

IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS
AIZAWL, MIZORAM

CRIMINAL COMPLAINT No. 55 of 2018
U/S 125 Cr.PC

Smt Rothangpuii : Complainants/Petitioners
W/o JL Chawngmunte
R/o Lamherh, Aizawl District
P/a Ramhlun North, Aizawl

Mary Lallawmkimi (Minor)
D/o JL Chawngmunte
R/o Lamherh, Aizawl District
P/a Ramhlun North, Aizawl

Versus

Shri JL Chawngmunte : Respondent
Headmaster
Gov't Hmunghak Middle School
Aizawl District

PRESENT
H. LALDUHSANGA
Judicial Magistrate First Class, Aizawl

Counsel for Petitioner : Shri Lalbiakdika Sailo, Legal Aid Counsel
Counsel for Respondent : Shri Raymond Lalbiakzama, Advocate

Complainants' witnesses

CW 1 : Smt Rothangpuii
CW 2 : Smt Mary Lallawmkimi
CW 3 : Smt C Lalthanzami
CW 4 : Shri Lalchhuana

Respondent's witness

RW 1 : Shri JL Chawngmunte

JUDGMENT & ORDER

Dt. 29.10.2018

1. This is a Criminal complaint No 55 of 2018 filed U/S 125 Cr.PC by Smt Rothangpuii W/o JL Chawngmunte R/o Lamherh, Aizawl District P/A Ramhlun North, Aizawl and Mary Lallawmkimi (Minor) D/o JL Chawngmunte R/o Lamherh, Aizawl District P/A Ramhlun North, Aizawl against Shri JL Chawngmunte, Headmaster, Gov't Hmunghak Middle School, Aizawl District on 02.03.2018 claiming for maintenance @ Rs 15,000/- (Rs 7,500/- each) for the maintenance of the complainants and ad the interim measure Rs 6,000/- per month each (Total Rs 12,000/-) during the pendency and final disposal of the instant case.

2. The Complainant No 1 submitted *inter alia* the Complainant No 1 and the Respondent were married on 06.01.1996 as per the Mizo customs and traditions and their marriage vow was renewed on 25th December, 2008 at Lamherh Presbyterian Church according to the Christian rites and ceremonies. They have been married for 21 years and blessed with three children namely Andy C. Lalramchhana (20 years), C. Lalthanzami (18 years) and Mary Lallawmkimi (17 years). Andy C Lalramchhana is presently studying B.E. at Hyderabad, C. Lalthanzami is studying B.A and the youngest Mary Lallawmkimi is studying Class XII. The Complainant No. 2 is the youngest child of the Complainant No. 1 and the Respondent. Since the Complainant No 2 is a minor, her mother Smt C. Rothangpuii represented her. The complainants are unemployed and have no earning while the Respondent is a teacher currently posted as a Headmaster, Gov't Hmunngghak Middle School, Hmunngghak, Aizawl District. As per the last Pay Certificate dated 15.12.2016, the Respondent's monthly salary is Rs 65,943/- and after deductions, the Net amount received is Rs 37,654/-. The Complainant No 1 further submitted that due to their children education, the Respondent had made her and their children stayed in Aizawl in a rented house from the year 2011 while the Respondent was posted at a village. The Respondent always visited them whenever he had time. He even put all his Bank Pass Book and Cheques at her custody and so she could maintain the family. On 20th August, 2016, the Respondent gave them Rs 13,000/- for their maintenance and took back his Bank Pass Book and Cheques from her and started neglecting them. In September, 2016 and October 25, 2016, the Respondent gave her Rs 10,000/- each for their maintenance. On 30th December, 2016, the Respondent gave her Rs 3,000/- for the last time and thereafter, he had been refusing to give any money. After August, 2016, the Respondent refused to visit or join his wife and children. He even spent the Christmas and the New Year holidays away from them. Before the problems arose, the Respondent had never allowed her to visit him at the village where he was posted. Without getting any divorce, the Respondent had unreasonably refused to give them money even for their maintenance. The Complainant No. 1 had sent her relatives as "Palai" but no meaningful result could be made. Since the Complainant No. 1 is unemployed, it has been very hard and difficult to maintain herself and three children who are pursuing their studies and often seek financial help from her parents and other relatives. Further, there is a danger that their eldest son who is studying B.E in Hyderabad might not complete his course due to financial problem. The complainants are living at Ramhlun North, Aizawl by paying a house rent of Rs 5,500/- per month. The Respondent neglected his duty as a father and a husband to maintain them although he had the means for maintenance. The Respondent is in position of paying Rs 7,500/- per month each to the Complainant No. 1 and

the Complainant No. 2 for maintenance. Therefore, prayed for monthly maintenance @ Rs 7,500/- each i.e Rs. 15,000/- for the Complainant No 1 and the Complainant No 2 and ad the interim measure, Rs 6,000/- each per month (Total Rs 12,000/-) to the Complainant No. 1 and the Complainant No. 2 during the pendency and final disposal of the instant case.

