

**IN THE COURT OF ADDL.DISTRICT & SESSIONS JUDGE-I
AIZAWL JUDICIAL DISTRICT, AIZAWL**

Crl.Complt No. 10/2015
A/o Crl.Complaint No.102/2013.

State of Mizoram	:	Complainant
	Vrs	
Thuamzakunga	:	Appellant

BEFORE
Vanlalmawia
Addl.District & Sessions Judge-I
PRESENT

For the Appellant	:	Francis Vanlalzuala, Advocate
For the Respondent	:	J.C.Lalnunsanga, Advocate.
Date of hearing	:	18.11.2015
Date of Judgment	:	1.12.2015

ORDER

This Criminal Revision was filed by Thuamzakunga, Forester Champhai Forest Division, Champhai District, through his Ld. Counsel Francis Vanlalruata Advocate and other. The Respondent Lalremruata d/o L.Sangkunga, Republic Veng, Aizawl is represented by her counsel Mr. J.C Lalnunsanga Advocate. It was registered as Criminal Revision petition No. 10/2015, A/o Criminal Complainant No. 102/2013.

The Appellant Thuamzakunga is his memorandum of appeal submitted through his Counsel that:

1. The facts of the case in brief is that the respondent and the appellant married 24.05.1982. During the subsistence of their marriage a son Vanlalthuama was born out of the wedlock. The appellant had divorced the respondent on 26.06.1998. thereafter the respondent filed Criminal Complaint No. 102/2013 U/s 125 Cr.Pc and prayed the lower court to pay Rs. 5000/- pm for herself and to enhance the maintenance allowance of his minor son Vanlalthuama from Rs. 500/- to Rs. 5000/-. Thereafter, the Ld. Lower Court had issue judgment order on 11.12.2014 wherein the appellant was directed to pay the sum of Rs. 3000/- per month to her and Rs. 2000/- to her minor son until he attain the age of majority. So, as per the order of the Ld. Trial Magistrate the concerned authority deducted the sum of Rs. 3000/- + 2,000 = Rs. 5000/- per month since pronouncement of judgment till today.

2. It is submitted that the respondent had left the appellant on her own will without sufficient reason. The respondent used to leave the company of the appellant on many occasions without any reason. Therefore the respondent was left with no other options.

3. That the monthly salary of the appellant is around Rs. 20000/- and all members of his family being dependant on him, it is clearly not sufficient to meet the daily needs.

4. That the respondent left the Appellant without any sufficient reason as such the respondent cannot claim any maintenance from the Appellant.

5. That the Ld. Trial court in the judgment had quoted Section 125 (3) Cr. Pc " If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him". The Appellant had never contracted marriage with another woman nor keeps a mistress. There is no such evidence in support of the same.

6. That in the impugned judgment, the actual statement was not reflected and twisted the statement in order to support the side of the respondent. The Ld/ Trial Court had stated in the judgment that the Appellant had admitted that he had love-affairs with his present wife during his marriage with the complainant which was not in the evidence. The Appellant married his

present wife only after more than two years as the respondent refused to live with the appellant.

The Respondent Lalremruati argued and objected through her Counsel that:

1. That in reply to para no. 3, the answering Respondent would like to submit that the minor son of the complainant/Respondent has attained the age of majority and he no longer receives a sum Rs. 2000/- (Rupees two thousand only) for his monthly maintenance.

2. That in response to para 4, the answering Respondent strongly objects and denies the contentions put forth by the appellant. The Respondent did not leave the Appellant on her own will without sufficient reason as can be seen from the evidence on record. The Respondent witnesses Lianhmingthangi and Rebecca Lalhmingthangi also deposed that the Appellant used to cause physical assault and have love-affairs with others. Rebecca Lalhmingthangi also further deposed that she was present when the Appellant had returned some of the belongings of the Respondent to their ancestral home, which clearly indicates that the Appellant had divorced the Respondent. Moreover, the Appellant/Petitioner in his evidence had also admitted that he used to intoxicate himself with alcohol during his marriage with the Respondent. He also admitted that he had love-affairs with his present wife. The Respondent is legally entitled to receive maintenance allowance. Even the Appellant/Petitioner witness Vanlalkunga had also deposed in his evidence that "ka pa hian ka nu hi chawm ngei se chu ka ti".

