

**IN THE COURT OF JUDICIAL MAGISTRATE, 5th COURT,
ASANSOL, PASCHIM BARDHAMAN.**

Present : Ms. Pratika Rai,
Judicial Magistrate, 1st Class.

Misc Case No. 375/2016

Rina Bouri **Petitioners**

Vs.

Robin Bouri **Opposite party**

Date of Judgment :- 05.02.2024

J U D G M E N T

This is a case u/s 125 of Criminal Procedure Code. Brief facts of the case is that Petitioner is the legally married wife of the Opposite party (who shall be addressed as OP hereinafter) and their marriage was solemnized on 01.05.2006, from the maternal house of Petitioner at Salanpur (Rail Colony Khudika), PO & PS Salanpur, Dist- Paschim Bardhaman, according to Hindu rites and customs. At the time of marriage, Petitioner's parents gave Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) in cash, 8 bhoris of gold ornaments, utensils of kansa, pital and other household articles amounting to Rs. 25,000/- (Rupees Twenty Five Thousand Only) and wooden furnitures. After marriage, Petitioner was taken to her matrimonial house at Chitaldanga, PO Rupnarayanpur, PS Salanpur, Dist- Paschim Bardhaman where she started to reside with OP and his family members and the marriage was duly consummated. After some days of marriage, OP and his family members started to criticize the Petitioner for not giving adequate gifts at the time of marriage and often used to call Petitioner "daughter of a beggar". Out of the said wedlock on 01.05.2007, one female child namely, Suvoshree Bouri was born to them. In the month of June, 2007, OP and his family members started creating pressure upon petitioner to bring Rs. 1,00,000/- (Rupees One Lakh Only) from her father and due to non-fulfillment of such demand, Petitioner was subjected to torture to the OP and his family members and the Petitioner was driven out from her matrimonial house and after that the Petitioner took shelter at her father's place at BCCL Quarter Putki Balhari Area, PS Putki, Dhanbad. In the month of June 2008, father of the Petitioner arranged Rs. 50,000/- (Rupees Fifty Thousand Only) and the same was paid to the father of the OP and after receiving the said money, OP allowed the Petitioner to stay in the matrimonial house. After lapse of some days, from the early part of July, 2008, OP and his family members again started to demand money from the Petitioner and was asked to bring rest amount of Rs. 50,000/- (Rupees Fifty Thousand Only) but petitioner did not agree to comply with the said

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demand and as such OP and his family members, mercilessly beat the Petitioner and drove her out from the matrimonial house and Petitioner was compelled to take shelter at her father's place at BCCL Quarter, where Petitioner was medically treated. Thereafter, Petitioner lodged a complaint against OP and his family members u/s 323/498A/307/511/34 IPC and 3 & 4 DP Act vide CP no. 1775/2008 and same is still pending before the Ld. District Court, Dhanbad. In the month of August, 2009, OP came to Petitioner's father house and tendered apology for his wrongful act and took the Petitioner to the matrimonial house but Petitioner but was not provided proper food and medicines and when Petitioner asked the OP for arranging treatment for herself and her minor daughter, OP became furious and started abusing her in abusive language. OP and his family members started creating pressure upon the Petitioner to withdraw the above noted CP Case no. 1775/2008, which is pending before the Ld. District Court, Dhanbad but Petitioner showed unwillingness to withdraw the same and as such she was subjected torture both physically and mentally by OP and his family members. On 25.08.2010, OP drove out the Petitioner from her matrimonial house. Out of the said wedlock on 15.09.2010, one female child was born and all costs of delivery has been borne by the Petitioner's father and thereafter the petitioner alongwith her two minor daughters started living at her father's house and OP neither took any information nor provided any maintenance to the Petitioner and her minor children. In the month of November, 2011 OP against took the Petitioner to her matrimonial house and during the Petitioner's staying she was tortured inhumanly by OP and his family members. On 03.05.2015, Petitioner was assaulted by the OP and his family members mercilessly and Petitioner narrated all the facts to her father over telephone. When the Petitioner's father went to her matrimonial house, OP and his family members abused him in filthy languages and asked him to take away the Petitioner with him. Petitioner was brought back to her paternal house by her father along with two minor children and she was taken to Pithaieary Hospital where the Petitioner was medically treated and thereafter, the Petitioner went to Rupnarayanpur I/C under Salanpur PS. Since, 03.05.2017 Petitioner residing at her father's place along with her minor children. Petitioner has no source of income and is unable to maintain herself and her two minor daughters whereas, on the other hand, OP runs his Departmental cum Grocery business at Chitaldanga, PS Salanpur and earns of Rs. 30,000/- per month besides this income OP has agricultural landed property and from this he earns Rs. 2,00,000/- per month and the father of the OP works for gain at Chittaranjan Locomotive works, Chittaranjan and the OP is quite able to maintain the Petitioner and her two minor daughters. Petitioner claims Rs.5,000/- per month for herself and Rs. 10,000/- per month for her two minor daughters in totaling Rs. 15,000/- per month as interim maintenance.

