

G.R Case No. 732/23

order no. 09

07.12.24 :-

Today is fixed for app.

The sole accused person is present before this court by filing hazira.

Ld. APP is present. The record is taken up for framing of charge.

The accused person namely, Satyajit Barman is read over, explained and asked that on or about 28.11.23 at about 21.00 hrs at Khalisha Gosanimari, P.S. Dinhata, Coochbehar committed criminal trespass by entering into the land of complainant/Gita Ghosh to commit crime and thereby committed the offence punishable under section **447 I.P.C and** on or about same place, date and time, wrongfully restrained the complainant's husband/Sudeb Ghosh to commit crime and thereby committed the offence punishable under section **341 I.P.C** and on or about same place, date voluntarily caused hurt to the complainant's husband/Sudeb Ghosh and thereby committed the offence punishable under section **323 of I.P.C** and on or same date, place and time assaulted the defacto complainant and outraged her modesty and thereby committed the offence punishable under section **354 I.P.C** and on or about same date, place and time committed criminal intimidation by threatening to the complainant and thereby committed the offence punishable under section **506 I.P.C**, to such examination he pleaded not guilty by saying "Ami Nirdosh" and claimed to be tried.

To **05.02.25** for evidence of CSW 1 and 2.

06.02.25 for CSW 3,4,

07.02.25 for CSW 5,6.

Issue summon upon witnesses.

(D.C by me,)

Sd. Tanim Das

ACJM, Dinhata.

Sd. Tanim Das

ACJM, Dinhata.

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, DINHATA, COOCHBEHAR**

Present : Smt. Tanimas Das
Addl. Chief Judicial Magistrate,
Dinhata, Coochbehar

In the matter of :-

**Smt. Sampa Barman, Sayan Barman
&
Tanusree Barman**

..... Petitioners.

-VS-

Tapan Barman

..... Opposite Party.

Misc. Case No. 73 of 2023 (Reg No. 73/23)

Under Section 125 of The Code of Criminal Procedure

**Date of Delivery of Ex-parte Final Order :- The 06th day of
December, 2024.**

Ex-parte Final Order

CASE OF THE PETITIONER:-

1. The case of the petitioner is that the petitioner had filed a petition **u/s 125 of Cr.P.C** before this Court which was filed and registered on 23.06.23 being **Misc. Case No. 73/23** and she is the legally married wife of the Opposite Party and their marriage has been solemnized 8 years ago following Hindu Rites and Customs of their community. At the time of marriage the poor father of the petitioner gave **Rs. 1,00,000/-** in cash, gold ornaments and some household articles as dowry to the opposite party. After the marriage, the petitioner went to her matrimonial house and started her conjugal life with the opposite party. During her conjugal life, the petitioner begotten two children namely Sayan Barman (aged about 6 years) and Tanusree Barman (2 years). Since after one month of marriage, the opposite party started mental and physical torture upon the petitioner. Keeping in mind the future of her two minor children, the petitioner continued her conjugal life with the opposite party tolerating all the physical and mental agony. At last on 18.10.22 at about 08.00 p.m., the opposite party assaulted the petitioner on demand of Rs. 50,000/- and drove her out along with her two minor children from his house. Thereafter,

the opposite party entered into second marriage with another lady and has been leading conjugal life with her. Since then, the petitioner is living at her parental house and leading her life in great hardship.

The financial condition of the opposite party is good and he has agricultural lands and he also runs business. The opposite party is having monthly income of more than Rs. 30,000/- per month. The opposite party is not giving any maintenance to the petitioner and also does not enquire about her well being. For which the petitioner is prays for monthly maintenance allowance of **Rs. 8,000/-** for herself, **Rs. 5,000/-** for her minor female child and **Rs. 5,000/-** for her minor male child (in total **Rs. 18,000/-**) from the Opposite Party.

CASE OF THE OPPOSITE PARTY :-

2. The instant case was filed by the petitioner on 23.06.23 and it was duly registered in this court and direction for issuance of summons upon the opposite party was given which was duly complied and taking into consideration the service return is received with good service, the case proceeded ex parte against the opposite party. Even after getting sufficient opportunity, the opposite party did not turn up in this court to file show cause in order to contest the case and finding no other alternative on **06.04.24 vide order no. 08**, the case is fixed for ex-parte hearing and accordingly on **31.08.24** the petitioner filed affidavit-in-chief and on **30.11.24** the petitioner had deposed on oath on dock as **PW1** in order to prove her case, on ex-parte basis and after that the case is fixed for the ex-parte argument.

I S S U E S

3. 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 "*lis*".

I) ***Whether the petitioner no. 1 has sufficient means to maintain herself and her minor children or, not?***

II) ***Whether the Opposite Party is willfully neglecting to maintain the petitioners or, not?***

III) ***Whether the petitioner no. 1 is entitled to get an order of maintenance in her favour for herself and her children or, not?***

IV) ***Whether the Opposite Party has sufficient income to maintain the petitioners or, not ?***

V) ***To what other relieves the petitioners are entitled to ?***

DECISION WITH REASONS

4. In order to prove the case of the petitioner, she had adduced herself on oath on dock as **PW1** on ex-parte basis and filed her affidavit- in- chief and exhibited her signature on the affidavit-in-chief as **Exhibit P1/PW1**.

SCANNING OF EVIDENCE OF PW1.

