

**In the Court of the Judicial Magistrate, 2nd Court, Diamond
Harbour**

**Present: Samitinjoy Pal
Judicial Magistrate, 2nd Court,
Diamond Harbour
Maintenance Case 260 of 2014**

Under Section 125 of Cr.P.C

**Banasree Halder
as the Petitioner**

V/s

**Utpal Halder
as the Opposite Party**

Judgment dated this 15th day of December of 2018

J U D G M E N T

This is an application under Section 125 of the Code of Criminal Procedure, 1973 filed by the Petitioner **Banasree Halder**, claiming maintenance for herself and for her minor issue from the OP

Utpal Halder, who happens to be her husband and who fathered her issue born out of the wedlock. The petitioner covets for herself, a sum of Rs. **6,000/- each** for herself and for her minor issue/Son, as monthly maintenance from the OP.

The epitome of the petitioner's case, of course bereft of unnecessary details, is that she is the legally married wife of the OP and their marriage would be solemnized dated 13th May of 2007, as per **Hindu Rites and Customs**. It is further embodied

in the petition that at the time of solemnization of the marriage, liquid cash to the tune of Rs. **100,000/-** as per his demand and other sufficient quantity of nuptial gifts would be given to the OP and his family members of his by her father and rest of her family members. After the said marriage, the petitioner would come to reside at her matrimonial house and she would start residing together with the OP as spouse in the conjugal knot. In the said wedlock, the petitioner and the OP would be blessed with the birth of their issues stated above. The petitioner would reside peacefully for some period. However, after a while of her stay therein, the OP would reveal his true self when he would start pressing for hefty amount towards meeting his unreasonable demands. That apart, he would indulge in several bad habits and one of the heinous most would be mixing and associating with women of bad repute with whom he would be quite intimate. He would not be happy with his wife being the claimant of this case and he wanted the company of other women. He would be desperate and he would seek the chance to break open the tie of his marriage and for that he would start severe matrimonial discord. The thirst for easy money would haunt him and the devil of marital life would virtually consume him. The drenched state of the financial state of the family of the claimant of this case would not mollify him and his quench for that amount. It would not be possible for her to manage this amount owing to the stringent financial state of her father and rest of her paternal house. Of course, the petitioner would come from a poor family as can be perceived from the pleading of hers. She would be compelled to express her inability to fulfil the said demand which would culminate into the OP inflicting severe assault and torture, both physical and mental over the petitioner. She would be denied the

basic necessities of life at the instance of the family members of the OP and by the OP himself. The life of hers at the said matrimonial house would come to a standstill and she would find it almost impossible to breath in there. The matrimonial house has left no stone upturned to cause harassment and render persecution against her person, both mental and physical for her inability to make arrangement of this additional amount since claimed at the instance of the OP of this case. The petitioner further explicitly has stated that ultimately the OP and rest of his family members would mercilessly assault her and subject her to an incessant persecution, for her inability to meet up with the demand since stated above and would literally drive her out from the matrimonial house along with her issues. Of course, the nuptial gift that would be given at the time of the occurrence of the alleged marriage would be kept and confined at the instance of the OP and his family members as per the submission of the claimant. She has let out all of her grievance before this Court in filing of this case as such. The date of her ouster from off the matrimonial house is the **06th of April of 2014 B.S.** Not just her, but her minor son would also be driven out as well.

Ever since she would be driven out at the instance of the OP and his family members, she has been living at her paternal house where she has to pass her days in an extreme penurious state finding it impossible to fend for herself and to maintain her minor issues.

Since then the OP has completely neglected and refused to maintain the petitioner and her minor issues. The petitioner further has stated that the OP has never provided a single farthing towards her maintenance and towards the maintenance of her minor sons since stated above. It is further

asserted by the petitioner that the OP despite having an income of Rs. **40,000/-** per monsem being an an employee of Police force and having a spurious seasonal business and having landed properties and ponds in plentitude, wilfully would have refused and neglected to maintain her and her minor son. On the other hand, the petitioner claims that she has no means to maintain herself and her minor issue and that she is compelled to pass her days under acute distress and despondency.

Such being the scenario, the petitioner has prayed for maintenance for herself and for her minor son from the OP and has prayed before this Court to allow maintenance to her and her minor son at the rate mentioned in the outset.

