

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM**

**M.R. CASE NO. 67/2017**

**Smti Budheswari Mahanta Bordoloi  
W/O- Sri Kanuram Bordoloi,  
Village- Rajagaon, Biharipatty  
P.S.- Morigaon,  
Dist- Morigaon, Assam**

**..... First party**

**Vs.**

**Sri Kanuram Bordoloi  
S/O- Late Tulsu Bordoloi  
Village- Nowkata  
P.S.- Morigaon,  
Dist- Morigaon , Assam**

**.....Second party**

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

For the first party: Mr. N.K. Bora, Mr. D. Bayan, Advocates

For the second party: Mr. P. Bora, Advocate

Application u/s 125 CrPC filed on: 10-7-2017

Written Statement filed on: 27-10-2017

Evidence recorded on: 25-1-2018, 25-5-2018, 7-3-2018, 15-10-2018,  
12-11-2018, 6-12-2018 and 13-5-2019

Argument heard on: 11-9-2019 & 25-9-2019

Judgment delivered on: 10-10-2019

**FINAL ORDER**

**1.** This final order goes to dispose of an application filed by the first party above named under section 125 CrPC seeking maintenance amount of Rs.10,000/- (Rupees ten thousand) per month, for her from the second party above named, who she claims to be her husband.

**2.** In the application, the first party has stated that the second party is her husband and both of them resides within the jurisdiction of Morigaon town. According to her, her marriage with the second party was solemnized around 30 years ago as per Hindu rites and custom. Since then she resided in the house of the second party, as his wife. Out of the wedlock a boy was born and he was named Sri Mukuta Bordoloi, who is major at present. After about one year of the marriage, Sri Mukuta Bordoloi was born. After his birth, the second party developed love affair with a girl named Smti. Malaya Bordoloi. When the first party came to know of the said affair, she objected to the same but the second party beat her and drove her away. When she was so driven away, she had to take shelter in the house of her maternal uncle along with her son. After about one year from the day the first party was driven out by the second party, he married Smti. Malaya Bordoloi and after some years again married the younger sister of Smti. Malaya Bordoloi. After the said events, when the first party prepared to file a case against the second party in court, the second party suggested that the first party should not come to the house of the second party and instead the first party should reside at a rented house at Morigaon town and he will provide monthly maintenance to the first party and her son. Accordingly, the first party along with her son started residing in a rented house at Morigaon town and the second party was providing them house rent as well monthly maintenance regularly. However, for one year prior to lodging of this case, the second party did not pay any rent or any monthly maintenance amount to the first party and her son. The second party promised the first party that he would give his landed property to the first party and her son, when he was confronted regarding non-payment of rent as well monthly maintenance. However, the second party did not keep his promise and did not give any maintenance, house rent or landed property to the first party for which the first party has been forced to file the present case. According to the first party, the second party is a rich man having more than 100 bighas of land and he earns Rs.50,000/-, per month, from cultivation. Therefore, she has prayed for the maintenance amount, as aforementioned.

**3.** On receipt of notice of the application, the second party appeared and contested the application by filing written statement. In his written statement the

second party denied all the statements made in the petition of the first party. According to him, the first party is not the wife of the second party and the first party is elder sister of the second party. It is further stated by him that the relationship between the first party and the second party are within prohibited degree. Therefore, no marriage can be solemnized between them. It is further stated that one late Senehi Bordoloi was the mother of the first party and the second wife of the father of the second party. As such, late Senehi Bordoloi was step mother of the second party. Late Senehi Bordoloi was married by late Kareng Mahanta. After the death of Kareng Mahanta late Senehi Bordoloi was married by late Tulsu Bordoloi, who is the father of the second party, after the death of his first wife. It is also stated by the second party that the first party was fathered by late Kareng Mahanta. After the marriage of her mother with the father of the second party, the first party used to live with her grandmother at Kumuraguri. According to the second party, at Kumuraguri, the first party became pregnant by some other person and subsequently, she bigoted a child. According to the second party, the first party never stayed in the house of the second party and there was no co-habitation between the first party and the second party. Rather, the second party always respected the first party as her elder sister. Therefore, she is not entitled to any maintenance from the second party. Hence, he has prayer for dismissal of the application filed by the first party.

