

*Criminal Revision Case No. 22/18*

**IN THE COURT OF SESSIONS JUDGE, BAKSA:.....:AT MUSHALPUR**

Present: Mr. A. Rahman, L.L.M, A.J.S,  
Sessions Judge, Baksa

**CRIMINAL REVISION NO. 22/18**

Niha Ramchiary ..... Petitioner/First Party

-versus-

Pramod Khaklary ..... Respondent/Second Party

**Appearance:**

For the Revision-petitioner : Mr. T. Sarma, Ld. Advocate

For the Opposite Party : Mr. P. K, Sarma, Ld. Advocate

Date of hearing : 11.01.2021.

Date of judgment : 22.01.2021.

**JUDGMENT**

1. Mr. Tridip Sarma learned Advocate for the revision petitioner as well as Mr. P. K. Sarma learned Advocate for the respondent were already heard on the preceding date.

2. This criminal revision petition u/s 397/399 of Cr.PC was filed by petitioner/first party challenging the judgment and order dated 26.07.2018 passed by learned Chief Judicial Magistrate, Baksa in M.R Case No. 67/2018 u/s 125 Cr.PC whereby and whereunder the prayer of the petitioner for maintenance from second party was rejected. The said M.R Case No. 67/2018 u/s 125 Cr.PC

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was filed by first party against the second party claiming maintenance of Rs. 10,000/-(ten thousand) per month.

3. The case of the petitioner/first party in brief is that her marriage with the second party was solemnized as per Hindu rites few years back following their love affairs. Thereafter, she started residing at the house of second party as husband and wife. She also carried cash amount of Rs. 50,000/- (fifty thousand) and other articles to his house at the time of marriage. After one year of their marriage, her husband/second party started demanding her to bring Rs. 8,000/- (eight thousand) from her parental home. As she failed to fulfill his demand, he involved in quarrel with her. He also subjected her to physical and mental torture on trifling issues. Under this circumstance, she called upon bichar in the society but she got nothing. Under the above circumstance, being compelled, she left her matrimonial home and took shelter at her parental home. The second party has not taken care of her nor paid any maintenance, although his monthly income is Rs. 25,000/- (twenty five thousand) from his business and agricultural produce.

4. The second party appeared and filed written objection denying all the claims and contentions raised by the petitioner/first party. He has categorically denied any love affairs with her and also solemnization of any marriage with her. He has specifically pleaded that the first party/petitioner was never his wife. According to him, due to cross connection of mobile phone, he came into contact with the petitioner. Taking this advantage, she used to call him over telephone causing irritation to him. Therefore, he did not receive her telephone call for which she came to her relatives of his village. Thereafter, she filed this false case. He has prayed for dismissing the case of the petitioner.

5. During the course of hearing, both sides adduced evidence in support of their respective cases. Upon hearing arguments advanced by learned counsel of both sides and appreciating the evidence, learned Chief Judicial Magistrate passed the impugned judgment and order.

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6. I have carefully gone through the records of MR Case No. 67/18, the evidence recorded by learned trial court and also the impugned judgment and order. From the perusal of the impugned judgment and order, it is found that the learned Chief Judicial Magistrate rejected the maintenance prayer of the first party/revision petitioner mainly on the ground that she is not the wife of the second party.

7. Mr. T. Sarma learned counsel appearing for the revision petitioner contended that in a proceeding u/s 125 Cr.PC, strict proof of marriage is not necessary. The court is also not required to ascertain the legality and validity of the marriage. Learned counsel further submitted that from the evidence of the petitioner and the other witnesses, it is established that she was living as wife in the house of the second party. Only under compelling circumstance, she had to leave the matrimonial home. Therefore, learned Chief Judicial Magistrate has committed wrong in holding that the petitioner is not the wife of the second party.

8. On the other hand, countering the above submission, learned counsel for the respondent/second party stridently argued that the evidence of the petitioner is self contradictory as regards the performance of her marriage with the petitioner. There is absolutely no evidence to hold that she was living with the second party as husband and wife at his house. Therefore, learned counsel has submitted that learned Chief Judicial Magistrate, rightly rejected the prayer of the petitioner/first party. Otherwise any woman without having any marital relation or co-habitation may claim maintenance from any stranger.