OP appeared in this case and contested the matter by filing show-cause/written objection.

OP stated in his show-cause that the instant petition filed by the Petitioners is false, fabricated and far from the truth. OP accepted that petitioner is his legally married wife and out of the said wedlock two daughters have been born but refuted all allegations leveled by the Petitioner as false, fabricated, cooked up, far from iota of truth. OP also denied the allegations of dowry demand made by the Petitioner against him, as the same being false and fabricated story. OP submitted that neither he and his family took dowry at the time of marriage from the Petitioner and her parents nor made dowry

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demand rather father of the Petitioner gave some gold ornaments, some utensils and furniture to the Petitioner as 'dan samagri' as per the social customs. OP submitted that Petitioner herself went to stay at her paternal house for few days and during her stay there fell down and incurred injury and was also treated but is using those medical documents maliciously to frame false case of assault against him and his family members. OP also submitted that he alongwith his family members accepted her lovingly in the family but Petitioner being an only daughter having been brought up in a lavish environment could not adjust in the matrimonial house and insisted OP to live separately. OP also denied that he did not drive out the Petitioner and the minor daughters instead, Petitioner, herself left the matrimonial house voluntarily with her father. OP stated that he is a private tutor and from this he earns of Rs. 4,500/- per month and apart from this he has no source of income of his own.

During the trial the Petitioner no. 1 was examined as P.W.1 and OP was examined as DW-1, in full.

Points for consideration:-

The pleadings of both the sides gave rise to the following issues in this case.

1. Whether Petitioners and her two daughters eligible for maintenance from OP ?
2. Whether OP has willfully neglected or refused to maintain the Petitioners without just cause ?
3. Whether the Petitioners unable to maintain themselves ?
4. Whether O.P. having sufficient means of his own has obligated to maintain the Petitioners?
5. Have the Petitioners been able to prove their case ?

Decision with reasons:-

Point no.1:-

Under section 125 (1) of Cr.P.C. 1973 , it is laid down that "if any person having sufficient means neglects or refuses to maintain -

- (a) his wife, unable to maintain herself, or
- (b) his illegitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his illegitimate or illegitimate child (not being able 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 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 thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

A bare reading of the section provides that a wife and minor child are eligible to claim

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maintenance from husband/father if unable to maintain themselves. Hence, Petitioner and her minor daughters are eligible to claim maintenance from OP.

Point no.2:-

The next point which has to be decided by this Court.

