

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE**

**::::UDALGURI**

**Present : Smti. N. Talukdar,  
Addl. Sessions Judge,  
Udalguri.**

**Crl. Revision No. 09/2018**

**Sangita Boro.....Petitioner/First party.**

**-Vs-**

**Ramen Deka.....Opposite Party/Second party**

For the Petitioner : Mr. Tarun Ch. Boro, learned Advocate.

For the Opposite Party : Mr. L. Saharia, learned Advocate.

Date of Argument : 25-07-2019.

Date of Judgment : 07-08-2019.

**J U D G M E N T**

1. This revision is preferred by the petitioner against the Judgment and Order dated 06-10-18, passed by learned Addl. Chief Judicial Magistrate, Udalguri, in MR Case No. 02/16 rejecting the petition filed by the petitioner under Section 125 Cr.P.C.
2. The petitioner's case in brief is that on 09-12-11, a marriage agreement being registration no. 12444 was executed between the petitioner/first party and opposite party/second party before the notary public at Mangaldai. After execution of the marriage agreement both parties solemnized their marriage socially and thereafter they started living as husband and wife. After a few days of marriage the opposite party/second party with the aid of his family members started to

torture petitioner/first party physically and mentally and drove her away from her matrimonial home. Then the petitioner/first party took shelter in her parental home. While the petitioner/first party was taking shelter in her parental home on several occasions the opposite party/second party went there and co-habitat with the petitioner/first party. According to the petitioner/first party she has no source of income and dependent upon the income of her mother. The opposite party/second party is a BSF Jawan and his monthly income is Rs. 37,000/-(thirty seven thousand) only. Since the date the petitioner was driven out from her matrimonial home, the opposite party/second party has not paid maintenance to her.

3. The opposite party/second party has filed written statement denying the case of the petitioner. The opposite party/second party had denied that the petitioner/first party is his legally married wife. According to opposite party/second party after execution of marriage agreement he came to know about the love affairs of the petitioner/first party with one Jagat Deka. She continued her relationship with that Jagat Deka despite the objection raised by the opposite party/second party. In the month of June, 2014, the petitioner/first party left her home with Jagat Deka and lived with him for more than ten days as husband and wife in several places including Hajo. On 25-06-14, the family members of Jagat Deka detained the petitioner/first party and Jagat Deka near Saraighat Bridge and brought them back to the village of Jagat Deka. On the same day a village meeting was held in the house of Jagat Deka where the family members of Jagat Deka refused to keep the petitioner/first party in their home. The petitioner/first party also expressed her reluctance to stay there and accordingly her family members brought her back to her parental home. According to the opposite party/second party the petitioner/first party has filed the instant case in order to harass him. Hence, he has prayed for dismissing the case of the petitioner.

4. Learned trial court by the impugned Judgment and Order date 06-10-18, arrived at a finding that petitioner has failed to establish marriage with the opposite party/second party and therefore she is not entitled to get maintenance under Section 125 Cr.P.C. Hence, the present revision petition filed by the petitioner/first party.
5. I have heard learned counsel for both the parties and carefully go through the evidence available on record.
6. Learned counsel Mr. Tarun Ch. Boro for the petitioner has argued that the marriage agreement executed between both the parties has been established by the petitioner by producing both oral and documentary evidence. The original marriage agreement has been exhibited as Ext.-1. The opposite party/second party has also not disputed execution of the marriage agreement between the parties. According to learned counsel for the petitioner/first party in the marriage agreement it has been specifically stated that immediately after execution of the marriage agreement both parties would start their conjugal life. After execution of marriage agreement both parties have solemnized marriage socially and thereafter the petitioner/first party went to her matrimonial home where she stayed for a brief period as she had been compelled to leave her matrimonial home due to torture upon her by the family members of her husband. Even after she left her matrimonial home the opposite party/second party used to cohabit with her in her parental home.
7. Learned counsel for the petitioner/first party as submitted in the provision under Section 125 Cr.P.C. strict proof of marriage is not necessary.

