

IN THE COURT OF JUDICIAL MAGISTRATE, 1ST COURT ULUBERIA,
HOWRAH

District – Howrah.

Present– Akash Bose [J.O. Code– WB01491]

Judicial Magistrate, 1st Court, Uluberia

In the matter of:

Rupa Nath

----- Petitioner

Vs.

Sumanta Nath

----- Opposite Party

M. Case No. : 65/2021 [TR – 179/2021]

CNR No. WBHW120011052021

Under Section 125 of the Code of Criminal Procedure, 1973

Date of delivery of Judgment: 24.07.2026

J U D G M E N T

MATRIX OF THE ‘L/S’:

1. This is an application under section 125 Cr.PC, wherein the applicant has filed the instant application seeking succor of maintenance against the Opposite Party who happens to be the mother of the Petitioner.

2. The Petitioner's case in brief is that OP is the son of her and got married in **2018** and since marriage he started residing separately and petitioner tried to adjust with him but OP and his family member tried to driven out her from residential house and forcefully possessed one shop room which is in the name of his father and have falsely filed a criminal case being no – 371 of **2020** of Rajapur PS. That, OP is a working person in ITC company and is earning Rs 30,000/- per month. On the other hand, petitioner has no such income and the OP intentionally refusing to maintain her.
3. The petitioner stated that she has no independent sources of income but the opposite party did not provide her anything.
4. The petitioner somehow passing her days in great difficulty with other petitioners. The OP neither took any information nor paid any maintenance. The petitioner has no income of her own and living a life in distress condition.
5. In order to prove her case the petitioner examined herself as PW 1 and cross-examined in full and discharged.
6. Per contra, the Opposite Party had contested the case, wherein though he denied all the allegation regarding and further stated that after marriage, the petitioner did not accept his wife properly for her caste and the OP in the year **2014** has constructed a pucca house by taking loan and after marriage, the petitioner started harassing the OP and his wife as their marriage is happened due to love marriage. The OP tried to reconcile with the petitioner but nothing fruitful arrived and on **21.11.2020**, the petitioner after assaulting the wife of the OP, driven her out of her house and also abused her in filthy language. The OP further admitted that despite of earning Rs 25,000/- to 30,000/-, he has to repay loan and is also residing in separate accommodation with his wife and he is further giving Rs 2,000/- per month to her mother since **2020** on regular basis. It is further alleged that the another son of the petitioner is also earning Rs 25,000/- per month and somehow

with the instigation of that son, the petitioner has falsely filed this case against the OP just to harass him and he has no ability to pay the separate maintenance and hence the application made by her is liable to be rejected.

7. The OP further stated that the petitioner has sufficient means to maintain herself and she is financially sound and falsely filed this case. On the other hand, the OP has income of Rs 30,000/- but he has to incur loan and rent as well as household expenditure.
8. In support of his contentions, though Opposite Party has adduced himself as OPW – 1 and OPW–2.

Heard the Ld. Advocate for petitioner only at length.

EVIDENCE ON RECORD:

In order to prove her case the petitioner has examined herself as PW1.

It appears from the evidence of petitioner the main allegation from the side of the O.P. is that the petitioner has sufficient means to maintain herself . From the evidence nothing come to show the actual income of the O.P. or that the petitioner has her own income.

POINTS FOR CONSIDERATION:

In the light of the above–stated matrix of the case, the following points are formulated for coming to a just and reasonable culmination of the instant *lis*.

- i] Whether the Petitioner can be termed as 'mother' within the meaning of section 125 CrPC.
- ii] Whether the Opposite Party refused or neglected to maintain the Petitioner?

iii] Whether the Petitioner has sufficient means to maintain herself?

iv] Whether the Opposite Party is an able-bodied person?

v] Whether the petitioner is entitled to get maintenance from the Opposite Party? If so, from which date and what would be the quantum for maintenance?

vi] Whether the child is admitted by both side ?

DECISION WITH REASONS:

For the sake of convenience of discussion and as all the points are co-related, all the points are taken up together for delineation and analysis so as to come to a reasonable culmination in respect of the feud between the parties to this case as has unfurled from the petition.

I have gone through the entire records meticulously. After going through the application u/s 125 Cr PC and both the arguments of the parties the admitted facts that arises prima facie are as follows:–

i] That the Opposite Party and the Petitioner are the son and mother. There is no dispute regarding the factum of their relation. Thus from the petition as well as written objection it is firmly established that the OP is the son of petitioner and it is not denied by OP too.

ii] That it can be presumed that the Opposite Party is an able-bodied person as nothing adverse in record as he preferred not to adduce evidence and file affidavit of assets and liabilities and OP has further admitted that he is working in a private company and earns Rs 25,000/- to 30,000/- per month.

iii] That the petitioner has no income of her own as no evidence to that effect.

iv] That the Petitioner and the Opposite Party have been residing separately at present.