3. On the other hand, the Respondent submitted *inter alia* in his written objection that the instant complaint was not maintainable in its present form and style. It was liable to be dismissed for mis-joinder and non-joinder of necessary parties. The Complainant No. 1 had no locus standi to file the instant complaint. The answering Respondent submitted that the Complainant No. 1 was young and physically healthy enough to earn her livelihood and not entitled to claim maintenance from the Respondent. The Complainant No. 1 forced him out from their rented house and said to him, "I hmel hmuh hian mut a titui lo." When the Respondent went out and came back to their house, the Complainant No. 1 locked the door from inside. The Respondent could not enter into their house and had no other choice but leaving the house and going back to his village. Further, the Complainant No. 1 often urged him to divorce by way of MAK which was refused by the Respondent as he never wanted to commit divorce. Hence, the Respondent had no reason to give money to the Complainants as they unreasonably refused to live with him. Furthermore, he had no responsibility as the Complainant No. 1 not only chased him out but also constantly urged him to divorce by way of MAK. The 'Palai' carried the message of the Complainant No. 1 proposing the Respondent to commit divorce but he rejected as he did not find sufficient reason to execute MAK against his wife. Out of their three issues, the Complainant No. 2 alone is a minor and the other two had attained the age of majority. The Respondent is always ready and willing to give reasonable amount of maintenance to his minor daughter but could not do it as she never approached him. He is not liable to maintain the wife who is fit to work, earn, constantly urge to commit divorce by way of MAK, asked for her share of property and not allowing her own husband to live with her. The Complainant No. 2 is free to approach her father any time she wants and the Respondent is always ready and willing to maintain her. The Complainant No. 1 always insisted him to execute MAKNA LEHKHA for availing her father's pension benefit. Further, the Complainant No. 1 threatened him that she would divorce him unless he gave her the amount of money she asked for her personal expense. These showed that the Complainant No. 1 was hungry for money and not entitled legal benefit. She told the Respondent that after divorce, she would take the entire Respondent's salary and the Respondent would be transferred out from his home village. Hence, the Respondent has been transferred and the Complainant No.

1 is now filing the instant complaint. It appeared that the Complainant No. 1 loved money but not her own husband.

4. Having heard the Ld. Counsels for both the Parties and perused the complaint and the written objection, this Court by Order Dt 27.07.2018 directed the Respondent to make payment of maintenance for the maintenance of Complainant No 2 @ Rs 4,000/- per month ad interim measure until the final disposal of the present case. The following points are drawn for determination and the Court entered into evidence.

(1) Whether the Complainant No 1 has Locus standi to file the present case?

(2) Whether the Complainant No 1 is entitled to the reliefs claimed. If so, to what extent.

5. *To the Complainants' evidences.* The Complainant No 1 Smt Rothangpuii deposed that the Complainant No 1 and the Respondent were married on 06.01.1996 and blessed with three children. Due to education of their children and as agreed by the Respondent she started living in Ramhlun, Aizawl with their children in the year 2012 when the Respondent was in his place of posting at Lamherh village. In those days, the Respondent left his Passbook and Cheque Book at her hand for drawing his monthly salary. She used to send the Respondent his monthly salary to Lamherh village and the Respondent visited them always from the village. Unexpectedly, she came to know from her relatives living in Lamherh village that her husband was in relationship with another woman. The youngest of their children Mary Lallawmkimi had also proved the same. On 03.06.2016, her husband was travelling to Aizawl from Lamherh village by Bike and she was waiting for his arrival at home. The Respondent usually took 4 to 5 hours to reach home but on that day he could not reach as expected. Hence, as she had previously strong suspicion she at around 2:00 PM moved to the house where one Smt Sangluri was staying at Zemabawk and on reaching it, she found the door locking from inside. She watched from the window and found her husband coming out from the bedroom. Her husband opened the door and she entered into the house and scolded the said Smt Sangluri. No others other than her husband and Smt Sangluri were there in that house on that evening. After the incident, she told the Respondent to decide as to whether he wanted to continue living with them or with the said Smt Sangluri. She also told him to leave them if he had preferred his lover to them. Thereafter, the Respondent had taken back his Pass Book and Cheque Book. The Respondent gave her Rs 36,000/- in between August 2016 to December 2016 and he had not been making any payment to her since then. She had no regular source of income and in need of maintenance from the Respondent.