8. On the other hand learned counsel Mr. L. Saharia for the opposite party/second party has submitted that there is no dispute in execution of marriage agreement between the parties but no social marriage was solemnized as the petitioner/first party had love affair with someone else with whom she had eloped later on. The opposite party/second party has examined members of Chaturbhuj primary branch of Sankari Sangh and the neighbours of the petitioner/first party. They had adduced evidence negating the factum of sexual marriage between the parties and that they had cohabit as husband and wife.
9. In the instant case the petitioner/first party has examined four witnesses whereas opposite party/second party has examined seven witnesses in support of his contention.
10. The petitioner/first party has examined herself as PW1. She has deposed that after execution of marriage agreement before the Notary at Mangaldai the opposite party/second party had solemnized social marriage with her in her mother's house. After marriage they stayed two/three days together as husband and wife at her mother's house. Thereafter opposite party/second party went to undergo BSF training. After nine months he came back from his training and pick the petitioner to his house where she lived with his family for one week. During this period of one week the parents of the opposite party/second party tortured her physically and mentally. Therefore, she came back to her parental home with the consent of her husband/opposite party. From 2012-2015, the opposite party/second party used to visit regularly her parental home to meet her. He used to cohabit with her in her mother's house. During these period once she had become pregnant but at the instance of opposite party/second party she terminated her pregnancy. According to petitioner/first party after April, 2016, the opposite party/second party stopped all the ties with her. In cross-examination, PW1 had revealed that her social

marriage was solemnized as per "Sankari Pratha". There was no "Namacharya" to lead the marriage. "Namacharya" is called as "Parichalak" of marriage.

11. The brother of the petitioner has been examined as PW2. The evidence of PW2 is to the effect that after solemnization of marriage petitioner went to the house of the opposite party/second party and live her conjugal life with him. After one year she was subjected to torture in her matrimonial home and as a result she was forced to left for her parental home.
12. PW3, Sri Bipul Boro has also deposed that after execution of agreement of marriage both parties have solemnized socially marriage as per "Sankari Pratha".
13. PW4, Dayaram Boro has also testified to the effect that both parties have solemnized social marriage where he was present.
14. The opposite party/second party has examined himself as DW1 and testified denying solemnization of marriage with the petitioner. The opposite party/second party has examined DW2 Thaneswar Deka, DW3 Harendra Ch. Rabha and DW4 Lohit Baishya, who are the members of Chatarbhuji Primary Branch of Sangh. They had deposed that they are the followers of Sankari Pratha. DW2 was not aware of the facts that both parties had entered into any social marriage. DW3 had deposed that if any social marriage conducted by their Sangh they furnish one receipt to the parties. DW4 had deposed that there was a "Parichalak" to conduct the marriage under Sankari Pratha. According to DW4 the marriage of the petitioner was not solemnized from the primary branch of their sangh. The brother of the petitioner PW2 has admitted in cross-examination that they follow Sankari Pratha under Sankar Sangh. Their primary branch was Satur Bhuj. Thaneswar Deka, Harendra Ch.

Rabha and Lohit Baishya are the members of Chaturbhuj Sangh. Hence, there is no dispute that DW2, DW3, and DW4 are the members of Chatarbhuj Primary Branch of Sangh.

15. Learned counsel for the petitioner has argued that strict proof of marriage is not necessary under Section 125 Cr.P.C. After execution of the marriage agreement both parties started to live together as husband and wife. Hence, the petitioner is entitled to get the maintenance. In this regard learned counsel for the petitioner/first party has relied on the decision reported in **2017 (5) GLJ 649, Smti. Sabita Deka Vs. Babul Deka and 2005 SCC (Cri) 787 Savitaben Somabhai Bhatiya Vs. State of Gujarat and others.**
  
16. Though in a case under Section 125 Cr.P.C. strict proof of marriage is not required and in the instant case petitioner/first party has examined two independent witnesses who as per their evidence, were present at the time of marriage between the parties but the opposite party/second party has examined the members of Chatarbhuj Primary Branch of Sankari Sangh who had deposed denying the claim of the petitioner that a marriage was solemnized with the opposite party/second party as per rites and rituals of Sankari Pratha. What has been transpired from the evidence of DW3 Harendra Ch. Rabha that if any social marriage was conducted by the Sankari Sangh one receipt is furnished to the parties. In the instant case though the petitioner claimed that their marriage was solemnized as per Sankari Pratha but she has failed to furnish any receipt of solemnization of marriage issued by Sankari Sangh. She has also failed to examine the Parichalak who conducted the marriage. Per contra the opposite party/second party has produced sufficient evidence that no social marriage was performed between the parties as per Sankari Pratha and as such the opposite party/second party has successfully averted the claim of the petitioner that after execution of marriage agreement social marriage was performed.

