

IN THE COURT OF JUDICIAL MAGISTRATE, KHATRA, BANKURA

Present: Shakib Akhtar, Judicial Magistrate (WB01522)

Misc. Case 95/2022 (Reg. No. 74/2022)

Smt. Supriya Das

Petitioner...

Vs

Sri. Sudip Das

O.P...

Final Order (Exparte)

Order dated: 27.09.2024

Petitioner is present by filing hazira. As stipulated by the previous order today is fixed for passing ex-parte final order for maintenance u/s 125 of Cr.P.C. Even after duly receiving summons and appearing before this court on 05.08.2023, the O.P did not appear to defend his case by filing his W/O. Even after allowing several dates and getting sufficient Opportunities to the O.P, he has been negligent, made himself absent on the date fixed without taking any steps. Hence the case was taken up ex-parte against the O.P and accordingly evidences by the Petitioner were recorded.

The case is now taken up for passing ex-parte final order.

Peruse the case record carefully. Considered.

This is a Petition filed by the Petitioner under section 125 of Cr.P.C. for claiming maintenance from the O.P. to the tune of Rs 20,000/- per month for herself. Petitioner does not pray for specific litigation cost from the O.P.

The brief points of the Petitioner's case are as follows: -

1. The Petitioner is the legally married wife of the O.P, their marriage is still in subsistence, she got married to the O.P on 03.12.2019, as per Hindu rites and rituals. After her marriage she moved to her matrimonial house to live with her husband and in-laws. At the time of marriage, the father of the Petitioner, gifted a gold finger ring to the O.P, and as per demands, promised to give a pair of gold earring soon after marriage. The Petitioner's father under immense financial pressure gave ₹50,000/- cash, gold chain, furniture, and other articles at the time of marriage.

2. The Petitioner, after marriage, moved to her matrimonial house to live with the O.P, as husband and wife. After few months of her marriage, the O.P and his family members started to torture the Petitioner on various grounds and assaulted her upon raising any question. When the petitioner got pregnant, the O.P and his family members, even caused the abortion of the Petitioner. She was deprived of basic amenities of life, she was even tortured when even she used to call at her father's house.

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(Advocate)
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3. On 20th day of Shrabon of Bengali calendar, the O.P pressurized the Petitioner to bring ₹50,000/- from her father's house. As the Petitioner denied to fulfil the said demands, she was assaulted and threatened for divorce and on 09.08.2020, at about 12:00 PM, she was expelled from her matrimonial house in a single attire.

4. Since being expelled from her matrimonial house, the Petitioner is residing at her father's house. On 22.09.2022, when the father of the petitioner took the Petitioner to her matrimonial house, the O.P and his family members abused, assaulted and drove them away.

5. After the said incident, the Petitioner has initiated a criminal case before the Barikul P.S, being case no 38/23 dated 23.10.2022 under section 498A/312/323 I.P.C and 3/4 D.P Act.

6. The Petitioner contends that he is passing her days at her father's house in utmost hardship, as the financial condition of her father is impoverished is she does not have any income of income of her own. On the other hand, the O.P, is an able-bodied person, working in BSF service under The Govt. of India, having a monthly salary of about ₹60,000/-. Furthermore, O.P also has about 2 bighas of cultivational land, where from he earns ₹24,000/- per annum.

The Petitioner prays that, since getting expelled from her matrimonial house, she has not been contacted by the O.P. The O.P does not bother to find her whereabouts, nor provide her with any kind of maintenance.

7. Accordingly, the Petitioner has claimed from the O.P a monthly maintenance of ₹20,000/- for herself. She claims that the O.P has the capacity to provide the same.

The O.P. and failed to present himself on the date fixed for filing W/O, even after getting repeated chances. Hence, this case is taken up ex-parte against the O.P.

EVIDENCE

In order to prove the case on behalf of the Petitioner, the Petitioner herself deposed as witness:

P.W 1 -Supriya Mahanta (Das). (Petitioner)

P.W 2 -Gopal Mahanta. (Father of Petitioner)

POINTS FOR CONSIDERATION

In the light of the above-stated factual backdrops, the following points are formulated for coming to a just and reasonable culmination of the instant case.

- 1) Whether the Petitioner is the legally wedded wife of the O.P?**
- 2) Whether the O.P is willfully neglecting to maintain the Petitioner?**
- 3) Whether the Petitioner has willfully withdrawn herself from the society of the O.P?**
- 4) Whether the Petitioner has sufficient means to maintain herself?**

- 5) Whether the O.P has sufficient means to provide Maintenance to the Petitioner?
- 6) Whether the Petitioner is entitled to get an order of maintenance in her favour?

DECISION WITH REASONS

Since the Case is running ex-parte, Heard the Uncontested argument from Ld. Advocate for the Petitioner. Perused the Mis. Case petition, materials and evidences adduced.

In determining the points for consideration:

1) Whether the Petitioner No. 1 is the legally wedded wife of the O.P?

The Petitioner, in her Petition and as well as in her Evidence has stated that the O.P is her lawful husband, and that their marriage was solemnized on 03.12.2019 as per Hindu rites and customs. Thus, as these facts are unchallenged, and corroborated by P.W 2, it can be presumed to be true.

2) Whether the O.P is willfully neglecting to maintain the Petitioner?

