

In the Court of the Ld. Judicial Magistrate 1st Court, Raghunathpur, Purulia.

Present: - Bashar Nawaz
Judicial Magistrate, 01st Court, Raghunathpur, Purulia.

Misc Case No. 23 of 2023
CIS Registration No. 23 of 2023
Case under Section 125 of CrPC

Lakshmi Swarnakar

-VS-

Amar Swarnakar

Order dated: 27.08.2025

The petitioner files hazira through her ld lawyer. The opposite party is absent and represented by his Ld. Lawyer. As stipulated by the previous order today is fixed for passing of order. On the earlier date OP was directed to submit details of his assets and liability in the mean time, but he failed to submit the same.

Hence the record is taken up for passing of order.

The petitioner has filed an application under Section 125 of the Code of Criminal Procedure seeking interim maintenance for herself and her minor son. It is her case that she has been residing in her father's house since 30.07.2022 as the opposite party, her husband, has failed to provide any maintenance to her or their minor child. She asserts that her father is a poor day labourer who maintains a large family and that she and her child are surviving on his mercy. The petitioner submits that she has no independent source of income, while the opposite party is an able-bodied person earning approximately Rs. 80,000/- per month from various sources. Alleging that the opposite party is deliberately delaying the proceedings to harass her, she prays for a direction upon him to pay a sum of Rs. 15,000/- per month for her maintenance, Rs. 5,000/- per month for the minor son, and Rs. 3,000/- per month as litigation cost, totaling Rs. 23,000/- per month, during the pendency of the case.

The opposite party, on the other hand, has contested the petition by filing a reply wherein he has described the petitioner's application as false, frivolous, vexatious and not maintainable either in law or on facts. He submits that the petitioner deserted her matrimonial home of her own accord and took with her not only her jewellery but also several ornaments belonging to his late mother. According to him, the petitioner is well maintained in her father's house, her father being financially sound and not a poor labourer as claimed. He further asserts that the petitioner has an independent source of sustenance from her parental home and is, therefore, not entitled to claim maintenance. The opposite party has specifically denied that he earns Rs. 80,000/- per month and has instead stated that he is presently unemployed and searching for suitable employment. He contends that the petitioner has concealed material facts, misrepresented circumstances, and approached the Court with unclean hands. Relying on the decision of the Hon'ble Supreme Court in *Dalip Singh v. State of U.P. & Ors.*, (2010) 2 SCC 114, he argues that a litigant who approaches the Court with falsehood is not entitled to any relief, interim or final, and accordingly prays for rejection of the application for interim maintenance.

On the date fixed for hearing Ld. Lawyers for both sides were heard in full on the legality and validity of the petitioner's claim of interim maintenance. Ld lawyer for the petitioner submitted that the petitioner is passing her days in great hardship and if the prayer for interim maintenance is not allowed in that event the very existence of the petitioner will be seriously jeopardized. It was further argued that due to paucity of her income the petitioner is not able to maintain herself and due the dilatory tactics adopted by opposite party the petitioner is fighting for her existence and even conducting this case. It has been further submitted by the ld lawyer for the petitioner that in this case the petitioner has been admitted to be the wife of the opposite party and that being the case the opposite party is duty bound to maintain the petitioner no matter how small his income might be and the petitioner must get the interim maintenance as prayed for.

Refuting the version of his counter part the ld lawyer for the opposite party submitted that the opposite party has low income and the petitioner made false statement and that must entail the dismissal of the petition as submitted by the petitioner. It was also vehemently argued by the ld lawyer for the opposite party that the petitioner is not staying with the opposite party out of whims and caprice and there is no point in allowing the prayer of the petitioner who by herself has renounced the company of her husband. The learned lawyer for the opposite party lay much emphasis on Section 125 sub-section (4) of the Criminal Procedure Code 1973 and argued that the petitioner is not entitled get any maintenance as the

petitioner has deserted his client. Ld lawyer for the opposite party further submitted that the petitioner is exploiting the opposite and her prayer ought to be rejected by this court.

Opposite party has relied on the following judgements 1. *Rekara Sultana @Rehana Begum vs B. Mohammad Ghouse Anthra Pradesh HC 18 march 2016*, 2. *Anil Kumar Jain vs Sunita Madhya Pradesh HC 28 Nov 2016*, 3. *Arif vs Sajida Madhya Pradesh HC 4 july 2019*, 4. *Amit Kumar Kachhap vs Sangeeta Toppo Jharkhand High Court 2 feb 2024*.