Apparently a marriage agreement is not a proof of solemnization of marriage. In the instant case the onus of proof which has been shifted to the opposite party/second party is successfully discharged by the opposite party by producing sufficient evidence to establish that no social marriage was solemnized between both parties.

17. In this case the petitioner herself claimed that after execution of the marriage agreement her marriage was performed socially. Hence, she is under obligation to prove the claim of social marriage which she has miserably failed. Hence, the decision reported in **2017 (5) GLJ 649, Smti. Sabita Deka Vs. Babul Deka and 2005 SCC (Cri) 787 Savitaben Somabhai Bhatiya Vs. State of Gujarat and others** is not applicable in the present case.
  
18. Learned counsel for the petitioner relying on the decision reported in **(2011) 1 SCC 141, Chanmuniya Vs. Virendra Kumar Singh Kushwaha and Another** submitted that the opposite party has cohabitate with the petitioner for a long period and in such a case in absence of proof of a valid marriage the petitioner shall be considered as wife of the opposite party. As the term wife includes a woman who cohabitate with a man living together as husband and wife for a reasonably long period of time and in such a case strict proof of marriage should not be a precondition for maintenance under Section 125 Cr.P.C. In this regard he has further relied on the decision reported in **(2011) 12 SCC 189 Pyla Mutyalamma @ Satyavathi Vs. Pyla Suri Demudu and Another.**
  
19. The instant case according to PW1 immediately after the marriage she and the opposite party stayed as husband and wife for two/three days at her mother's house. Thereafter, the opposite party/second party went to join BSF training. After nine months he came back and took her to his house where she stayed for a brief period of one week.

Contradicting her statement PW2 her brother had deposed that after marriage she went to the house of the opposite party and lived her conjugal life with him. After one year due to continued torture upon her she was forced to leave her matrimonial home. According to PW3 and PW4 after marriage petitioner stayed in the house of the opposite party/second party for one week and thereafter left for her parental home. PW3 had further deposed that after one year of their marriage opposite party had stopped visiting the petitioner/first party and willingly deserted her. Similarly PW4 had also deposed that after few months of bringing her back to her mother's home from his house the opposite party/second party had stopped visiting the house of the petitioner and started to neglect her. Thus, the evidence of PW3 and PW4 is contradictory to the evidence of PW1 that from 2012 to 2015 the opposite party/second party regularly visited in her mother's house. On the other hand DW6 the Gaonbura of village of the opposite party/second party had testified to the effect that both parties never cohabit as husband and wife. The opposite party/second party had also examined DW7, Sri Dhiren Deka, who had deposed that about four years back the petitioner/first party eloped with his son Jagat Deka.

20. The evidence adduced by the petitioner are inconsistent and contradictory on material points and from such evidence it cannot be conclusively decided that the petitioner/first party and opposite party/second party lived together as husband and wife for a reasonably long period of time and the society has recognized their relationship as husband and wife. Learned counsel for the petitioner/first party has argued that even if the petitioner had eloped with one Jagat Deka same cannot be ground to disentitle her from maintenance under Section 125 Cr.P.C. as on the ground of adultery she cannot be refused from getting maintenance from her husband. In this regard he has relied on the decision reported in **2017 6 GLJ 724, Ranjan Kumar Pathak Vs. Smti.Jayantipriya Pathak**. What has been transpired

from the impugned judgment and order is that the learned trial court rejected the petition for maintenance filed by the petitioner not on the ground of adultery committed by her but on the ground that the petitioner has failed to prove her marriage with the opposite party/second party and that she cohabitated with the opposite party/second party for a long period of time as husband and wife to the recognition of the society. Therefore, I find no merit in the contention of the learned counsel for the petitioner. In view of above discussion it appears that petitioner has failed to prove that she is legally married wife of the opposite party/second party and that they lived together as husband and wife for a long period. Hence, I found no infirmity, illegality or irregularity committed by the learned trial court. Learned trial court has correctly analyzed the evidence on record and come to just conclusion of the case. Hence, the impugned judgment and order of the learned trial court needs no interference.

21. In the result the revision petition is dismissed on contest.
22. Send back the Original Case record being MR Case No. 02/16 to learned Chief Judicial Magistrate, Udalguri, along with a copy of this Judgment.
23. Given under my hand and seal of this court on this 07<sup>th</sup> day of August 2019, in the open Court.

**Dictated and Corrected**

**(N.Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri**

**(N.Talukdar)**  
**Addl. Sessions Judge**  
**Udalguri**