In the present case, the Petitioner has brought before this court that after soon after marriage, the O.P and his family started to torture the Petitioner in pursuance of further demand further dowry, failing which, the O.P and his family caused physical and mental torture upon the Petitioner. Ever since the Petitioner is at her father's house, neither did the O.P pay visit to her nor made any contact with her, hence causing desertion to her. O.P has not turned up to defend himself, and to prove that the O.P is not willfully negligent towards Petitioner. Thus, unchallenged allegations of Petitioner, also corroborated by P.W 2, are presumed to be true.

3) Whether the Petitioner withdrawn herself from the society of the O.P?

It is generally presumed; no married woman leaves the home of her husband unless there are pressing circumstances for her to take that recourse. (**Bhinde Lal v Kushma Devi, 1988 (1) HLR 421; Mina v Sahdev, 1988 HLR 91.**)

In the present case, the Petitioner has stated in her Complaint as well as in her written Examination-in-Chief that on 09.08.2020 she was forcefully driven out from her matrimonial house. After getting expelled from her matrimonial house she was compelled to stay at her father's house.

Here, I would like to refer the relevant Provision of the section 125 Cr.P.C which lays down that –

“No wife shall be entitled to receive an allowance for maintenance or interim maintenance and expenses of proceeding, as the case may be, from her husband if she is living in adultery, or without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent”.

In the present facts and circumstances and evidence adduced by the parties, I am inclined to hold that the Petitioner is deserted by the O.P. I do not find any evidence to hold that the Petitioner has voluntarily withdrawn herself from the Society of her husband as the O.P has not presented himself to prove the contrary.

22.

(4) Whether the Petitioner has sufficient means to maintain herself or not?

As regards this the Petitioner has filed her annexure of assets and liabilities supported by Affidavit. The Petitioner states that she is H.S pass, but has no income. She is living at her father's home. The declared monthly expense of the Petitioner is Rs 20,000/- p.m. Having no source of income of her own, she is totally dependent upon her father. Petitioner says that the her father's monthly income is ₹23,000/- No documents have been brought on record through exhibit, in proof of the income and expenditure of the Petitioner.

It has now been settled in **Rajathi V Ganesan, (1999)6 SCC,326** at page 330, that the statement of the wife that she is unable to maintain herself would be enough and it would be for the husband to prove otherwise.

As this case is taken up ex-parte against the O.P, and no adverse materials have been brought on record to prove that the Petitioner has her own source of income, it is presumed by this court that the Petitioner here has no source of income and means to maintain herself.

5) Whether the O.P has sufficient means to provide Maintenance to the Petitioner?

Considering the claims made by the Petitioner, though not supported by any documentary evidence, it is said that the O.P is an able-bodied person who works working in BSF service under The Govt. of India, having a monthly salary of about ₹60,000/-. Furthermore, O.P also has about 2 bighas of cultivational land, where from he earns ₹24,000/- per annum. Thus, the total income of the O.P adds to about ₹62,000/- per month.

The said fact is not rebutted by the O.P, as this case is running ex-parte against him, the fact of the Petitioner can be presumed to be true. Thus, considering the said facts, this court can presume that the O.P is definitely an able-bodied person who is capable of earning, and that he is presently employed. So, the O.P, hereby is under obligation to provide maintenance to the Petitioner.

(6) Whether the Petitioner is entitled to get an order of maintenance in her favour?

After, settling all the above points for consideration, I am of the opinion that the points for consideration of this case leans, undisputedly, toward the Petitioner. Thus, the Petitioner shall be given the consideration of the adjudication.

The purpose of the provision under section 125 Cr PC is social and beneficial. It is protected by the constitutional guarantee as enshrined under Articles 39 and 15 of the Constitution of India. The legislative edict behind section 125 Cr PC is not to penalize a person for his past neglect, but to prevent vagrancy in future of those who passes their days in penury, by compelling those who are obligated to look after and maintain them by catering to their need of food, clothing and shelter.

The Status of the parties show that the Petitioner has no source of income of her own. On the other hand, the O.P is an employed, as well as able-bodied person capable to support his family.

Now the question germane for consideration is what should be the amount of maintenance. As held in **Neelam vs. Rajindra AIR 1994 Del 234** there can be no precise or settled formula to assess the quantum of interim maintenance. There is no strait jacket mathematical formula to precisely calculate any accurate amount to be given as maintenance. One thing however is clear and that is the opposite party being an

able-bodied person and being the husband and father of the Petitioner, is bound both socially and legally to maintain his them.

So, considering the entire evidence placed before me, the status of the parties and the present price index, I think an amount of Rs. 10,000/- is justified and ought to be awarded to the Petitioner.

Hence it is

ORDERED:

That the present Misc. Case U/s.125 of Cr. P.C. is hereby allowed on ex-parte. The O.P. is directed to pay Rs. 10,000/- per month as maintenance to the Petitioner by the 10th of each succeeding English Calendar month.

The instant order shall take effect from the date of filing of the case i.e. 18.11.2022. The arrear maintenance shall be paid in six equal instalments which shall commence from the month of October, 2024 for six consecutive months. In the event of non-payment by the O.P, the Petitioner is given liberty to put the order into execution in accordance with law.

Let a copy of this order be given to the Petitioner free of cost if applied for.

Dictated & corrected by me /-



(Mr. Shakib Akhtar)

Judicial Magistrate, Khatra
Judicial Magistrate 1st Class
Khatra :: Bankura



Judicial Magistrate,

Khatra
Judicial Magistrate 1st Class
Khatra :: Bankura