5. The **PW1** namely, **Sampa Barman** had deposed on oath on dock that she had filed the maintenance case against her husband Tapan Barman for getting maintenance for herself, her son/Sayan Barman (aged about 9 years) and for her daughter/Tanusree Barman (aged about 4 years). Her son studies in school. In the year 2016, she got married to Tapan Barman following Hindu customs. At the time of marriage gold ornaments, Rs. 1,00,000/- in cash and other house hold articles were given to the opposite party. After marriage, she went to her matrimonial house along with those articles and started her conjugal life. During her conjugal life, she gave birth to one male and one female child. During her conjugal life, her husband used to abuse her and torture her both mentally and physically. Her father-in-law, mother-in-law, 'bhasur' and 'ja' all used to reside along with them at her matrimonial house. All of them used to assault her and torture her. She had submitted an affidavit-in-chief before court after understanding the contents of it and putting her signature on the same. She had exhibited her signature on the affidavit-in-chief as **Exhibit P1/PW1**. Her husband and her in-laws had demanded Rs. 50,000/- more which she could not fulfil. On 18.10.22 she was assaulted. She had to come to her parental house along with her children. Since, then she has been residing at her parental house. Her father looks after her and her children. She has no independent source of income of her own. Her husband runs business and does farming. He earns Rs. 30,000/- to Rs. 35,000/- per month. She is praying for monthly maintenance of Rs. 8,000/- for herself and Rs. 5,000/- per month for both of her children from the opposite party (in total Rs. 18,000/-).

In her affidavit in chief she had stated that she is the legally married wife of the Opposite Party and their marriage has been solemnized 8 years ago following Hindu Rites and Customs. At the time of marriage the poor father of the petitioner gave **Rs. 1,00,000/-** in cash, gold ornaments and other house hold articles as dowry to the opposite party. After the marriage, the petitioner went to her matrimonial house and started her conjugal life with the opposite party. During her conjugal life, the petitioner begotten two children namely Sayan Barman (aged about 6 years) and Tanusree Barman (2 years). Since after one month of marriage, the opposite party started mental and physical torture upon the petitioner. Keeping in mind the future of her two minor children, the petitioner continued her conjugal life with the opposite party tolerating all the physical and mental agony. On 18.10.22 at about 05.00 p.m., the opposite party assaulted the petitioner on demand of Rs. 50,000/- and drove her out along with her two minor children from his house. Thereafter, the opposite party entered into second marriage with another lady and has been leading conjugal life with her. Since then, the petitioner is living at her parental house and leading her life in great hardship.

The financial condition of the opposite party is good and he has agricultural lands and he also runs business. The opposite party is having monthly income of more than Rs. 30,000/- per month. The opposite party is not giving any maintenance to the petitioner and also does not enquire about her and her childrens' well being. For which the petitioner is prays for monthly maintenance allowance of **Rs. 8,000/-** for herself, **Rs. 5,000/-** for her minor female child and **Rs. 5,000/-** for her minor male child (in total **Rs. 18,000/-**) from the Opposite Party.

6. Here in this case it appears that the instant case was filed by the petitioner on 23.06.23 and it was duly registered in this court and direction for issuance of summons upon the opposite party was given which was duly complied and taking into consideration the service return is received with

good service, the case proceeded ex parte against the opposite party. Even after getting sufficient opportunity, the opposite party did not turn up in this court to file show cause in order to contest the case and finding no other alternative on **06.04.24 vide order no. 08**, the case is fixed for ex-parte hearing and accordingly on **31.08.24** the petitioner filed affidavit-in-chief and on **30.11.24** the petitioner had deposed on oath on dock as **PW1** in order to prove her case and her such deposition is found to be substantiated on dock as per the contention of the main petition and her such deposition remained uncontroverted and unchallenged from the other side and thus deemed to be admitted by the opposite party. The opposite party seems to be reluctant to counter the contention of the main petition as well as the averment of the petitioner on oath on dock.

In view of the discussion made above, I am of the Considered opinion that the petitioner has proved her case and this had entitled her to get the maintenance allowance for herself and her minor child from the opposite party **u/s 125 of Cr.P.C on ex-parte basis**.

7. In view of **citation reported in 1998 CWN page No. 292** and considering the length of proceedings I am inclined to give effect of the order from date of filing of this case and considering the length of the case, I am inclined to assess the cost of litigation as **Rs. 5,000/-**.

HENCE, IT IS,

ORDERED

that the application **Under Section 125 of Criminal Procedure Code** is considered and allowed ex-parte from the date of filing of this case. The petitioner is entitled to get an amount of **Rs. 5,000/- per mensem** for herself and **Rs. 3,000/- per mensem (each)** for her two minor children (in total **Rs. 11,000/- per mensem** for the petitioners) along with a **litigation cost** of **Rs. 5000/-** from the Opposite Party. The Opposite Party is directed to pay the above stated amount to the petitioner by the **15th Day of each succeeding month**. The petitioner is at liberty to execute the order if the Opposite Party does not comply the same through Court.

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

D/C by me,
Sd. Tanim Das
Addl. Chief Judicial Magistrate
Dinhata, Coochbehar
(J.O. Code: WB 00951)

D/C by me,
Sd. Tanim Das
Addl. Chief Judicial Magistrate
Dinhata, Coochbehar
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