6. Complainants' witness No 2 Mary Lallawmkimi deposed that she was born to the parties and just completed Class XII (Science) Standard and prepared to appear in the Technical Entrance Examination. Her father had not been sending any money to them since the last part of the year 2016. She had proved that her father was in relationship with another woman. Whilst staying together with her father in their rented house at Ramhlun Aizawl, she had caught her father talking to his lover and sending her messages through mobile phone. Even when she got through HSSLC Examination (Science) in May, 2017, her father did not make any reaction and he did not call her through telephone even just to congratulate her. On cross-examination, she admitted that she believed that her father was falling in love with Smt Sangluri when she checked her father's mobile phone and found that her father contacted one mobile phone saved in the name of Shri Ramthangvela. When she contacted the said phone number Smt Sangluri who was the daughter of Shri Ramthangvela answered her. She also admitted that she had not made any financial demand to her father.
7. Complainants' witness No 3 Smt C Lalthanzami deposed that she was the middle of the three children born to the Complainant No 1 and the Respondent. She was doing Bachelor of Arts (BA) at Government Hrangbana College, Aizawl. Her father had not been providing them financial support since the last part of the year 2016. In the last part of 2016, she asked her father for her younger sister's school fee and that was the last talk between them. That was also not sent by the Respondent. She came to know that her father was in relationship with another woman from her mother and her younger sister. The undesirable manner, behaviour and her father's way of life deeply shocked her mother and caused inferiority complex in the society and she hardly mingled with others. On her cross-examination, she deposed that she had no personal knowledge about the Respondent having relationship with another woman.
8. Complainants' witness No 4 Shri Lalchhuana deposed that the Complainant No 1 was the daughter of his wife's brother namely Shri C Chawngsavunga. When the problems arose between the Parties, Shri C Chawngsavunga sent him with Shri Tlanglianthanga and Shri Lalmangpuia as "Palai" to Hmunghak village. They met the Respondent in the month of November, 2016 and asked about his decision on his wife and children as he neither paid visit nor providing financial support to them. They also attempted for reconciliation of the family. The Respondent replied that he did not believe that a reunion of family was possible as his wife was furious. He further told that he would share 50% of his salary to his wife and children. However, the Respondent had not been providing any financial support till date. On his cross-examination, he denied that he met the Respondent on that day to propose for

divorce by way of MAK. He did not know as to whether the Respondent neglected his wife and children because the Complainant No 1 disallowed him to stay with them.

9. *To the Respondent's evidence.* RW 1 Shri JC Chawngmunte deposed that the Complainant No 1 forced him out from their rented house and said, "I hmel hmuh hian mut a ti tui lo". When he went out from their rented house, the Complainant No 1 locked the door from inside and he could not enter into it. He under such situation had no option but to leave them and go back to his village. The Complainant No 1 often urged him to divorce her by way of MAK. The Complainant No 1 told the said Palai to propose for divorce by way of MAK but he rejected. On his cross-examination, he admitted that the marriage of the Parties had not stood dissolved. He provided no financial support during the year 2017 as the Complainant No 1 used to threaten him that she would approach the Court of Law. He admitted that the Complainant No 1 saw him with the said Smt Sangluri at Zemabawk on that day. He did not hesitate to provide financial assistance/support for further education of his three children.

DECISIONS AND RESAONS THEREOF

10. Point No 1: *As to whether the Complainant No 1 has Locus standi to file the present case?* On perusal of the petition and the documents submitted and heard the Parties, it appeared that the Complaint No 1 was the present wife of the Respondent and the Complaint No 2 was the youngest of the three children born to the Complainant No 1 and the Respondent. The Complainant No 2 had not attained the age of majority as per the Indian Majority Act, 1875 at the time of filling the present case. The Complainant No 1 and the Respondent were still husband and wife. The marriage tie was still in existence. Hence, this Court held the present case maintainable.
11. Point No 2: *Whether the Complainant No 1 is entitled to the reliefs claimed. If so, to what extent.* Heard the Ld. Counsels for both the Parties and received written arguments. I have repeatedly gone through the entire evidence. From the evidence, it appeared that the Complainant No 1 and the Respondent were married on 06.01.1996 and blessed with three children namely Andy C Lalramchhana (20), C Lalthanzami (18) and Mary Lallawmkimi (17). The Respondent is a regular Government servant presently serving as Headmaster, Government Hmunngkhak Middle School, Aizawl District and drawing monthly salary i.e Gross Salary Rs 65,943/-, Total Deduction Rs 28,289/- and Net Salary Rs 37,654/- (as on 30.11.2016). The Complainant No 1 started living in rented house at Ramhlun, Aizawl in the year 2011 with their three children. The Respondent also used to visit them at regular interval from his place of posting. The problems between the Complainant No 1 and the Respondent

