

IN THE COURT OF JUDICIAL MAGISTRATE, 3RD COURT AT BARRACKPORE

PRESENT:- Smt. Pratigya Pradhan (J.O.Code- WB 01453)

Judicial Magistrate, 3rd Court, Barrackpore.

M. CASE NO: 182/2021

T.R- 243/21

Sahanaj Bibi -----Petitioner

-VS-

Md. Arif -----Opposite Party

Under Section 125 of Cr.P.C.

Date of Final Order: 05.04.2024

Today is fixed for ex-parte order.

Petitioner files hazira and represented through her Ld. Advocate.

Heard the Id. Advocate for the petitioner. Perused the application filed u/s.125 CrPC, evidence of the petitioner both oral and documentary and her affidavit of assets and liabilities. Considered.

Now the record is taken up for passing order.

The petitioner's case in brief is that the petitioner is the legally married wife of the O.P and their marriage was solemnized on 02.03.2012 according to Muslim rites and customs. After marriage the petitioner went to her matrimonial home where she lead a happy conjugal life with the OP. Out of the said wedlock one female child namely, Zarin Parveen was born on 06.08.2013. After the birth of the female child the OP and his family members started to inflict mental and physical torture upon the petitioner and abused her with filthy languages. The OP and his family members forced the petitioner to go back to her paternal house along with her female child. The petitioner had to undergo treatment due to inhuman mental and physical torture. The parents of the petitioner went to her matrimonial house and tried to settle the dispute but the OP and his family members assaulted them and abused them with filthy languages. The petitioner was ousted by the OP and his family members several times but with a hope for a peaceful future the petitioner went back to her matrimonial house. At her matrimonial home the petitioner was not given proper food and clothing. On 15.10.2020, lastly the petitioner was forcefully driven out of her matrimonial home by the OP and his family members and they took away the child of the petitioner they also did not allow the petitioner to take her documents and stridhan articles. The petitioner took shelter at her parental house. The petitioner requested the OP to take her back to the matrimonial home but the OP refused. Since 15.10.20 the OP has refused to maintain the petitioner and the petitioner has been dependent on her parents. The petitioner has no source of income and on the other hand OP runs a grocery shop and he has a animal farming business wherefrom he earns Rs.35,000/- per month. The petitioner has prayed for a sum of Rs.15,000/- per month for herself as maintenance allowance from the OP.

It appears from the record that notice was issued to the OP and the same was delivered to him but the OP did not appear to contest the case such the case was fixed for ex parte hearing. Subsequently on 27.1.23 the OP appeared and prayed for vacating the ex parte order which was allowed with cost. However, the OP again failed to take in his step as such the case was fixed for ex parte hearing.

To prove the case of the petitioner, she herself has deposed as P.W.1. No documents was produced and exhibited during the evidence of PW 1.

Perused the maintenance application, evidence of the petitioner and affidavit of assets and liabilities. Considered.

Considering the unchallenged testimony of the Petitioner, I do not have any reason to disbelief the Petitioner's case.

It is a solitary principle of law that every husband is bound to maintain his wife and child. When a person entered into a bonding of marriage then it is presumed that he has willfully accepted the liability of maintaining of his wife. The object of section 125 of Cr.P.C. is to prevent vagrancy and destitution.

Thus, I am of the view that the opposite party is bound to maintain his wife considering all the aspects the prayer of this petitioner claiming maintenance from the opposite party for herself is allowed ex-parte.

It is pertinent to mention the observation of Hon'ble Supreme Court of India, in **Rajesh Vs. Neha (2021) 2 SCC 324** where the Hon'ble Court was pleased to observed in its page 39 that

“VI. The directions in view of the Foregoing discussion as contained in Part B I to V of this Judgement we deemed it appropriate to pass the following directions in exercise of our powers under Article 142 of Constitution of India:

(d) Date form which maintenance to be awarded We make it clear that maintenance in all cases will be awarded from the date of filing application for maintenance.

Now in determining the income of the OP, the petitioner has not filed any document as to the income of the OP. It can be observed that the OP is a healthy and able bodied person having source of income. Considering the current market price, basic needs of the petitioner, social position of the parties, petitioner is entitled to get a monthly maintenance allowance of Rs.5,000/- per month for herself.

Hence it is,

ORDERED

That the case of the petitioner claiming maintenance from the O.P is hereby allowed ex-parte.

The O.P is hereby directed to pay a sum of Rs.5,000/- per month for the petitioner as monthly maintenance allowance from the date of filling of the petition i.e.25.2.21 to be paid to the same within 15th of each succeeding month.

Let a copy of this order be given without payment to the petitioner in terms of section 128 of Code of Criminal Procedure, 1973 read with Rule 251 of the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985.

Dealing Assistant is directed to make necessary entries in T.R and CIS.

Typed and printed by me,

**(Pratigya Pradhan)
Judicial Magistrate 3rd Court,
Barrackpore.**

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Judicial Magistrate, 3rd Court,
Barrackpore.**