**4.** In support of her application the first party has adduced written evidence on affidavit of 4 (four) witnesses namely first party herself as PW-1, Smti. Upeswari Konwar as PW-2, Sri Mukuta Bordoloi as PW-3 and Sri Haranath Patar as PW-4, respectively. They were cross examined and discharged.

**5.** The second party has also adduced written evidence on affidavit of his own as DW-1. He was also cross-examined and discharged.

**6.** I have heard the argument of Mr. Newton Kr. Bora, assisted by Mr. Debajit Bhuyan, learned counsels for the first party as well as the argument of Mr. Punaram Bora, learned counsel for the second party. I have perused the case record and considered the same. The following points for determination are formulated:

(a) Whether the first party is the legally married wife?

- (b) Whether the second party, in spite of having sufficient means, has refused or neglected to maintain the first party without sufficient cause?
- (c) Whether the first party has any income of her own?
- (d) Whether the first party is unable to maintain herself?
- (e) Whether the first party is entitled to any maintenance and if so, how much maintenance amount she is entitled to?

**Discussion, decisions and reasons therefor:**

**7. Point for determination No. 6(a):** The claim of the first party that she is the wife of the second party is denied by the second party. Therefore, it is necessary to determine as to whether the first party is the legally married wife of the second party. From the evidence adduced by the parties, the following facts are found to be admitted by both the parties:

- (a) The first party is the daughter of late Senehi Bordoloi and Late Kerang Mohanta.
- (b) Second party is the son of Late Tulsi Bordoloi and Late Mogori Bordoloi and
- (c) On the death of Late Mogori Bordoloi, Tulsi Bordoli married late Senehi Bordoloi. It is admitted by DW-1 Sri Kanuram Bordoli, who is the second party, that the marriage between Late Kerang Mahanta and late Senehi Bordoloi was solemnized when the second party was 5/6 years old. If that be so, the first party who is daughter of Late Kerang Mahanta and late Senehi Bordoloi cannot be older than the second party. Therefore, this admission by the DW-1 belies his statements made in the written statement and written evidence on affidavit that the first party is older than him.

**8.** The second party also married Malaya Bordoloi and her younger sister. The second party has four children from his second wife. In her written evidence on affidavit, the first party Smti. Buddheswari Bordoloi reiterated her statement made by her in her application. According to her, her marriage was solemnized with the second party as per Hindu social rites and her son was born out of the said wedlock.

This statement is denied by the second party. In the cross-examination of PW-1, it has been revealed that after the death of Tulsi Bordoloi. i.e. father of the second party, she demanded a portion of the property as his heir and in connection with the said demand, she raised the issue at a village settlement forum on two occasions. Though, the villagers wanted to give her property, the second party objected to the same. She demanded the said property as a daughter of her father. It has also been revealed in her cross-examination that after the death of Tulsi Bordoloi she resided at Kumuraguri for about 15 years in the house of her maternal uncle. This revelation, however, goes to support her contention in the application that she had to take shelter in the house of her maternal uncle when the second party drove her out along with her son. It is also revealed by the PW-1 that thereafter, one Smti. Dipti Mahanta took her to Nagaon wherein she resided for about 20 years and at present she has been staying at Morigaon Biharipatty for about 4/5 years and her son has been providing her maintenance as well as house rent. Her son is aged about 35 years. It has been reiterated by her in her cross-examination that her marriage with the second party Sri Kanuram Bordoloi was solemnized as per Hindu social rites in presence of Brahmin, who was a resident of village Kahibari and the said Brahmin died. This revelation, that too in her cross-examination, goes to support her contention given in her application as well as in her written evidence on affidavit that her marriage was solemnized with the second party.