Having considered the rival contentions and the authorities relied upon by the learned counsel for the opposite party, it is to be noted that the reliance on *S. Rehana Sulthana @ Rehana Begum v. B. Mohammad Ghouse* (AP High Court, 28.03.2016), *Anil Kumar Jain v. Sunita* (MP High Court, 28.11.2016), *Arif v. Sajida* (MP High Court, 04.07.2019) and *Amit Kumar Kachhap v. Sangeeta Toppo* (Jharkhand High Court, 02.02.2024) is misplaced. The principle underlying Section 125 Cr.P.C. has been consistently explained by the Hon'ble Supreme Court in *Mohd. Ahmad Khan v. Shah Bano Begum*, (1985) 2 SCC 556 and *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316, that the provision is a measure of social justice intended to prevent destitution and vagrancy, and has to be interpreted liberally in favour of the wife who is unable to maintain herself. The disqualification under Section 125(4) Cr.P.C. is not automatic, and whether a wife is living separately "without sufficient cause" is a matter of factual inquiry. Recently, in *Rina Kumari @ Rina Devi v. Dinesh Kumar Mahto* (Supreme Court, 10.01.2025), it has been categorically held that mere non-compliance of a decree for restitution of conjugal rights or the fact of residing separately cannot, by itself, disentitle a wife from claiming maintenance; the Court must examine whether there was sufficient and justifiable reason for her living apart. Further, in *Rajnesh v. Neha* (Supreme Court, 04.11.2020), the law has been clarified that even if a wife has some support from her parental family or is educated, she may still be "unable to maintain herself" within the meaning of Section 125, and the husband's obligation does not stand discharged merely because she has temporary shelter. The decision in *Sudeep Chaudhary v. Radha Chaudhary*, (1997) 11 SCC 286, also underscores that maintenance proceedings are summary in nature and intended to provide immediate relief for sustenance. In light of these binding pronouncements, the High Court decisions relied upon by the opposite party cannot override the settled position that interim maintenance must be considered on the basis of the wife's inability to maintain herself and the husband's capacity to provide support. Accordingly, those judgments stand distinguished on facts and law, and the petitioner's entitlement to interim maintenance requires consideration within the framework laid down by the Supreme Court.

It is quite common that applications made under section 125 of the Code also take several months for being disposed of finally and this court can do very little to obliterate this time span for disposal of the proceeding. In order to enjoy the fruits of the proceedings under section 125 of Cr.P.C the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the court. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed.

Thus, the law draws a distinction between a wife's right to live separately for just cause, in which case she is still entitled to maintenance, and a deliberate, unjustified refusal to cohabit, which can disqualify her under Section 125(4) Cr.P.C. Whether the separation was caused by domestic violence, cruelty, or mental harassment, and whether the wife is genuinely in need of support, are the key determining factors. Maintenance, being a social welfare measure, is not to be denied mechanically but must be adjudicated equitably and contextually, keeping in mind both the spirit of the law and the facts of the case.

Thus being pioneered by the above observation, there is no obscurity on the point that this court is perfectly authorized to grant interim maintenance if the other attending circumstances supports the case of the petitioner and it is the duty of the court to hoist the moto of this beneficial legislation. It is also evident that while deciding the question of payment of interim maintenance to a wife where relationship is admitted, this court is only expected to form a prima facie opinion as to the legality and validity of the petitioner's claim. If the argument of the ld lawyer for the opposite party that the petitioner has willfully deserted the house of the opposite party; has to be accepted then it is only after the entire evidence is led that an order for interim maintenance can be passed. That would defeat the very purpose of providing for payment of interim maintenance in Section 125 and hence the argument is required to be discarded at this stage. In ***Sunita Kachwaha & Ors. Versus Anil Kachwaha, AIR 2015 SC 554*** it has been held as follows:

" 8. The proceeding under Section 125 Cr.P.C. is summary in nature. In a proceeding under Section 125 Cr.P.C., it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need

not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant-wife and the respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance.”

Therefore the much argued point of the opposite party merits no consideration at this stage. At this stage another piquant question raised by the opposite party in his written objection, needs to be addressed. Ld lawyer for the opposite party during the course of his submission has submitted that the opposite party has a very little income and with that income it is practically impossible for him to maintain the petitioner. The law on this score has been clinched by now by the pronouncement of the Hon'ble High Court in **Saili Halder vs Debaprasad Halder And other reported in 2005 (3) CHN 87** the Hon'ble High Court has observed that:

“ 8. Section 125 prescribes a summary procedure with a view to providing a speedy remedy against vagrancy and starvation of a deserted wife or child or indigent parents, the object being to compel a man to perform the moral obligation which he owes to society in respect of his wife, children and parents so that they are not left beggared and destituted on the scrap-heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence.

At the stage of hearing an application for interim maintenance which is generally disposed of on the basis of affidavit filed by or on behalf of the applicant stating the grounds in support of the claim for such maintenance, the Court is to satisfy itself regarding existence of a prima facie case for making such an order. Where such a prima facie case has been made out, interim maintenance cannot be denied unless it is barred by any other provision. Residing of the wife in a place on her own arrangement at the charity and mercy of others cannot be held to amount to discharge of the moral and legal obligation of the husband to look after his wife. The wife cannot be treated as a chattel. The word "maintenance" is not to be narrowly interpreted. It means the most reasonable requirement for existence of a person to live separate. As regards the above contention of O.P. relating to his receipt of a meager income. If the above contention of the O.P. is taken into consideration, any person who is obliged to maintain his wife, children etc. by adopting the same recourse can avoid his solemn obligation to maintain and thus frustrate the very raison d'etre of the provision which is not permissible.”