P.W.1 in her examination-in-chief deposed that she is the Petitioner of this case and she filed this case against her husband Rabin Bouri. She further deposed that she was married to OP on 01.05.2006 as per Hindu rites and customs and was married off from her maternal uncle's house at Khudika Rail Colony. She also stated that as per the demand of of the OP, Petitioner's father gifted almirah, bed dressing table, sofa, utensils worth Rs. 25,000/-, 8 bhories of gold and a sum of Rs. 1,50,000/- in cash. PW-1 further deposed that after her marriage, she went to her matrimonial house and there her in-laws specially her mother-in-law and sister-in-law started to taunt her with respect to the bad quality of the gifts given by her father. She stated that she never protested to the alleged insult of her in-laws. PW-1 stated that her elder daughter was born on 01.05.2007. She further stated that OP and his family members demanded a sum of Rs. 1,00,000/- after birth of her child. PW-1 also stated that when she protest to the illegal demand, OP and her in-laws driven out the petitioner from her matrimonial house and then she went to her paternal house in Dhanbad. PW-1 deposed that in the year 2008, her father paid a sum of Rs. 50,000/- and she again started residing in her matrimonial house and in the month of July, 2008, she was forced to bring the rest amount, to which she protested and for this Petitioner was physically assaulted and again driven away by the OP and her in-laws. PW-1 further deposed that her father took her back after she called him up and narrated him the incident and then Petitioner filed a case before the Ld. Counsel for the Dhanbad Court, and OP was convicted in the said case. PW-1 stated that in August 2009, OP admitted his fault and tendered apology before her parents in her paternal house and her parents were moved by his apology and Petitioner was sent back to her matrimonial house along with the OP. PW-1 stated that she was not cordially accepted in her matrimonial house and her in-laws isolated her therein. PW-1 also stated that she was not interacted with, not given food and medicines when required and a pressure was created upon the Petitioner to withdraw the complaint she filed before the Dhanbad Court and when she refused to comply, they are used to be heated altercations and the OP along with her in-laws used to assault her. PW-1 deposed that on 25.08.2010, when she was carrying her second issue was driven away from her matrimonial house by OP and her in-laws and she went back to her paternal house where she gave birth to her child and none of her in-laws or OP came to visit her second child in spite of information given to them. PW-1 also deposed that on 11.11.2011, OP yet again admitted his fault and tendered apology before her parents in her paternal house and the Petitioner was sent back to her matrimonial house along with OP. PW-1 further deposed that during her stay in her matrimonial house, OP along with her in-laws used to abuse her in filthy language and assault her and on 03.05.2013, there was another hot altercation, on account whereof Petitioner was yet against driven away from her matrimonial house and she called her father and when the father of the Petitioner confronted the OP and OP abused her father and drove them both away after assaulting. PW-1 stated that since 03.05.2013, she was residing with her parents along with her children and OP has a departmental shop at Chitaldanga, Rupnarayanpur, PS Salanpur and he

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earns of Rs. 30,000/- per month. PW-1 also stated that she is an unemployed and do not have any source of income of her own and she prayed for maintenance of Rs. 5,000/- per month for herself and Rs. 7,000/- each for her children aggregating to Rs. 19,000/- per month from the OP. PW-1 further stated that her children are presently studying in Burnpur Riverside School. PW-1 testified that these are the photocopies of the bill book of her children and photocopies of the bill book are collectively marked As Exhibit-1.

PW-1 deposed in her cross-examination that her marriage was an arrange marriage and the said items were given on 02.05.2006 and the further demand of money was made on 07.06.2007. PW-1 testified that on 10.06.2008, her father paid of sum of Rs. 50,000/-. She further testified that her father is an employee of BCCL. PW-1 deposed that she was not financially happy in her matrimonial house. PW-1 stated that she never saw any document pertaining to the income of her husband, as has been pleaded by her in her petition. She also stated that she cannot say in whose name the shop is registered. PW-1 further stated that she could not say as to in whose name, the landed property of OP is lying. PW-1 testified that she studied up to Class-VIII and she is not employed in any manner. She also testified that both her daughters are studying in private English Medium School and submitted annual fees receipt marked as exhibit – 4. She further testified that she does not want to return to her matrimonial house and last resided at her matrimonial house on 03.05.2013

OP was examined as OPW-1 and he deposed in his examination-in-chief that his wife Rina Bauri filed this case against him for claim of maintenance and they got married on 01.05.2006 according to Hindu rites and customs. OPW-1 deposed that he did not receive any dowry or cash from his in-laws but his father-in-law had given his daughter some utensils, furniture and gold ornaments at the time of marriage. OPW-1 deposed that his wife did not want to stay together with him as his salary was very less and she demanded for expensive things which he could not afford. OPW-1 also deposed that his wife used to fight over insufficient life as he could not proved her with all the things. OPW-1 further deposed that at the time of marriage, he was unemployed and after marriage he started tutoring children and from this he used to earn Rs. 4,000/- to Rs. 4,500/- per month. OPW-1 stated that his wife was taken away from his house by her family on 03.05.2013 and he did not receive any cash of Rs. 50,000/- on 10.06.2008 from her father. OPW-1 stated that he never physically assaulted his wife for demand of dowry. He further stated that he used to maintain his wife properly by providing proper food and medicine. OPW-1 deposed that he want to take his wife and his minor children back to his matrimonial house and start a conjugal life.