Section 125 of CrPC requires as a sine qua non for its application neglect or refusal by the son and daughter to his parents seeking maintenance under section 125 Cr.P.C has to prove the neglect or refusal on the part of the son and daughter to maintain him and her. Neglect or refusal can be inferred from the works, conduct of the son, if there is justification for refusal to live separately.

Keeping the statutory principle referred to above, this court has to see whether the Petitioner has been able to prove that her son has neglected her and as a result of which she has been compelled to reside separately and has also been able to show that cruelty is being manifested in the conduct of the son.

Speaking tersely, the concept of neglect involves an element of deliberate disregarding or slighting of a person, or avoiding or paying no attention to the person concerned.

Neglect has myriad forms. It always hinges on the facts and circumstances of each and every case.

In Akhtarunnisa v S Khan, 1987 (1) HLR 109(MP), it has been observed that it is not necessary for the wife to prove neglect or refusal by her husband to maintain her by adducing any elaborate evidence. It is sufficient for her to establish the circumstances from which a *prima facie* case of husband having neglected or refused to maintain her could be spelt out. The very term 'neglect' does not lose its essence on peculiarity of relationship between the parties. Thus, the very view in this dictum is universal and thus can be aptly fit for a mother also.

The Ld. Advocates submitted allegations and counter allegations for the Petitioner and the Opposite Party, as stated above in the factual Backdrop of the instant case.

Now, let me consider the two rival contentions with reference to the evidence on record.

For the sake of convenience of discussion and as all the points are co-related, all the points are taken up together for delineation and analysis so as to come to a reasonable culmination in respect of the feud between the parties to this case as has unfurled from the petition.

Section 125 of Cr.P.C requires as a sine qua non for its application neglect or refusal by the son or daughter to his parents seeking maintenance under section 125 Cr.P.C has to prove the neglect or refusal on the part of the son or daughter to maintain his or her. Neglect or refusal can be inferred from the works, conduct of the husband if there is justification for refusal to live separately.

Now, let me consider the two rival contentions with reference to the evidence on record.

It appears from the evidence as garnered on record that that the parties had been residing separately and it is admitted. The O.P. failed to show anything that he provided any maintenance to the petitioner since in the year 2020 though he has admitted the same in his written objection.

From evidence of PW-1 the petitioner stated that the petitioner has filed this case against his eldest son and after death of his husband, she gave his marriage in 2018 and after marriage, the dispute between the both parties started. Further, the said witness has admitted the fact that the OP is giving her maintenance of Rs 2,000/- per month on regular basis and till date she has received Rs 23,000/- as maintenance but presently not getting anything. Further, she has stated that the OP and his wife has filed a criminal case against the petitioner and his wife and at present the petitioner is living in a poor condition and Rs 2,000/- maintenance is not enough for her where the OP is earning Rs 40,000/- per month. The said witness further admitted that her younger son does work in North Mill and having Rs

20,000/- to 25,000/- per month. Further, the PW-1 denied the allegation that on 21.11.2020, the OP and his wife did not abused her and did not torture her badly. At the time of cross examination now it is the duty of the petitioner to prove the allegation against the OP.

Perused the evidence on record, it is hereby appeared that the household and residential premises is being possessed by the petitioner herself and the petitioner has knowledge regarding the criminal case prior to filing of this case. Further, the petitioner herself admitted that in the said criminal case after the submission of charge sheet, she thought of filing this case and here the intention of the petitioner comes to play. The court observation depict clear judicial shift from rigid technicalities to a more human and purposive approach in maintenance matter. It is discernible that courts today focus less on formal marital levels and more on real question. In the case of **Kritikant D Vadodaria Vs State of Gujarat**, the Apex Court held that the object of Section 125 CrPC is to give social justice to woman, child and parents and to prevent destitution, vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. Perusing the document on record it is not found any documentary evidence filed by the petitioner regarding the income of the OP. In numerous court proceedings, applications are often filed without adequate disclosure of parties income, asset or financial liabilities thereby impeding a fair assessment of quantum maintenance. As a result, genuine claim, risk may under value while in certain cases one party may gain undue advantage over others. Thus the primary object of Section 125 CrPC is must be a beneficial legislation but at the same time, the basic moral interpretation of the said section cannot be overlooked. Perusing the evidence on record, the PW-1 on open dock has admitted the fact that she would not file this case if the OP did not file the previous criminal case against her and his son. Thus at this juncture, it is as clear as water that the petitioner has filed this instant case against the OP out of revenge and vengeance. Though the petitioner has himself admitted

that the OP is giving him regular maintenance of Rs 2,000/- per month on regular basis and thus from this contention, the basic intention of the OP to perform his obligation towards his mother is also taking note and considered.