3. That in response to para 5, the Respondent would like to submit that though the Appellant had contended that he looked after 17 members of his family, but his witness i.e Vanlalkunga had stated in his evidence that the appellant had looked after only 4 members of his family. Merely because the Appellant had remarried and looked after his family members, he could not be exempted from giving maintenance allowance to the Complainant/Respondent and his son, especially if he is directed by the Hon'ble Court. The law does not provide that a person can be exempted from giving maintenance allowance to

his ex-wife merely because he has re-married and is looking after his family members. The Appellant/ Petitioner is a regular Government employee working as Forester at Champhai Forest Division and he has sufficient means to give maintenance allowance to the Respondent. Section 125 Cr.PC specifically provides that " if any person having sufficient means neglects or refuses to maintain...". Had the Respondent and his son been given maintenance allowance by the Appellant/Petitioner, the Respondent would never have approached the Hon'ble Court for vindicating their grievances.

4. The answering Respondent would like to submit that the monthly salary of the Appellant is more than what he had mention in his petition. The Respondent need not pay the maintenance allowance of Rs. 2000/- (what had been granted by the trial Court in favour of the minor son for his maintenance) to his son as he had attained the age of majority. The total amount which he is liable to pay amounts to Rs. 3000/- only which is much less than one-third of the total salary of the Appellant. Moreover, the Respondent is of old age and has no source of income. Her son requires regular medical treatment and checkup, but he can no longer receive the maintenance allowance from the Appellant as he just barely attained the age of majority. As per May 2013, the LPC of the Appellant/ Petitioner shows that his monthly income is Rs. 36,4877/-.

5. That in response to para 7(c), the Respondent was divorced by the Appellant/Petitioner and she left the Respondent with sufficient reason. The Respondent witnesses Lianhmingthangi and Rebecca Lalhmingthangi also deposed that the Appellant used to cause physical assault and have love-affaires with others. Rebecca Lalhmingthangi also further deposed that she was present when the Appellant had returned some of the belongings of the Respondent to their ancestral home, which clearly indicates that the Appellant had divorced the Respondent. Moreover, the Appellant/Petitioner in his evidence had also admitted that he used to intoxicate himself with alcohol during his marriage with the Respondent. He also submitted that had love-affairs with his present wife. The Respondent is legally entitled to receive maintenance allowance. Even the Appellant/ Petitioner witness Vanlalkunga had also deposed in his evidence that " ka pa ka nu hi chawm ngei se chu ka ti" which clearly indicates that even

Appellant witness was aware of the living condition of the Respondent. Moreover, he stated in his evidence that he along with his family members were living together with the Appellant/ Petitioner and members of the families were being looked after by both of them, he owns 207 motor vehicle by which sometimes he earns Rs. 20000/- in a wee. The monthly salary along with the income earned by Vanlalkunga (two reside with the Appellant) clearly indicates that the financial condition of the family is stable and well enough to give maintenance allowance to the Respondent.

6. That in response to Para 7 (d), violent act is not necessary point for consideration regarding awarding maintenance allowance. As had been already mentioned above, the law merely cast duty on a person to give maintenance allowance if he has sufficient means and neglects or refuses to maintain. Presuming but not admitting if violent act is to be considered, the Respondent/Complainant Witnesses had stated in their evidence that the Respondent/ Complainant was physically assaulted by the Appellant/ Petitioner and he had love-affairs with others. Moreover, he himself had admitted in his evidence that he used to drink alcohol while he was married to the Respondent/Complainant. He further stated that 'Zu ka ruih chang hian nam zauh chang te chu a awm ve thin'.

7. That in response to para 7 (e) the Ld. Trial Court had fairly quoted Section 125 (3) Cr.Pc because the main contention put forth by the Appellant/Petitioner to exempt himself from giving maintenance allowance to the Respondent/ Complainant is "She left the Respondent without sufficient reason'. However, the Appellant/ Petitioner fails to proof it through evidence. He himself had admitted in his evidence that during his marriage with the Respondent/Complainant he had love affairs with his present wife. (Kan inneih laia zu ka in thin hian ngaihzawng ka nupui lo chu ka nei ngai lo).

