

M. 389 of 2023
Jhumpa Mondal V Arup Naskar

(1 of 7)

In Court of Additional Chief Judicial Magistrate, Diamond
Harbour, 24 Parganas (South)

Present: -Sri Arif Ahmed, W.B.J.S.
Additional Judicial Magistrate,
Diamond Harbour, 24 Parganas (South).

In the matter of:-

Jhumpa Mondal

Petitioner

VS

Arup Naskar

Opposite Party

M. 389/2023
CIS Registration MrM No. 389 of 2023

CNR No. WBSP14-0010462023
Case under Section 125 Cr.P.C.

Date of Delivery of Judgment:-The 18th day of August, 2026

J U D G M E N T

Factual Outline

1. This is an application under section 125 Cr.P.C filed on 22.09.2023, wherein the applicant seeking succour of maintenance for herself from the Opposite party.

The fact of this case after scrutinizing the pleadings of the parties in capsulated form is that petitioner, Jhumpa Mondal is married to Opposite party, Arup Naskar as per Hindu rites and customs on 10.01.2019 . Dowry including cash of Rs. 50,000/-was presented by her parent. After marriage petitioner went to her matrimonial home and resided with the OP as husband and wife. Their marriage was consummated. While residing as husband and wife at matrimonial home she was physically and mentally tortured for demand of money. When she reveal that her father cannot fulfill the demand then torture upon her was aggravated. Still she is resided at the matrimonial home hoping for better future. Finally, on 20.01.2020 she was again physically and mentally tortured by the OP for demand of Rs.20,000/- and was driven out from the matrimonial home. Finding no other alternative she took shelter at her paternal home. Since the day of separation, OP as neither taken information about her. Petitioner is an helpless lady having no independent source of income. On the other hand OP is a fit and able bodied person having dwelling house, landed properties etc. He is by profession a silver smith. He earns monthly Rs.40,000/- from all sources.

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Accordingly, petitioner claims monthly maintenance for herself to the tune of Rs.10,000/-.

2. Inter alia, OP contested the instant case by filing his written objection wherein he denied the statements and allegations made against him save and except which has been admitted. He admitted petitioner as his wife. The OP contended that the petitioner was unable to adjust with the matrimonial family members. She pressurize OP to live domesticated son in law. The OP also alleged that the petitioner has illicit relation with some other person of her paternal home locality. The petitioner voluntarily left OP's company and is residing at her paternal home. Petitioner is by profession a tailor earning Rs.8000/- per month. OP is a day labour earing 3000/- per month Accordingly, he has prayed for rejection of the instant case.

EVIDENCE ON RECORD

3. In order to prove her case the petitioner has examined herself as P.W.1. On the other hand opposite party adduce himself as O.P.W.1.

EXHIBIT FROM THE SIDE OF PETITIONER

No Exhibit.

EXHIBIT FROM THE SIDE OF OPPOSITE PARTY

No Exhibit.

4. **Argument advance by Ld Counsel for the petitioner:**

Ld. Advocate for the petitioner argued that petitioner was physically and mentally torture in different manner for demand of money. He physically and mentally torture petitioner and driven her out. He does not maintains her. OP has sufficient means. Opposite party works as a Silver Smith and has landed property. He earns Rs.40,000/- monthly from all sources. Ld. Counsel also argued that since the days of separation O.P. is not maintaining petitioner. The Ld. Counsel further argued that the petitioner deposed as PW-1 and corroborated to her case. Her testimony was tested by the cross-examination and remain unshaken. So the petitioner is entitled to get maintenance from Opposite party for herself.

5. **Argument by Ld. Advocate of O.P.**

Ld. Advocate for the Opposite party argued that petitioner is not entitled to get any maintenance from the Opposite party. The petitioner has voluntarily left the OP's company due to his poor financial condition and nature of job.

There was no refuse and neglect on the part of the OP towards the petitioner. The petitioner has filed the instant case without any reason just to harass the OP. The Ld. Counsel pressed that the petitioner has to show by cogent evidence that she was refused and neglected by the OP. In the instant case save and except the oral testimony of PW-1, none has been examined to support petitioner's case. OP is a dutiful husband. OP is a day labour and earns Rs.3000/- per month. Petitioner is not entitled to get maintenance from the Opposite party. Ld Counsel prayed rejection of instant application.

POINTS FOR CONSIDERATION

- i) Whether the petitioner is the legally married wife of opposite party ?
- ii) Whether the petitioner is unable to maintain herself ?
- iii) Whether the opposite party has sufficient means to maintain the petitioner ?
- iv) Whether the opposite party has neglected to maintain the petitioner ?
- v) Whether the petitioner is entitled to get maintenance from the opposite party for herself ?

DECISION WITH REASONS

6. 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 and evidence on case record.

7. Before coming to any conclusion to answer the issues, let us first scan the oral testimony and document, if any, adduced by either of the parties.

8. PW-1 Jhumpa Mondal by adducing herself replicated the statement as made by her in her application u/s. 125 Cr.P.C. and at the same time denied the case of the Opposite party.

In cross-examination, she stated that she has filed any document to show that dowry was presented. She live her conjugal life for six months and during those six months he did not lodge any complaint any where. She came to her paternal home because she was driven out after being assaulted. She has lodged the instant case after four years of their separation. During those four years, she had gone to her matrimonial home but cannot recollect the date. Rest part is denial.

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9. OPW-1 Arup Naskar by adducing himself replicated the statement and allegation is made by him in his written objection and at the same time denied the case of petitioner.

In cross-examination, he stated that he has not filed any application for enforcing his conjugal right. He also admitted that he is not complying the direction of this court by paying the interim maintenance award. He is also not maintaining the petitioner because she does not keep any relation with him. He admitted that bridal torture complaint has been registered against him. Rest part is denial.