Having obtained notice of this case, the OP has appeared and he has filed written objection, wherein he has avowed the fact of marriage with the petitioner and the paternity of her daughter but vehemently denied the fact that the petitioner would ever be subjected to physical and mental cruelty or that she would ever be driven out from her matrimonial house along with her issues citing the reasons stated in the body of the petition. It is further contended from the end of the OP that since inception, the petitioner used to act according to her own will and desire without paying any heed to him, and that she would keep herself abstained from the performance of the domestic chores and that she would be a lady prone to start a quarrel on any point. The OP further ventilated that the petitioner frequently went away to her paternal house. He has stated that she would be a lady of such a character that she would never have respect or regard to any of the family members of his and that she used to beat up and assault the brother in law as well on regular interval owing to no reason at all. Her behaviour would not be acceptable from any

point of social standard as can be perceived from the pleading of the defence. It is the petitioner who would depart from her matrimonial house on a false pretext. He has asserted that the claimant has no reason to agitate any issue of rendering of unfair treatment towards her as she would be the one to have vacated from the marital house in the first place and that the OP and his family members would never had anything to do with her removal therefrom. Whenever, the OP has tried to bring her back from her paternal house, he would be insulted at the instance of the petitioner and her family members. As such, it would be beyond his dignity to be trampled again and again. The petitioner having left her matrimonial house voluntarily along with her minor issue at her own will and accord and having never returned there with expressing her reluctance to continue her conjugal life with the OP, she has forgone her right to claim the maintenance from the coffer of the OP. She would be in the habit of leading a spurious life with utter disrespect to her husband and her in laws and rest of his family members. It is categorically made a point that while the OP would be tied in this marriage with the claimant, he would have taken care to see that the financial interest of his wife would not get sabotaged. Accordingly, he would have opened a Joint account in her name. he would have also opened a bank account and make a provision of fixed deposit to the tune of RS. 50,000/- in her favour.

The OP has denied all other allegations of the petitioner starting from receipt of liquid cash as per his demand and other nuptial gifts at the time of marriage to the allegation that he and his family members mercilessly would have had assaulted her due to non-fulfilment of their monetary demand and that they would driver her out from the matrimonial house as she

would be unable to cope with the said demand. The OP further has denied that he has an income Rs. **12,000/-** per monsem being a constable in the Police Force. He has got the liability to look after his ailing parents and that he is also burdened with other responsibilities as well rendering his position very precarious enough to make separate provision for his wife and the children afresh. The OP out and out has denied all of the material allegations brought against him by the petitioner and has denied the petitioner's contention that she and her minor issues are entitled to the maintenance amount as prayed for. Accordingly, the OP has prayed before this Court for dismissal of the application for maintenance filed by the petitioner.

The petitioner has similarly denied all the contentions of the OP emphatically at the stage of her evidence.

Given to such adverse claims, this Court is to decide the case on the following points based on the evidence adduced by both the parties.

Points for Determination

- Whether the OP has neglected or has refused to maintain the petitioner and her minor sons?
 - Has the petitioner got sufficient means to maintain herself and her minor sons?
 - Whether the OP has got sufficient means to maintain the petitioner and her minor daughter?
 - Are the petitioner and her sons entitled to the maintenance amount as prayed for, from the OP? If yes, what should be the quantum of maintenance and from which period the same should take effect?

WITNESSES EXAMINED FOR THE PETITIONER:

P. W1 - The Petitioner, **Banasree Halder**

WITNESSES EXAMINED FOR THE OP:

O.P.W.1- **Utpal Halder**

Nothing has been sought to be marked as Exhibits from either side at the time of recording of evidence. On closure of the evidence of both sides, arguments were heard upon at length.

DECISION WITH REASONS

This Court has bestowed its anxious consideration to the arguments as advanced by Ld. Counsels for both the parties in respect of the above points for determination. Ld. Counsel for the petitioners vehemently argued before this Court that it has been clearly established from the evidence of the petitioner that during her stay at her matrimonial house, the petitioner would be subjected to physical and mental persecution by the OP and the OP members for demand of dowry from her paternal house, and that ultimately, she would be driven out from her matrimonial house along with her minor sons owing to her inability to meet up the said demand. It has further been argued on behalf of the petitioner that it would emerge from the evidence on record that the petitioner would mercilessly be assaulted at the instance of the OP and his family members persistently for non-fulfilment of the said demand, and that she and her daughter would be forcefully kept under starvation. Ld. Counsel for the petitioner further has submitted that it is lucid from the evidence that the petitioner is at present residing at a great peril and living in a state of drudgery and that the OP has wilfully refused and neglected to maintain them. Ld. Counsel for the petitioner has pointed out before this Court that refusal or neglect by the OP to maintain the petitioner and her minor issue has been deemed to be proved by the OP himself as he has not adduced any evidence

respecting any fact where from it may be reasonably ascertained that he would discharge the duty towards the spouse of his and towards the issues.

In the backdrop of the aforesaid arguments advanced by the parties, this Court shall now examine the case in terms of the well-established legal position. It has to be decided herein whether the petitioner voluntarily has refused and has withdrawn herself from the society of the OP or whether she would be compelled to leave her matrimonial house due to inhuman torture upon her by the OP and the OP members for non-fulfilment of their monetary demand for dowry from her paternal house. It is also found expedient to analyse the evidence on record to come to a conclusion whether the OP wilfully neglected or refused to maintain the petitioner and her minor issue.