8. The Appellant/Petitioner had sufficient means and he will not suffer any irreparable harm an injury, as the monthly maintenance allowance awarded by the Id. Trial Court i.e Rs. 3000/- only which is not even one-third of his monthly salary.

Both the Ld. Counsel one heard at length and also submitted written argument.

Mr Francis Vanlalzuala Advocate submitted that:

1. During the subsistence of marriage, the respondent left the appellant a number of times without a sufficient reason. Prior to this incidence, the respondent left the Appellant without sufficient reason and after 5 years separation, the appellant and the respondent re-married.

2. That the last time when she left the appellant, the appellant was not at home, the relatives of the appellant tried to prevent her, however, she still left.

3. That the respondent herself clearly stated before Your Honorable Court that she does not know as to whether the appellant had an illicit relationship with other women. The lower Court in the impugned judgment had stated that if the Husband kept another women as a mistress during the subsistence of marriage, it is a reasonable ground to leave the husband. Accordingly, the lower court feels that the respondent was entitled to maintenance.

While the respondent herself do not know as to whether, the appellant has any illicit relationship with other woman, how can the lower court treated the appellant as keeping a mistress.

4. That the respondent counsel raised that the appellant used to assault the respondent which might be a good ground for leaving the husband. In the evidence taken in the lower court, The respondent herself never mentioned that the appellant used to assault her.

The other witnesses who live in Aizawl stating that the Appellant used to Assault her is irrelevant as the respondent herself never stated such incidence.

5. That the Id. counsel for the respondent also stated that after three months of leaving the appellant by the respondent, the appellant married C.Neihkimi, the present wife of the appellant which is a lie.

6. The respondent left the appellant in the year 1977 and the appellant married again with C. Neihkimi on 18th February, 2002 only which is after lapse of 5 years (A copy of Marriage Certificate is annexed herewith).

7. That the respondent never claimed maintenance at the time of claiming for her son. Which shows clearly that the respondent without any reasonable cause and willfully left the respondent.

I therefore pray this honorable court to declare that the respondent willfully left the appellant without sufficient reason and set aside the impugned lower court judgment and order accordingly.

Mr J.C Lalnunsanga, Advocate Ld Counsel for respondent also submitted his written argument:

1. That the allegation that the Respondent left the Petitioner without any sufficient reason is entirely false. The petitioner had several illicit relationships and affairs with other women during his marriage with the Respondent. It is evident that the petitioner maintained such illicit relationships. The Complainant witness Lianhmingthangi had deposed that the Petitioner had affairs with other women, indulged in alcohol and even hit the Respondent on several occasions. On cross-examination, she vehemently denied the suggestion that the Respondent had left the Petitioner without any sufficient reason. She further stated that the Petitioner had returned the belongings of the Respondent to her ancestral home, and he then married another woman soon after. Complainant witness Rebecca Lalhmingthangi also stated that the Petitioner had affairs and committed violence upon the Respondent, and this was the reason why she left the Petitioner. On the other hand, the Petitioner's witness, Zamlova, even though he suggested that the Respondent had left the Petitioner without sufficient reason admitted in his cross-examination that during the relevant time,

he was living in Aizawl and he was not aware of the situation between the Petitioner and the Respondent.

2. That the petitioner was involved in illicit relationships and affairs with other women during his marriage with the Respondent. One month after the Respondent left the Petitioner, he immediately had a live-in relationship with another woman (not with his present wife). However, he also separated with the said woman and got married to his present wife. Furthermore, upon careful appreciation of the deposition and cross-examination of the Petitioner, it is seen that the Petitioner refers to the complainant as 'ka nupui hlui'. However, he admits in his cross examination that during his marriage with the Respondent, he did not have any affairs with any other woman except his present wife (ka nupui). This is not just a matter of interpretation, but is evidence that even during his marriage with the Respondent, he had stated maintaining a relationship with his present wife.

