

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS
AIZAWL DISTRICT :: AIZAWL**

CrlCompl .No.154/2014
U/S 125 Cr PC

Smt. SaihminglianiSailo
D/o LaltluangaSailo
R/o.Mualpui, Aizawl District

..... *Petitioner*

-Vs-

Shri.Lalsangzuala
S/o Vanlalkulha
R/o. MualpuiAizawl District

..... *Respondent*

PRESENT:

T.Lalhmachhuana, MJS
Judicial Magistrate First Class-1
AizawlDistrict :: Aizawl

For the Petitioner	:	Mr. T. Lalnunsiam, Advocate
For the Respondent	:	Mr. HranghmingthangaRalte, Advocate
Date of hearing	:	11.10.2017
Date of Judgment & Order	:	10.11.2017

J U D G E M E N T & O R D E R

Dated 10thNovember,2017

1. This is an application filed by Smt. SaihminglianiSailo, Ex-wife of Lalsangzuala, mualpuiAizawlDistrict for monthly maintenance of herself from the Monthly Salary of her Ex-husband ShriLalsangzuala S/o Vanlalkulha (L) who is presently working as Constable, 3rd BN MAP MualpuiAizawl. The petitioner claimed that the parties were married on 17th November 2009 and their marriage was solemnized by Rev. H. Lengluta (BCM) at Mualpui Police Kohhran Hall and their marriage was registered by the Church which bearRgn. No 02/2009. Since then they were living together as husband and wife but having no issues between them.
2. The petitioner further claimed that the parties were separated in the month of February,2014 by way of "MAK" under the Mizo Customary law and practices and

now she is living with her natural parents who has no skills for working as such she is living in hardships but the respondent had never provided maintenance to her. Therefore, the complainant prays :-

(1) To pass an order U/S 125 of Cr PC, 1973 for maintenance of herself from the Respondent @ Rs 6000/- per month.

(2) To pass any further order in favourof the complainant for the ends of Justice.

3. The respondent, in his Written Objection admitted that both the parties were married in the month of November, 2009 and further admitted that the parties have no issues during their marriage. However, since their marriage there has been a conflict and misunderstanding between them due to the bad behavior of the complainant, and they were living separately by mutual consent since February, 2014. Then the complainant insisted the said divorce should be by way of "MAK" under the Mizo Customary Law. Then the respondent with much hesitations declared that he had divorced the complainant by way of 'Mak' as per the wishes of the complainant. In fact the complainant left the respondent on her free will. The respondent reiterates that it was the complainant who did not want to look after the respondent in a way a good wife ought to have looked after her husband.
4. In order to established her case the petitioner examined four witnesses including herself and exhibited a number of documents like- Ext. C-1 as her complaint, Ext C-1(a) and C-1(b) as her signatures on it. Ext. C-2 as acknowledgment made by Asst Secretary of 3rd BN. MAP kohhran. Besides the petitioner herself as PW-1, her witnesses- Vanlalfeli as Pw-2, Thanzampuii Pw-3 and MrLalrinzuala as Pw-4. All the Pw's re- affirmed the pleadings of the petitioner in her plaint with other Exhibits and they were cross-examined by the Ld Counsel for the respondent where in the petitioner and all her witness had fairly admitted and deposed that the petitioner and the respondent were married on 17th November, 2009 and living separately in the month of February, 2014 by way of Mak in the Mizo customary Law and practices.
5. Whereas the respondent produced as many as two witnesses including himself as witness No.1 and Smt.Lalthangpuii as Dw-2, and both the respondent witnesses were cross-examined by Ld. Counsel for the petitioner wherein both the Dw's had fairly admitted that the respondent and the complainant were marriedand living as husband and wife but divorced in 2014 by way of Mak. The respondent also exhibited his Last Pay Certificate issued on 13th November, 2014 as Ext D-1, details of deduction as Ext D-2 and various medical certificates of the complainant as Ext D-3.

6. While considering the submission of both parties, let us look into the relevant section of law under section 125 of Criminal procedure Code 1973,-

125 : Order for maintenance of wives, children and parents. -(1) *If any person having sufficient means neglects or refuses to maintain-*

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether or not,

Unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married Daughter) who has attained majority, where such child is,

By reason of any physical or mental abnormality or injury

Unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

*a magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate [***], as such Magistrate think fit, and to pay the same to such person as the Magistrate may from time to time direct.*

7. In consideration of the prayer of both parties with the provision of Section 125 Cr. P.C, I have also taken reliance on the decision's of our **Hon'ble Gauhati High Court** in the case of **Bishnu Priya Sutradhar Vs Nipendra Sutradhar** reported in **2012(2) GLT 299-**

