

Present: Sri Sourav Das (J.O. Code: WB 01319)
Judicial Magistrate, 2nd Court, Islampur

MR Case No. 51 of 2022
TR No. 536 of 2022
CIS No. 51 of 2022

Order Dated: 19.08.2023

Today is fixed for hearing ex parte argument in respect of this case.

The petitioner is present by filing hazira.

Now, the record is taken up for hearing argument.

The Argument is heard in full. So, the record is taken up for passing ex parte order.

Perused the materials containing in the record and considered.

This is a case filed u/S 125 Cr. P. C. by **Mehajabi**. The brief facts narrated by the petitioner is that she is the married wife of the OP namely **Md. Sakir** as per **Muslim** rites and rituals. At the time of marriage, several nuptial gifts were given to the family of the OP as per their demand. After the marriage, the petitioner shifted to her matrimonial home and started residing with the OP. Out of their wedlock, one daughter namely **Saberi** was born to them. Now, the allegation of the petitioner is that the OP has been torturing her both physically and mentally on the demand of money to be brought from her father. Lastly on **05.04.2022**, she was assaulted and driven out of her matrimonial home. Since then she has been residing at her parental home with her daughter. The OP has neglected to maintain the petitioner and he never kept track of the whereabouts of the petitioner.

According to the petitioner, the OP earns about Rs. 60000/- which he earns from his catering business and apart from that he has his own land and house while the petitioner has no independent income of her own. So, in spite of having sufficient means, the OP intentionally neglected to maintain the petitioner for which the petitioner has claimed the monthly maintenance of Rs. 30000/- from the OP towards her maintenance and Rs. 5000/- for the maintenance of her daughter.

OP, on the other hand, had appeared in this case but subsequently he had lost interest in proceeding with this case for which the instant case has been running ex parte against the OP.

In order to prove her case, the petitioner namely **Mehajabi** deposed as **PW 1**, one **Rizwan** has been examined as **PW 2** and one **Nazim Aktar** has been examined as **PW 3**. They were examined in full and discharged. However, the petitioner has failed to bring any relevant documentary evidence on record which could be marked as **Exhibit**.

Upon careful analysis of the facts and circumstances of this case it appears that the **PW 1** has well corroborated the case of the petitioners and the testimony of the **PW 2** and the **PW 3** appear to be in consistency with that of the **PW 1** and the OP did

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not turn up to cross-examine and rebut the claim of the petitioner. Therefore, this Court is inclined to place reliance upon the unchallenged testimony of the petitioner and if the petition and the deposition of the petitioner is perused, it will appear that she is living in die hard situation.

Now, it is needless to mention that, the burden was upon the OP to rebut the presumption taken in favour of the petitioner. But here in this case, the OP did not turn up to challenge the case and deposition of the petitioner and to cross-examine her or to adduce his own evidence. Therefore, I find no bar in holding that, the petitioner, being the legally married wife of the OP, is entitled to get maintenance from her husband.

Therefore, in view of the above discussion, I am inclined to allow the instant case filed by the petitioner.

Hence, it is

ORDERED

that the present petition u/S 125 of Cr. P. C. stands allowed in part and the instant case is disposed of ex-parte.

The OP is directed to pay monthly allowance towards the maintenance of the petitioner to the tune of Rs. 3500/- per month (Rs. 2500/- for the maintenance of the petitioner and Rs. 1000/- for the maintenance of her daughter) to the petitioner within 10th day of each succeeding English calendar month. The order shall take effect from the date of passing of the order.

It is pertinent to mention that the monthly allowance towards the maintenance of the **daughter** of the petitioner will continue till **her** attaining the age of majority.

With the above observation the instant case stands disposed of ex-parte.

Let a copy of this order be supplied to the petitioner free of cost.

JM-II, Islampur