The evidence adduced from the side of the petitioner comprises the sole evidence of the petitioner herself who has been examined as P. W1. A meticulous scrutiny of the evidence on record shows that P. W1 at the course of her examination in chief, in material parts, corroborated the allegations that she would be subjected to physical and mental cruelty by the OP and the OP members for demand of Dowry from her paternal house. The petitioner has further corroborated her statement respecting the material allegations brought by her against the OP and the OP members, and has asserted that the OP has not provided any maintenance to her sons till date. The cross examination of the petitioner does not appear to be convincing enough in brushing aside the allegations of refusal and neglect to maintain her and her minor sons by the OP. There is no hesitation for the Court to assert that cross examination of P. W1 has even brought a picture of the willingness of hers to go back to her matrimonial house.

The OP has admitted P. W1 as his legally married wife, and the paternity of her legitimate sons. He denied distinctly that P. W1 would be subjected to physical and mental cruelty and persecution for and in connection with a demand for the sum as stated above from her paternal house. After the Court has considered the evidence of the petitioner, it may be stated that the evidence is just of one single person and that being the petitioner herself. But the question is if the evidence of hers is not capable of being acted upon. There is no corroboration from any independent source respecting the facts that she would depose on oath. But is corroboration the sole basis for coming to a finding of confirmation of truthfulness of the concerned deponent? Is it not good an evidence if there be just one witness and the Court to proceed on that basis? Of course, it would be perfect for the Court to proceed in terms of the evidence that she would have rendered at the time of her examination and cross examination. Her statement has faced the rigorous test of truthfulness. She has maintained her stand. There is specific method of discrediting the credence of a witness and that specific mode of examination has to be resorted to at the instance of the concerned lawyers. Nevertheless, it is evident that there is not much of incriminating materials from her evidence which may come to contradict the stand that she would actually take at the time of the filing of this case. It is the considered opinion of the Court that the credibility of the concerned petitioner has not been subjected to taint at the instance of the cross examination by the OP. The OP has not been able to prove by cross examining her that the case that she would make out would be a false statement or fact and that she would otherwise be dis-entitled from claiming maintenance as such. It is the opinion and view of the Apex Court of this country that even if

the sole evidence has arrived at the attention of the Court, the same may be acted upon should it be of such a character as inspiring the confidence of the Court. Now, the Court would be inclined to act upon the evidence of any person whose evidence apparently appears to be of moral and not otherwise tainted at the instance of any of the incriminating elements since stated in the body of the Evidence Act of 1872 in this respect. Where the evidence of the concerned witness for the case of the petitioner has not been subjected to taint at the instance of the OP, there is no reason for the Court to not act on the same. Hence, it is the considered opinion of the Court that the statement meted out at the time of the examination and cross examination of the concerned petitioner may be acted upon.

But this Court would like to add to this score of evidence that the claim of the petitioner that her husband would be involved with several woman or that he would conspire to get married second time or that he would otherwise lead an adulterous life has not bene established from her end. She has alleged the existence of a state of facts against her husband and she has the liability to prove the same and, in this respect, the burden cannot be shifted from her shoulder to that of the OP. The latter cannot be asked to prove his good character or otherwise the type of life that he leads on a regular basis. What is the score of evidence wherefrom it would perhaps be discernible for the Court about the factual sanctity of the claim of the petitioner respecting either the character of or the leading of an immoral life by the OP? The existence of relation with several women as claimed by the claimant has to be proven by her only. There is no evidence that can be relied upon and acted on at the instance of this Court respecting the contention of the petitioner to start off

with. Simply based on her statement respecting the character of her husband pertaining to leading of illicit relation with several women, it would perhaps be best if this Court would decline to act on the said contention and call it stating that the question in this respect has not been proved.

It is a fact that the liability of proving the income of the petitioner is that of hers inasmuch as the said liability is also of the OP when it comes to prove his income. It is the mandate of Section 106 of the Evidence Act of 1872 wherein it may be held that any information within the special knowledge of the concerned person has to be established at his instance only. Of course, the petitioner has not established her income if any.