Further, the petitioner on the same line in the case of Chaturvuj vs Sitabai the court observed that the object of the maintenance is not to punish a person for his neglect but to prevent the vagrancy and destitution of deserted wife or parents by providing her food, cloth, shelter and Section 125 CrPC enacted to protect the woman and children or infirm parents falling within the scope of Article 15(3) reinforced by Article 39 of Constitution.

Thus from the evidence on record, some facts and points have been popped up. Firstly, the petitioner and the OP relation as son and mother are admitted without any denial. Secondly, the petitioner is subjected to physical and mental torture by OP and his family. Thirdly, both spouses are living separately since a long time though the petitioner admitted that OP is paying regular maintenance of Rs 2,000/- per month in regular basis. Fourthly, the petitioner has no income of her own and she has not received any parental property and her elder brother used to help her for livelihood. Though she has another son having income of Rs 10,000/- per month as per PW-1. Fifthly, the OP has sufficient means of income and did not pay sufficient maintenance as per his capabilities. Though the O.P. has claimed that he is working in a private sector and earns Rs 29,000/- per month. He has to pay maintenance for his wife and children aged 4 years along with he has to repay his loan with installment of Rs 13,000/- per month and also has to pay rent Rs 5,000/- per month including electric bill since his separate living. Though no such documentary evidence is produced in supporting of this contention but it is fact and admitted by the petitioner too that OP is residing in a separate accommodation. The OPW-1 further denied his monthly income of Rs 40,000/- per month by doing job in ITC and also denied the fact that the petitioner has not received any maintenance money

from him. He further denied that he has bought an alternative house outside and admitted that he is living in a rented premises which he has mentioned in his written objection. Though he has not filed any rent of receipt before this court and did not provide any details of the landlord. Though the OP has admitted the fact that the petitioner is residing in a house with her younger son which is unpartitioned property with having various co-sharers. Thus it is established also that petitioner is possessing the house which is not a sole own property. Further, OPW2 is appeared on dock and stated that she got married with OP in the year 2014 and due to difference of caste, her matrimonial dispute arose with petitioner and she was badly tortured and abused badly by her. The matter was informed before Rajapur PS but concerned PS did not take any step and later she has filed a case against petitioner and she has been driven out from her matrimonial house by petitioner. The OPW2 admitted the monthly income of the OPW1 of Rs 29,000/- per month and also stated that the petitioners are enjoying the usufruct and ancestral property. At the time of cross examination like she also admitted that she does not know the present condition of the petitioner and also admitted that the property where the petitioner is residing is ancestral property and got inherited by the law of inheritance. Though the OP side did not produce any document regarding the ownership of the property by the petitioner. Further, the OPW2 also failed to produce any rental receipt of their separate accommodation. Further, she failed to produce any document regarding plot number, area of the land from where it is alleged that the petitioner are enjoying usufruct and benefits. Further, she failed to produce any document regarding the loan amount debited from the OP's account per month.

From the deposition of PW1, where it is appeared that the OP has income of Rs 40,000/- per month but to rebut the same contention, the OP has not corroborated any material evidence in favour of himself and thus without any valid evidentiary documents, this court will presume the version of the petitioner as conclusive as it

is the burden upon the OP to prove his point that he has not sufficient means of income and has to incur the other expenses. Though the OP has admitted that he has to incur two loans and to pay separate rent for accommodation but no such documentary evidence is produced. Further, from the material on record, it is hereby appeared that OPW1 and OPW2 has both admitted the fact that presently they did not know the condition of the petitioner. However, it is also admitted fact that on the part of OP that after separation, he has paid maintenance to his mother Rs 2,000/- per month but whether he is still paying the same to the petitioner or not. No such valid document or receipt is found at the time of evidence. Thus as per version of PW-1, this court will taken into consideration that OP has paid till now Rs 22,000/- to 23,000/- as maintenance. It is also considered that the petitioner version to claim maintenance out of revenge from his own son is not appreciable and diminish the basic value and principle U/s 125 CrPC.

Thus, the delineation made above are enough to hold that the petitioner was subjected to refusal or neglect by the opposite party, since in a case under section 125 of the Cr P C, the petitioner has to prove that a prima facie case of neglect exists from the materials on record. From the above case prima facie of case of refusal is established by the petitioner in part as the OP as per record till some point of time has paid maintenance towards her on regular basis.

The Petitioner as PW1 in her evidence stated that she has no income. It further appears no such corroborative witness is adduced by the OP on his behalf and it is the bounden duty of the OP to prove the burden of proof and in this case the OP has failed to prove his contention before this court. Though the OPW1 and OPW2 both have failed to produce any necessary documents regarding plot and number of area of property as alleged to possess by the petitioner. Further, they admitted on dock that the alleged property is ancestral one and not partitioned. The OP further admitted that they did not have any idea regarding the present condition of the petitioner. As per monthly

income is concerned, the OP denied the huge income per month. Rather, he stated that he is earning Rs. 29,000/- per month.