Thus projecting the alibi that the opposite party has a very meager income or no income at all cannot exonerate the opposite party from his responsibility of maintaining his wife. It is axiomatic that the opposite party is an able bodied person and can work and earn his living. At this juncture a judgment of Hon'ble Madras High Court **Kandaswami Moopan v. Angammal AIR 1960 MADRAS 348(V 47 C 121)** demands mentioning here. In that case the Hon'ble Court held “ So long as a man is able bodied and can work and earn his livelihood, it is his duty to support his wife. Therefore notwithstanding the fact that a husband may be insolvent or a professional beggar or a minor or is a sadhu or monk, he must support his wife so long as he is able bodied and can eke out his livelihood and support his wife.”

The Hon'ble Kolkata High Court in **Ali Hossain v. Baby Farida Khatoon 1998 CRI.L.J. 2762** observed: “...The fact remains that the husband is an able bodied young healthy man. This fact may not give rise to a presumption that he is capable of earning sufficient money and is in a position to pay sufficient maintenance to his wife and two children, as was held by our High Court in **Dasarathi Ghosh v. Anuradha Ghosh 1988 CRI.L.J. 64**, but this much safely can be said that he had capacity to earn and the fact that he has capacity to earn is also borne out by his own case during the trial.”

So even if the opposite party is unemployed or has negligible income (as contended by him), that does not absolve him of the responsibility to maintain his wife. Moreover when at the time of marriage the opposite party had sufficient means to maintain his wife then it is corollary that he is still able to maintain his wife and he cannot evade that responsibility of his. So, the O.P.'s contention of his being having no or inadequate sufficient means to maintain himself and the petitioner is no ground per se to refuse maintenance to the petitioner. Also whether or not the petitioner had left her matrimonial home voluntarily or was forced out by the O.P. is a matter of evidence which cannot be gone into at this stage because the proceeding is at its threshold. In absence of strong prima facie evidence to the contrary on this point, it can be said that the petitioner being the legally wedded wife is entitled to some interim maintenance for herself.

Now the question germane for consideration is what should be the amount of maintenance. The legislative edict behind section 125 of Cr.P.C is not to penalize a person for his past neglect, but to prevent vagrancy in future of those who pass their days in penury, by compelling those who are obligated to look after and maintain them by catering to

their requirement commensurate with the standard of living which is neither luxurious nor penurious but is modestly consistent with the status of the family. However no arithmetic formula can be adopted as there cannot be mathematical exactitude. Each case depends upon its own facts; and it must be said that the Section is not a code of rigid and inflexible rules, arbitrarily ordained to be blindly obeyed; it does not enact any mathematical formulae; it gives wide power, flexible and elastic to do justice in a given case and leaves everything to the Judge's discretion. The Court is duty bound to take a just view of the matter and to see that it does not rehabilitate a party at the cost of the other and leaving the other side destitute. One thing however is clear in this case, the opposite party being an able bodied person and being the husband of the petitioner is bound both socially and legally to maintain his wife.

In this case the O.P. has brought nothing on record to prima facie satisfy this Court that the petitioner has sufficient means to support herself. Moreover this is a question which is needed to be proved at the stage of trial after taking evidence and not at this stage. Only evidence can illumine this court on the point of the true income of the parties.

It is a settled fact that the provisions of maintenance have been embodied in the Code of Criminal Procedure as a measure of social justice to protect the women and children of the society. The provisions as well as a plethora of judgments of higher courts have amply made it very clear that an able bodied person, who has his wife to support, has to maintain them in any condition. Here also, the O.P is under a social, moral and legal obligation to look after his legally married wife and maintain her. This has been clinched by catena of judicial pronouncements that there having no fixed and inflexible formula, what should be the quantum of maintenance is based on the discretion of the court but the court while exercising such discretion is duty bound to take a just view of the matter and to see that it does not rehabilitate a party at the cost of the other and leaving the other side destitute. However the soaring price index and the spiraling prices of articles of daily consumption must also be considered while considering the amount of maintenance.

In presence of a strong prima facie case to go to trial and considering all the facets of this case, and in view of the present social scenario as well as the status of both the parties which have transpired till date from the record, and taking into note all other facets of this case, I am of the opinion that the petitioner/wife is entitled to get interim maintenance from the O.P/husband to the tune of ₹2000/- per month for herself and ₹ 1000/- for her . I think that such amount shall be enough for the petitioner to sustain herself for the time being till final order and in the present socio-economic archetype I am feel extremely loath in granting any thing below that.

Hence, it is,

ORDERED

That the interim petition under section 125 of the Code of Criminal Procedure 1973 is hereby disposed on contest without any cost.

The Opposite Party herein is hereby directed to pay Rs. 2000/- as monthly maintenance to his wife being the petitioner herein, for her, and another sum of Rs. 1000/- to the petitioner herein for the monthly maintenance of the child of the petitioner and the opposite party, with effect from the date of filing application.

Liberty granted to the petitioner to put the Order or any part thereof into execution if the opposite party fails to comply the same.

Hand over a copy of this order to the petitioner free of cost forthwith.

To 13.10.2025 for evidence.

D/C by me

JM1
Raghunathpur, Purulia

Judicial Magistrate 1st Court
Raghunathpur, Purulia
WB01449