"12- The essence of Section 125 of Cr.P.C is to grant maintenance and not refusal of the same. The Court exercising jurisdiction under Section 125 of Cr.P.C. must keep in mind the very object of the provision and appreciate the facts and circumstances keeping in mind the legislative intents and purposes. It should appreciate the facts with broader possibility and should not reject the prayer of maintenance, as a matter 3like other Criminal cases, taking into consideration the technicalities. After marriage it is the duty of the husband to provide shelter and maintenance to the wife. If he neglects, the wife is legally entitled to have it from the Court by petition under this Section. It is true that the maintenance should be allowed keeping in mind the ability of the respondent i.e. his income, and other attending factors"

And also in the case of **Mofidul Islam Vs Morshida Begum** reported in **(2012) GLR 46-**

"10 – This Court is of the considered view that since the object of section 125 Cr.P.C is to prevent the vagrancy and destitution, it has a civil purpose to fulfil and in arriving at and finding in relation to an application there under the courts must look to the substances rather than to the form, must avoid strict technicalities of pleadings and proof and must make a realistic approach to the material available on record, so that purpose a foresaid is not frustrated"

8. In the present case, it is an admitted fact for both the parties that after living as husband and wife for about five years and having no children, the complainant and the respondent were living separately by way of Mak in the Mizo customary Law and practices due to un reconcilable mis understanding between them. Hence, on the basis of the above admitted facts for both the parties with relevant section of law under Criminal procedure Codes and Hon'ble Gauhati High Court direction as stated above, this Court is pleased to grant Monthly maintenance allowances to the petitioner Smt Saihmingliani Sailo D/o Laltluanga from the monthly Salary of her Ex-husband Shri. Lalsangzuala S/o Vanlalkulha who is presently working as Constable in the 3rd BN. MAP Mualpui Aizawl District.
9. With regards to the amount of maintenance allowance, the petitioner prayed for Rs 6000/- only per month while the respondent in his written Objection submitted that the complainant is a beautiful young and healthy lady who is able to look after herself. And further that he has earned only Rs 10196/- per month with a deduction of around Rs 6636/- he has earned only Rs 3560/- per month. However, the respondent and his witness admitted in their cross examination that the respondent is living alone but having one children to maintain from his first marriage and presently she is seven years old.
10. In consideration of both submissions, I have also gone through **Hon'ble Supreme Court decision** in the Case of **Jabir Kaur Seghal Vs District Judge, Dehradun and ors MANU/SC/0835/1997 : Air 1997 SC 3397**, wherein it has been observed that-

"maintenance being such that the wife could live in a reasonable comfort, considering her status and mode of life which she was used to while living with her husband.....a satisfactory approach would be divide the family resources cake in two portions to the husband since he has to incur extra expenses in the Course of making his earning, and one share each to other members"

The Hon'ble Supreme Court in the Case of **Dwarika Prasad Satpathy Vs Bidyut Prava Dixit and Ors in 2000 CRI.L.1** has laid down that –

" Provision Under Section 125 Cr.P.C is not to be utilized for defeating the rights conferred by the legislature to the destitute women, children or parents who are victims of Social Environment".

11. From the plain reading of the above Hon'ble Supreme Court and High Court decision it is cleared that there is no rigid or inflexible rule for determination of maintenance allowance but the wife could live in a reasonable comfort considering her status and mode of life which she was used to while living with her husband.

12. In accordance with law laid down by the Hon'ble Supreme Court and High Court in the above mentioned cases, this Court find it is reasonable to grant maintenance allowance at rate of Rs 4000/- only per month for the petitioner Smt. Saihmingliani from the month salary of her Ex-husband Shri. Lalsangzuala.

ORDER

13. In the result monthly maintenance allowance is granted u/s 125 (1) (a) of Cr.P.C for the petitioner Smt.Saihmingliani,D/o LaltluangaSailo of MualpuiAizawl District at the rate of Rs 4000/-(Rupees Four thousand) only per month from the monthly salary of the respondent Shri. Lalsangzuala S/oVanlalkulha presently working as Constable in the 3rdBn. MAP MualpuiAizawl District with effect from the Monthly Salary of November, 2017 until further Order, subject to future enhancement.
14. Further, Commandant, 3rd BN. MAP MualpuiAizawl District is kindly directed to make suitable arrangement for deduction of Monthly maintenance allowance and to deposit the same amount to the Bank account of Smt. Saihminglianiaccount No. 20222423946 of State Bank of India, Electric Veng Branch, Aizawl.
15. With this Order the instant CrICompl. C/No 154 of 2014 is disposed of.

(T.LALHMACHHUANA)

Judicial Magistrate First Class-1
AizawlDistrict, Aizawl.

Memo No._____ /JMFC-1(A)/2017: Dated Aizawl, the 10th November 2017

Copy to :-

- (1) SaihminglianiSailo D/o LaltluangaSailo, Mualpui, Aizawl through T.Lalnunsiam, Advocate.
- (2) Lalsangzuala S/o Vanlalkulha, R/o Mualpui, Aizawl through HranghmingthangaRalte, Advocate.
- (3) Commandant, 3rd Bn. M.A.P. for kind information and necessary action.
- (4) Registration Section.
- (5) Guard File
- (6) Case Record.

P E S H K A R