10. After scrutinizing the pleadings of the parties, the oral and documentary evidence adduced it transpire that admittedly Petitioner is the legally wedded wife of OP . Even there is nothing in the case record to suggest that petitioner is being re-married. So, in my view petitioner is the wife of O.P. Thus point of consideration no. 1 is decided in favour of petitioner.

11 It appears from the oral evidence adduce from the both sides that the parties to this case have made allegation and counter-allegation against each other. Petitioner has alleged of torture upon her physically and mentally for demand of dowry of money. Ld. Counsel for the OP argued that the petitioner has failed to show by cogent evidence that torture was inflicted upon her. OP has outrightly denied infliction of torture upon the petitioner and aver that the petitioner voluntarily left his company. From cross-examination of OPW-1 this Court finds that OP and petitioner are residing separately and since the date of their separation, OP is not maintaining petitioner .

12. It has been settled in plethora of judgement by the Hon'ble Supreme Court of India as well as our Hon'ble Parent High Court that in an application under Section 125 of the Cr.P.C (now section 144 of the BNSS), strict prove of marriage is not required as it is require u/s 498A of I.P.C. It has been further held that the petitioner has to prima facie show her marriage with the OP. Even strict proof is not required by the Court to show infliction of physical and mental torture upon the petitioner/wife by the OP/husband or in-laws.

13. From the oral testimony adduced by both the parties, this Court finds that the parties are residing separately from each other and OP is not maintaining her . OP has also question the chastity of the petitioner. Questioning such chastity of a women by her husband, itself tantamount to a mental torture upon her. This Court is not unmindful of the fact that torture is

inflicted within four corners of the room where sometimes chance witness happens to be the witness of such act. OP has not taken any step to resume his conjugal life and is even not maintaining the petitioner. This Court finds from the cross-examination of husband i.e. OPW-1 that he has not been maintaining petitioner. This shows neglect and refusal on OP's part towards the petitioner.

14. From the cross-examination of petitioner, I do not find anything to disbelieve the testimony of petitioner. O.P. is not maintaining petitioner since the days of their separation. Thus, from the above discussion, I find neglect and refusal on the part of the O.P. towards petitioner. So point no. 4 of point of consideration is decided in favour of petitioner in affirmative.

15. Now the question arises whether petitioner has sufficient means to maintain herself.

O.P. has failed to adduce documentary evidence to show that petitioner is an earning lady. I further find that petitioner is residing separately from O.P.

Thus, in my view petitioner cannot sustain her life without the financial help from the opposite party. So, point no.2 is also answered in favour of the petitioner.

16. Now, the question comes whether O.P. has sufficient means to pay maintenance to petitioner for herself.

From the pleading of the parties, petitioner has aver that OP is a fit and able bodied person having dwelling house, landed properties etc. He is by profession a silver smith. He earns monthly Rs.40,000/- from all sources. Petitioner reiterate her such averment in her oral testimony. But no documentary evidence is produce by her. OP adducing himself as OPW-1 has denied that he works as a silver smith. In written objection he has aver that he earns 3000/- per month as day labour but in his oral testimony he has stated that he earns Rs.4,000/-. Such oral testimony given by the OP shows that he has intentionally suppress actual income. According to Section 106 of the Indian Evidence Act, which lays down that burden of proof of special knowledge lies upon the person who has the know of it. The income of husband is such a knowledge which remains confine to husband.

17. In Shamima Farooqui V. Shahid Khan reported in (2015) 5 SCC 705 the Hon'ble Supreme Court of India observed as follows:

*“The obligation of the husband is on a higher pedestal
when the question of maintenance of wife and children arises.*

When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes her faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance. Grant of maintenance to wife has been perceived as a measure of social justice. An order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right. Thus, it is the obligation of the husband to maintain his cannot be permitted to plead that he is maintain the wife due to financial constraints as long as he is capable of earning.”

18. Considering the above observation of Hon’ble Court and the discussion made above, in my view O.P. is a fit and able bodied person having sufficient means and is liable to maintain the petitioner including his parent and child . I bow down to the observation of the Hon’ble Court in 2011 (1) CR.L.R (Cal) 395 and is also of opinion that an able bodied husband is liable to maintain his wife and children.

19. Furthermore where it has been already observed neglect on the part of O.P. Financial support is required to be given to petitioner for sustenance. Thus, from the above discussion petitioner is entitled to get maintenance from O.P.

20. In the result and in view of the delineation made above, it is met to allow the application under section 125 Cr.P.C. as filed by the petitioner. Considering

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the facts and circumstances, status of the parties transpiring from the affidavit of Asset and Liabilities filed by both the parties as per direction of Hon'ble Supreme Court of India in Rajnesh V Neha reported in (2021) 2 SCC 324 and present condition of the market inflation this court is of view that Rs. 2,000/-per month for the petitioner towards her maintenance will be sufficient enough so as to live a modest life.

HENCE, IT IS

ORDERED

that the application under section 125 Cr.P.C. is considered and allowed on contest in part. The petitioner is entitled to get an amount of Rs. 2,000/- per month for the petitioner towards her maintenance from the opposite party from the date of filing of this case i.e.22.09.2023.

The opposite party is directed to make payment of Rs. 2,000/-per month to the petitioner for her maintenance within 7th day of every succeeding month, failing which the petitioner would be at liberty to execute the order so passed.

A copy of this order be given to the petitioner free of cost.

The case is disposed of on contest accordingly.

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(A.C.J.M. Diamond Harbour,
South 24 Parganas.)
J.O. Code WB01221

(ARIF AHMED)
Additional Chief Judicial Magistrate
Diamond Harbour, South 24 Parganas.
J.O. Code WB01221