3. That the Respondent did not claim maintenance for herself immediately after their divorce but claimed it only for her son. This was due to the reason that during this time, the Respondent was fit and capable of working and maintaining herself at this time. She was able to fend for herself, earning income (however minimal), and hence, did not require maintenance for herself at during that time. However, due to various ailments and her age, she is no longer able to maintain herself. It is due to this reason that the Respondent initially claimed maintenance only for her son, but had claimed the same for herself at a later time. The Petitioner's witness, Vanlalkunga had even stated that the Respondent is unhealthy and is suffering from various ailments.

4. That as per the Judgement and order dated 11.12.2014, the Respondent was awarded a sum of Rs. 5000/- (Rs.3000/- to the Respondent and Rs. 2000/- to her son). As per the Pay Bill for the month of May, 2013, the Petitioner was earning a sum of Rs. 36,477/- out of this Rs. 5000/- which was being deducted towards maintenance of the Respondent and her son is only a meager sum. However, out of the said Rs. 5000/-, the Petitioner is no longer required to pay a sum of Rs. 2000/- as their son has reached the age of majority. This being said, Rs. 3000/- which is being deducted from the salary of the

Petitioner towards the maintenance of the Respondent alone is a very small amount as compared to his total income. Furthermore, considering the fact that the Respondent is still looking after their child, it is entirely fair and just that the meager sum of Rs. 3000/- be paid towards the maintenance of the Respondent, which she would eventually utilize for looking after their son.

5. That the reasons behind the Respondent leaving the Petitioner had been adequately adduced in the course of evidence during trial. The matter had been fairly and justly settled by the trial court. The lower court had also found it fit to award the meager sum of Rs. 5000/- towards the maintenance of the Respondent and her son. Moreover, the duty of the Petitioner as per section 125 is to maintain his wife if he has sufficient means, and there is no doubt that the Petitioner is able to maintain the Respondent. Furthermore, there is nothing which confirms the contention of the Petitioner that the Respondent left without any sufficient reason, and he has failed to prove the same, during trial and even in this instant Revision Petition. Therefore, in light of the circumstance and the facts and arguments which have been put forth hereinabove, it is abundantly clear that there is nothing which necessitates interference with the impugned judgment.

6. That it is humbly prayed that this court may find it just and reasonable to grant the meager sum of Rs. 3000/- towards the maintenance of the Respondent, and to also dismiss the revision petition filed by the Petitioner since the same is baseless and devoid of any merit.

On perusal of the case record of Lower Court, the appellant seem to be hearing another girl who is now his present wife and this may be the main reason why the respondents refuse to return to the appellant. The appellant divorce the respondent on 26.06.1988.

The Counsel for appellant.

Mr.Francis Vanlalzuala stated in his memorandum of appeal that the appellant married his present wife only after more than two years as the despondence refused to live with the applicant the appellant seems to have living

at Khawdungsei Village without the respondent, and will have a lot of chance to keep mistress secretly, without the knowledge of Respondent. So, the respondent will have sufficient reason to refuse to live with the appellant. Besides that the appellant is having sufficient means, as being Govt. Servant of Forester and other income from his 207 Vehicles, whereas the Respondent is daily bread earner by selling Vegetable and her health condition is also bad.

With these observations, the judgment of Trial Court is upheld but the maintenance allowance to minor son shall be stopped as the attained majority.

The appeal revision is disposed.

Case record of Lower Court be returned.

Give copy of this order to all concerned.

Sd/- VANLALMAWIA
Addl.District & Sessions Judge
Aizawl Judicial District,Aizawl

Memo No _____/ADJ-I(A)/2015 : Dated Aizawl the, 1.12.2015

Copy to :-

1. District & Sessions Judge, Aizawl
2. Shri Lalramsanga, Judicial Magistrate, with case record of CrI.Complt No.102/2013 U/S 125Cr.P.C
3. Thuamzakunga C/o Francis Vanlalzuala Advocate.
4. Lalremruati C/o J.C.Lalnunsanga Advocate.
5. Judicial Section
6. Case record.
7. Guard file.

PESHKAR