She, in fact, claims to be the wife of the first party by refuting the allegation of the first party. However, we have found the evidence of the first party to be more reliable. If she is has not obtained any divorce from the first party and the first party has not divorced her, therefore, by virtue of the marriage with Sri Nikumoni Deka she has, in effect, obtained divorce from her husband or she has been living in adultery. Based on the available evidence no conclusion could be arrived at to determine the said question. However, for the purpose of this proceeding, the fact of marriage by her with Sri Nikumoni Deka is proved beyond doubt.

17. From the aforesaid discussion, we have found that the second party has married Sri Nikumoni Deka on 22-1-2017 and therefore, the first party above named is no longer liable to provide maintenance to the second party with effect from 22-1-2017. Accordingly, the order dated 3-3-2016 passed in MR Case No.109/2014 is cancelled w.e.f. 22-1-2017.

18. For the aforesaid reasons and discussion the point for determination is answered in the affirmative.

19. This case is accordingly disposed of on contest. A copy of this final order be furnished to the first party free of cost.

20. This final order is signed, sealed and pronounced in open court on this 15th day of October, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

APPENDIX

(A) PROSECUTION EXHIBITS:

Ext.-X: Certificate issued by village headman Sri Gunendra Kr. Nath

Ext.-X(1): Signature of village headman Sri Gunendra Kr. Nath

Ext.-Y: Certificate issued by village headman Md. Anowar Hussain

Ext.-Y(1): Signature of village headman Md. Anowar Hussain

Ext.-Z: Photocopy of minutes of village meeting dated 13-8-2017

Ext.-Z(1): Signature of Sri Nikumoni Deka @ Rikumoni Deka

Ext.-Z(2): Signature of Sri Junti Deka

Ext.-Z(3): Signature of Sri Munindra Deka

Ext.-Z(4): Signature of Sri Mridul Rajkumar

(B) DEFENCE EXHIBITS:

None

(C) EXHIBITS PRODUCED BY WITNESSES:

None

(D) COURT EXHIBITS:

None

(E) PROSECUTION WITNESSES:

P.W.-1: Md. Ainul Hoque

P.W.-2: Md. Anowar Hussain

P.W.-3: Sri Gunendra Kr. Nath

(F) DEFENCE WITNESSES:

D.W.-1: Musstt. Seema Begum

(G) COURT WITNESSES:

None

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