**9.** Though it has been suggested by the defence that the son was an illegitimate son bigoted while the first party was residing at Kumuraguri, however, there has not been any attempt by the second party to conclusively prove that he is not the father of the son of the first party. Though, it has been argued by the defence that because of the marriage between the mother of the first party with father of the second party, the relationship between the first party and the second party was that of a sister and a brother, however, the revelation of the first party in her cross-examination that her marriage was solemnized with the second party corroborates her statement made in the application as well as in her written evidence on affidavit. It is pointed out by the learned counsel for the second party that no cohabitation is proved between second party and the first party, when,

admittedly, the first party herself stated that she resided for 15 years at Kumorguri and then for 20 years at Nagaon and therefore, the contention of the marriage itself was false. However, with all due respect to the contention so made, this court is of the view that though long cohabitation between the parties is not proved, however, her statement that the marriage was solemnized between her and the second party has been consistent and she raised the same in the application, in her written evidence on affidavit as well as in her cross-examination. The solemnization of the said marriage is also reiterated in the cross-examination by PW-2 Smti. Upeswari Konwar. Likewise, the solemnization of the said marriage is also reiterated by PW-4 Sri Haranath Patar in his cross-examination also, who stated to have seen the marriage between the first party and the second party, though he stated that as per the religion there cannot be any marriage between both the parties. This fact however, does not go to demolish the fact that a marriage, in fact, was solemnized between the first party and the second party. It may be indicated that in a proceeding under section 125 CrPC strict proof of the marriage is not necessary when the first party as PW-1 has repeatedly reiterated regarding the marriage and she was also supported by PW-2 and PW-4. Therefore, the said fact of marriage cannot be disbelieved. Hence, this point is determined in favour of the first party.

**10. Point for determination No. 6(b):** The first party as PW-1 has reiterated in her evidence the statements made by her in her application. Her son Sri Mukuta Bordoloi as PW-3 also reiterated the same in his evidence on affidavit. It was indicated in the application of the first party that she resided at a rented house at Morigaon town as per the suggestion of the second party and the second party was paying house rent as well as monthly maintenance regularly. However, it is also indicated in her statement that she started so residing in a rented house when she was driven out of the house of the second party and when second party married with Smti. Moloya Bordoli. This fact stated in the application, however, belied by her cross-examination. As we have already noted that her cross-examination revealed that she was residing at Kumoraguri for 15 years and thereafter at Nagaon for 20 years and started residing Morigaon only for 4/5 years. Therefore, her statement at para-7 of her application that she started residing at Morigaon when she was driven out of the matrimonial house cannot be relied. Further, according to her own

statement, for one year prior to filing of the case the second party stopped paying rent as well as maintenance amount to the first party and her son. According to her own statement, her son was aged about 35 years and a major and therefore there is no question that the second party would be paying any maintenance to the major son of the first party. Therefore, so far as this portion of the evidence of the first party is concerned, the same cannot be believed. Further, it has also been revealed by her in her cross-examination that it was her son who has been providing her maintenance as well as rent. If that be so, her statement that it was the second party, who was paying her rent and maintenance, was false. However, the question is whether partial falsehood in the deposition of PW-1 also renders her other parts of the deposition as unbelievable. In view of this court, this partial falsehood on the part of the first party does not render as unbelievable her statement that her marriage was solemnized with the second party and the fact that the second party is the father of her son.

**11.** Now the question is whether the second party has sufficient means to provide for the first party. Though, the first party stated that the second party has more than 100 bighas of land and earns Rs.50,000/- per month. However, except the bare statement, no other proof has been adduced to show such income or to show that the second party is owner of 100 bighas of land. According to the second party himself, as stated by him in his evidence as DW-1, he works as a day labourer and earns Rs.6000/- per month. However, he has also stated in his evidence that he married Moloya Bordoloi as well her sister as per suggestion of Moloya Bordoloi as she could not conceive any child. When the second party was capable of solemnizing marriage on three occasions, initially with the first party, then Maloya Bordoloi and subsequently her sister, fathered four children, therefore, it is certain that he is a person having sufficient means. When he was capable of solemnizing three marriages and also capable of fathering five children, in total, therefore, he is found to be capable of also providing maintenance to the first party. Further, though he stated in his written evidence on affidavit that the first party is his elder sister, however, he contradicted himself in his cross-examination when he stated that marriage between parents of the first party was solemnized when he was 5/6 years old. It has also been revealed by him in his cross-examination that he has not