arose and they had not been living together as husband and wife since the last part of the year 2016 without formal dissolution of marriage. The Respondent had not been providing his wife and children any financial support since then. However, in compliance with the Interim Order Dated 27.07.2018 passed by this Court, the Respondent has been making payment of monthly maintenance for the Complainant No 2 @ Rs 4,000/- per month. The Complainant No 1 has been paying house rent @ Rs 5,500/- per month. The eldest child Andy C Lalramchhana is studying B.E in Hyderabad, the second one Smt C Lalthanzami is doing Bachelor of Arts (2nd Semester) and Smt C Mary Lallawmkimi has completed HSSLC (Science) and prepared for Technical Entrance Examination. The Complainant No 1's parents have been helping the Complainant No 1 and her children for their education as far as possible. The Respondent does not hesitate and ready to provide financial assistance to his three children for their education but demanded his three children to approach and visit him.

12. In the light of the above observation, this Court strongly held the view that the husband having sufficient means should not leave his wife and children in helpless state of distress, destitution and starvation. It appears that the Complainant No 1 and the Respondent are still husband and wife. The marriage tie is still in existence. It has not stood dissolved. The Respondent is a regular Government servant having sufficient means to maintain his wife and children. No effort for reconciliation and reunion of family was found on the part of the Respondent. The Respondent is the biological father who gave life to his three children. Therefore, as being a father and a husband, the Respondent could not escape from maintaining the family and taking care of his wife and children. The three children in the present case are merely students having no source of income. Actually, no long journey is required to be taken because the Respondent himself had on his Cross-examination at Para 12 & 13 deposed that he did not hesitate to provide financial assistance to his three children for their higher and further education. But, he demanded his three children to approach and visit him. *Hence, **as agreed by the Respondent**, he shall make payment of monthly maintenance to the Petitioners. The 35% of the Net Salary of the Respondent should go to the Complainant No 1 for the maintenance and further study of the three children born to the Complainant No 1 and the Respondent.* Before parting out, the Respondent's deposition during his Cross-examination at Para 12 & 13 touched the heart of this Court and invited its attention. He deposed that he was ready to maintain his three children and provide financial assistance for their further education but highly expected his three loving children to keep contact, approach and pay him a visit very often. In this regard, this Court would remind the Respondent's children that it is the duty of children to show love and respect to their biological

father. There would be more than thousand reasons why the children should show love and respect to their father. *In fact, our parents are the ones who brought us into this world. They taught us how to eat and fed us first instead of eating by themselves. They taught us how to walk and we started learning how to walk by holding their fingers. They gave us education to make our today successful. To respect parents is one's duty always and forever. We often say that it is important to maintain and provide financial assistance by the father to his children. It is equally important to show love and respect by the children to their father.*

ORDER

- *Shri JL Chawngmunte, Headmaster, Lamherh Middle School, Aizawl District as agreed by himself shall for the maintenance and pursuing further study of his children namely Shri Andy C Lalramchhana, C Lalthanzami and Mary Lallawmkimi make payment of monthly maintenance at the rate of Rs 13,178.90/- (Thirteen Thousand One Hundred and Seventy Eight and ninety paise only) to Smt Rothangpuii W/o JL Chawngmunte R/o Lamherh, Aizawl District P/a Ramhlun North, Aizawl until further Order.*
- *The Respondent shall start making payment as per stated in above from the month of November, 2018.*
- *With this Order, the Interim Order Dated 27.07.2018 stands vacated*

With the above Order, this Criminal complaint stands disposed of.

Given under my hand and seal of this Court on this day of the 29th October, 2018 Anno Domini.

(H. LALDUHSANGA)

Magistrate 1st Class,
Aizawl, Mizoram

Memo No.....: Dated Aizawl, the 29th October, 2018.
Copy to:-

1. Smt Rothangpuii W/o JL Chawngmunte R/o Lamherh, Aizawl District
P/a Ramhlun North, Aizawl through Counsel Shri Lalbiakdika Sailo, Legal
Aid Counsel

2. Smt Mary Lallawmkimi (Minor) D/o JL Chawnghmunte, Aizawl District R/o Lamherh, Aizawl District P/a Ramhlun North, Aizawl through Counsel Shri Lalbiakdika Sailo, Legal Aid Counsel
3. Shri JL Chawnghmunte, Headmaster, Lamherh Middle School, Aizawl District through Counsel Shri Raymond Lalbiakzama Advocate & ors
4. i/c Judicial Section.
5. Case record.
6. Guard file.

PESHKAR