OPW-1 deposed in his cross-examination that there was a case against him u/s 498A IPC in Dhanbad Court and he was convicted by the said court. OPW-1 testified that he did not know any Mala Bauri. OPW-1 also deposed that he did not submit any trademark license of a shop as he does not have any shop. He stated that the shop is in the name of his mother and he did not submit the trademark license which is in the name of his mother. OPW-1 testified that he studied till BA. 2nd year. OPW-1 deposed that he made a complaint to the Panchayat in regards to his wife fighting and assaulting him. He testified that he did not submit before the Court any written complaint being made to the Panchayat. OPW-1 stated that his father-in-law was a CLW Employee and he did not know in which class his

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daughters were studying. OPW-1 also stated that he does not know how much his mother has studied.

In *Chaturbhuj vs. Sitabai CrAN 1627 of 2007*, Hon'ble Supreme Court has held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.

Further, in *Anju Garg & anr. vs. Deepak Kumar Garg, CrAN 1693 of 2022*, it was observed by Hon'ble Supreme Court that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children and to fulfill this obligation, the husband is required to earn money even by physical labour, if he is able bodied, and could not avoid his obligation, except on legally permissible grounds mentioned in the statute.

On the basis of the above discussion and observations this Court concludes that the petitioner has sufficient grounds to reside separately and claim separate maintenance from the O.P.

Thus, Point no.2 is decided in favor of the petitioner.

Point no.3 & 4

For the sake of simplicity and brevity both the points are discussed and decided together. Petitioner has submitted that she has no source of income and depended upon her father for her basic necessities as well as for her minor daughters. OP submitted that he earns meager amount by giving private tuitions. The excuse on the part of OP that he has meager income from giving private tuition is not sufficient enough to discharge him from the moral and legal obligation to maintain his wife and his daughters, where he is an able bodied person and no document or submission was made by OP to show that he is not able bodied. Moreover, during the recording of evidence of OP it has come before the Court that there is a shop, shop license in whose name though not confirmed, establishes that OP is economically well-off. Hence, he is liable to maintain his wife and his minor daughters.

Thus, on scanning the evidence on record and the facts of this case, this Court has come to the conclusion that the Petitioners are unable to maintain themselves and OP on the other hand is economically sound.

Thus, point no.3 & 4 are decided in favor of the petitioners.

Point No. 05:-

The provision of Chapter IX of the Code of Criminal Procedure 1973 is intended to fulfill a social purpose. Its object is to compel a man to perform the moral obligation which he owes to the society in respect of his wife, children and aged parents who are unable to maintain themselves. By providing a simple, speedy but limited relief, it was aimed to ensure that neglected wife, children and aged parents who are not able to maintain themselves are not left beggared and destitute on the scrap-heap of the society and thereby driven to a life of vagrancy, immorality and crying crime for their

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subsistence.

On the basis of the above discussions and observations and due regards being given to the provisions of law and other materials on record and without prejudicing any of the points raised by the parties, it appears to this Court that, in a situation where the income of the Opposite Party has been established, considering the present market price, index and the status of the parties and also considering the other dependents of OP i.e. his wife, this Court is of the opinion that Rs. 5,000/- per month to Petitioner and Rs.7,000/- each per month for two minor daughters, in total Rs. 19,000/- would be reasonable and justified to either of the parties.

Hence, it is,

ORDERED

that Misc. Case No 375/2016, is hereby allowed, on contest and finally disposed of. Petitioner and her minor daughters are entitled to get maintenance allowance of Rs. 5,000/- per month to Petitioner and Rs.7,000/- each per month for two minor daughters, in total Rs. 19,000/-, per month as monthly maintenance from the O.P.

Opposite Party is hereby directed to pay Rs.19,000/-, per month to the Petitioner and her minor daughters as maintenance allowance, within 7th day of every succeeding English calendar month commencing from the date of the filing of the maintenance petition. This order shall take effect from the date of this order. Petitioners are at liberty to execute this order in accordance with law.

Let, a certified copy of this final order/Judgment be supplied to the Petitioners free of cost on satisfying required formalities, as expeditiously as possible.

Note in the CIS and trial register.

D & C by me.

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