been paying any maintenance to the first party since the day when this case was lodged. Revelation by PW-1 in her cross-examination that she is being maintained by her son also goes to show that the second party has not been paying any maintenance to the first party. Therefore, this point for determination is answered in favour of the first party.

**12. Points for determination no. 6(c) and 6(d):** The first party has reiterated the fact that she has no source of income of her own and it has also been revealed in her cross-examination that she is being maintained by her son. There is also no statement by the second party that the first party has any income source of her own. Therefore, she is unable to maintain herself. The primary duty to maintain the wife falls on the husband as long as he is able to earn.

**13.** The provisions of Chapter IX of CrPC is a measure of social justice. The provisions are to be liberally construed as the primary object is to give social justice to women and children and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves. These provisions provide a speedy remedy to those who are in distress. These sections give effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves.

**14.** A person 'having sufficient means' does not signify only visible means such as real property or definite employment. If a man is healthy and able-bodied he must be held to possess the means to support his wife, children and parents. The second party is a healthy man with capacity of earning. He does not suffer from any disability rendering him incapable of earning a livelihood and providing for his family.

Hence, these two points are determined in favour of the first party.

**15. Point for determination no. 6(e):** The first party has been able to prove that she is the legally married wife of the second party and the 2<sup>nd</sup> party, in spite of having sufficient means, refused or neglected to maintain her, that she has no source of income of her own, that she is unable to maintain herself and her daughter and that she is entitled to maintenance from her husband for herself. Now the only question is how much maintenance the first party is entitled to?



**16.** We have already found that the first party did not submit any documentary proof showing ownership of the landed property of the second party. Though the first party has not indicated anything showing the exact earning of the second party, it can be stated that the second party earns enough in order to provide for his own family in view of his own statement that he earns Rs.6000/- per month. Even a day labourer is also duty bound to maintain his wife.

**17.** The present living standard of the second party was not also indicated in her evidence. The second party being an able bodied man he is capable enough to pay separate maintenance to his wife. In my view, a maintenance amount of Rs.1,500/- (Rupees one thousand five hundred) per month, for the first party would meet the ends of justice.

In view of the above, this point for determination is answered in favour of the first party to the extent indicated above.

**18.** The second party is directed to pay an amount of Rs.1500/- (Rupees one thousand two hundred), per month, to the first party, as maintenance, with effect from the date of this order.

**19.** This case is accordingly disposed of on contest. Furnish a free copy of this final order to the first party.

**20.** This final order is signed, sealed and pronounced in open court on this 10<sup>th</sup> day of October, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

## **APPENDIX**

**(A) PROSECUTION EXHIBITS:**

None

**(B) DEFENCE EXHIBITS:**

None

**(C) EXHIBITS PRODUCED BY WITNESSES:**

Ext.-1: Voter photo identity card of Smti. Bhudeswari Bordoloi

Ext.-2: Voter photo identity card of Sri Mukuta Bordoloi

Ext.-3: PAN Card of Sri Mukuta Bordoloi

**(D) COURT EXHIBITS:**

None

**(E) PROSECUTION WITNESSES:**

P.W.-1: Smti Budheswari Mahanta Mordoloi

P.W.-2: Smti. Upeswari Konwar

P.W.-3: Sri Mukuta Bordoloi

P.W.-4: Sri Haranath Patar

**(F) DEFENCE WITNESSES:**

D.W.-1: Sri Kanuram Bordoloi

**(G) COURT WITNESSES:**

None

Chief Judicial Magistrate, Morigaon