The petitioner has contended that the opposite party has refused and neglected to maintain her after leaving the house and to start residing in a separate accommodation and the petitioner having no other way to take help from her own brother.

The opposite party on the other hand has contended that they have been driven out from their house and having no other way took shelter in a rented premises but same is not proved by the help of any cogent oral or documentary evidence and as such the same is not proved. Though from the evidence on record from both side, it is appeared that due to family dispute, a criminal case was filed by the OP against the petitioner and out of revenge, the petitioner has filed the instant maintenance case against the OP but the basic obligation under the section cannot be overlooked when the OP at the stage of evidence has not adduced any evidence in their favour. Thus this court will take consideration that may be OP once upon a time has paid some maintenance money towards the petitioner but presently is not paying or performing any obligation of being a son. Though the Ld Advocate of the OP has contended and tried to highlight the point of having income of another son but that does not debarred the basic duties and obligations of the OP under this section.

Since the petitioner has alleged that the O.P earns Rs.40,000/- per month but he failed to establish the fact that she is not having sufficient means to maintain his wife therefore in pursuance of Section 125 of Code of Criminal Procedure the O.P, having sufficient means, is duty bound to maintain his mother. In the light of the foregoing discussion, I am of the view that Opposite Party has sufficient means to maintain the petitioner. Petitioner has also stated that she has no source of income to maintain herself .

Although the O.P. tried to proof that he earns Rs. 29,000/- per month but the said deposition stood way back in the year 2021 and

considering the rate of inflation it is presume that the O.P. earns more has the same is otherwise not rebutted.

In view of the discussion made above and regards being had to the provisions of law and other materials on record in my considered view, Petitioner is entitled to get maintenance allowance for her.

Hence, in view of the facts of the case, evidence on record and in view of the Judicial Pronouncements of Hon'ble Courts I find no hesitation to hold that the Petitioner has no income of her own to maintain her.

Thus in view of the observation of the facts and circumstances of the instant case at hand I can safely hold that the Opposite Party has the capacity to earn as such, he is an able bodied person and cannot take the defence that he has no capacity to pay separate maintenance to his mother. This court will further consider his own family consist of wife and children at this stage.

Thus, all these points are decided in favor of the Petitioner against the Opposite Party.

In view of the above stated facts and circumstances of the instant case the Petitioner is entitled to get maintenance from the Opposite Party. However, a question would crop up as to from which date the maintenance should be allowed. Whether it would be from the date of order or the date of application.

That apart, while fixing the quantum of maintenance, regard must be had to the factors like status, position, social customs, way of life, the community to which they belong, their upbringing, educational qualifications, standard of life and the requirements in relation thereto. Another crucial factor which the court is to take note of is that the quantum of maintenance fixed should not in any way appear to either luxurious or penurious for the parties.

Keeping in mind the above-stated principles let me see as to what should be the quantum in this case and from which date, either from the date of order or from the date of application.

Therefore, if the maintenance order is passed in favour of the petitioner from the date of filing of this case, to my mind, it would be justified and proper.

Thus the petitioner mother is entitled to get the maintenance from the date of filing of this case. Considering facts and circumstances of the case, the prayer made in the application under section 125 of the Code is liable to be allowed from the date of filing of this case.

In the light of discussion made above, if the amount of Rs. 5,000/- p.m. for the mother is allowed as maintenance allowance per mensem it would be a financial solace to the petitioner.

Considering the case and evidence from the both side this Court thinks fit that the petitioners are entitled to get maintenance from the OP.

To wind up, the application under section 125 Cr P C is allowed on contest from the date of filing of this case.

Hence, it is

ORDERED

That the application under section 125 of the C r P C is allowed on contest in favour of the petitioner but without any order of cost.

The petitioner is entitled to get Rs. 5,000/- (Rupees Five thousand) per mensum for herself from the date of filing of this case.

The opposite party shall make payment to the petitioner, the above-said amount, by the 10th day of every succeeding month.

O/P is also directed to pay the arrear maintenance allowances which becomes due to the petitioner by dint of this order, to the petitioner within a span of six (06) months in six(06) equal installments from this date.

In case, the opposite party fails to make payment, the petitioner no 1 would be at her liberty to execute the same through the court.

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

The instant case is hereby disposed of on contest in full in favour of the Petitioner.

D/C By

[A K A S H B O S E]
J.M., 1st Court, Uluberia, Howrah

[A K A S H B O S E]
J.M., 1st Court, Uluberia, Howrah