9. Having considered above rival submission, this court although cannot re-appreciate the evidence in exercise of revisional jurisdiction, yet proposes to go through the relevant evidence to see as to whether there was any husband-wife relation or performance of marriage between the parties.

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10. PW-1 Niha Ramchiary being the petitioner deposed that she used to visit the house of the second party prior to her marriage. About two years back, her marriage with the second party was solemnized at his house in presence of family members of both sides. She was leading conjugal life at his house for one year but as he demanded money from her, she returned home. However, during her cross-examination, she has stated that she does not know the day, date, month and year of her marriage with second party. Although, she stated that Pramod Khaklary (second party) put vermilion on her in presence of villagers. She also replied that she does not know the names of her matrimonial uncle and aunt of Goalpara.

11. PW-2 Sumitra Das is the elder sister of PW-1. She stated that Pramod (second party) put vermilion on his sister PW-1. She was leading conjugal life for two years. In her cross-examination, she has clearly stated that on the day of marriage between PW-1 and Pramod, she did not talk with his family members. She has also stated that her matrimonial aunt Anima Boro does not reside at Goalpara and she is a resident of Rangia.

12. The evidence of PW-2 is prima facie not believable because it is absurd that she would not talk to any family members of the second party on the day of marriage.

13. The evidence of PW-3 Kartik Khaklary shows that on the day of marriage of PW-1 with second party Pramod Khaklary, only PW-1 was present but other family members were absent. Therefore, his statement also contradicts the statement of PW-1 that her marriage was solemnized in presence of the family members of both sides.

14. DW-1 Pramod Khaklary is the second party of this case. He has categorically stated that due to cross connection of mobile phone, he came in contact with the petitioner (PW-1). After the incident, she used to call him but he tried to avoid, once she came to his house. On his request, she left his house

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and thereafter filed the case. During his cross-examination, he stoutly denied the suggestion that he married the petitioner and was leading conjugal life with her for a few days.

15. Now, upon critical analysis and appreciation of the evidence of the witnesses, it is found that PW-1 and DW-1 came to know each other over telephone. DW-1 admitted that she visited his house after they had come to know each other over telephone. But mere visiting his house, even more than once or several times by PW-1 does not prove that they got married with each other or they were living together for which the society treated them as husband and wife.

16. PW-1 has failed to prove her marriage or any ceremonial performance of her marriage with DW-1. It is of course well settled law that in a proceeding u/s 125 Cr.PC, strict proof of marriage or validity of marriage is not required to be determined by the court. Our ***Hon'ble Gauhati High Court*** in the case of ***Tarun Das vs. Purnima Bora Das (2020) 2 GLR 110 and Debashish Das vs. Bharati Dey Das (2020) 1 GLR 708*** has held that ***Section 125 of Cr.PC proceeds on de facto marriage and not de jure marriage***. Therefore, the validity of marriage will not be ground for refusal of maintenance if other requirement u/s 125 Cr.PC is satisfied.

17. In the instant case, not to speak about the validity or legality of marriage, even the factum of performance of any marriage between PW-1 and DW-1 has not been proved from the evidence on record.

18. Therefore, in the teeth of the above discussion, this court finds that the revision petitioner failed to prove that she was in any matrimonial relation with the second party. It appears that learned Chief Judicial Magistrate rightly passed the impugned judgment and order declining to grant maintenance to the petitioner/first party.

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19. There appears no ground to interfere with the impugned judgment and order. The revision petition being devoid of merit is dismissed. Return the records of M.R Case No. 67/18 along with a copy of this judgment to learned Chief Judicial Magistrate, Baksa for information.

20. Judgment is declared and delivered in an open Court under my hand and seal on this 22<sup>nd</sup> day of January, 2021.

Dictated and Corrected by :

Mr. A. Rahman,  
Sessions Judge,  
Baksa, Mushalpur