The OP could not show through his case that he has paid even a paltry sum towards the maintenance of the petitioner and her minor son. It is fact that there have been filed at the time of argument several copies of documents prima facie appearing to be copies of bank pass book or records of recurring deposit. But the Court does not have to stress upon the fact that without first substantiating the cause as to why primary evidence could not be procured, mere copy thereof would not be admissible in evidence. There is no document that can be termed as original ones and accordingly, the Court is not inclined to act on the mere copies thereof. The bar U/s 65 of the Evidence Act has to be considered and taken sacrosanct. This Court cannot rely on the Xerox copies of the pass book or of the holding papers of the Post Office in support of his contention respecting providing for his wife. The primary evidence has to be considered and without the cause adduced as to the state of affairs respecting the whereabouts of the original copies of the same, acting upon the Xerox thereof would tantamount to the violation of the spirit since envisaged

under the Evidence and in particular Section 61/62/65 thereof. Nevertheless, the pay slip that has been filed may be considered in proof of the income of the concerned OP as the one being filed with the Court is computer generated one and the same does not require any signature from the issuing authority itself. Nevertheless, it is also a question that the same has not been tendered from the end of the OP at the time of his tender. The document cannot otherwise compel this Court to consider the content thereof, if not be otherwise be of persuasive importance.

The pivotal point to be decided herein is, whether the OP has refused and neglected to maintain the petitioner and her son even though the fact remains that they are residing apart from him. A threadbare perusal of the entire evidence on record does not reveal any circumstance which goes on to show that the concerned OP had duly maintained the petitioner and her minor issue till date even after she would be compelled come out of the said matrimonial house. It has to be now looked into whether the OP would be assiduous in maintaining his legally married wife and legitimate heir despite the fact that they would be residing separately from him owing to the alleged circumstance as the case may be. The Op has alleged that the petitioner would withdraw from his residence on her own and that it would be a cautious act on her part. Nevertheless, it is the opinion of the Court that he who claims a thing as it is, has the liability of proving it as such. The question is if this burden has been discharged at the instance of the OP. It is the considered opinion of the Court that the Op has not been able to prove this fact by leading cogent evidence in this respect. Mere assertion cannot compel this Court to consider this averment of the OP. Every assertion has to be backed up by evidence. There is a clear lack of

evidence in this respect where from this Court may ascertain and come to the conclusion that the petitioner would withdraw herself from the society of the OP at her own will. The OP has not even adduced any evidence from his side in order to gain strength to this own case that he has set up in the first place. How is it possible for the Court to act on the contention of the OP where he himself has not been interested to look after his own case by adducing cogent evidence in this respect? Hence, it is the considered opinion of the Court that this claim of the OP respecting the wilful withdrawal of the claimant from his residence may not be acted upon.

This Court is of the view that the OP has not maintained the petitioner and her son up to the mark till date even though the fact remains that they are residing separately. It is just the interim maintenance that the Court would direct the OP to pay in favour of the minor issue of the OP that the former would be receiving leaving substantially nothing for herself. In this respect, it is plausible to mention that the concept of providing a wife merely with food, clothing and lodging as if she is only a chattel and has to depend on the sweet will and mercy of the husband has now become completely outdated and absolutely archaic.

An act of lack of willingness on the part of the OP can be inferred from the evidence of the petitioner and from the absence of any document or receipt evidencing the payment of any amount towards the maintenance of the claimant and her son. From the evidence beforehand, this Court is inclined to hold that the OP has not paid a single farthing towards the maintenance to the petitioner and her sons and that he would not even care to

ascertain their condition ever since the claimant along with her issues have been residing separately from him.

This Court is constrained to hold that neglect or refusal can readily be inferred from the words and conduct of the OP. These circumstances are sufficient to lead to the conclusion that there would be neglect and refusal on the part of the OP to maintain his wife being the claimant herself and his sons. In the instant case, the oral evidence has shown that the petitioner would be ill-treated in the matrimonial house when it would not be possible for her to meet up with the said demand as mentioned before. The contentions of the OP, since inception and as transpired from the cause shown is that PW1 had inflicted and caused severe torture and discord not only over him but over the rest of the family members of his and in particular his brother thereby leading him to stay in an unhappy, tormenting and a surreptitious marital life where his own stake would be literally close to none, his wife/petitioner rendering the marriage rotten by her unruly behaviour. In proceedings u/s 125 of the Cr.P.C., this Court does not have to ascertain as to who was in the wrong, or whether the petitioner was guilty of living her matrimonial house without any sufficient cause. It is the considered opinion of this Court that the petitioner (even if she is in the wrong) and her sons cannot be deprived from maintenance. The conduct of the petitioner, as alleged by the OP is wholly irrelevant.

From the cause shown by the OP against the case filed at the instance of the petitioner, it reflects that he would try to resist the claim of maintenance of the petitioner for herself and for her sons on the ground that the petitioner would be responsible and liable for the rift in matrimonial relationship with the OP as she would withdraw herself on her own from the society

of the OP. Point to be noted of the other contention from the end of the OP that she would be of certain erratic behaviour with irregular and highly objectionable stance from her end frequently. Now, it has already been stated above that the claim that wife of the OP has withdrawn herself as such cannot be stated to have been proven since reasons stated above. This Court has to see only whether there is negligence on the part of the OP in maintaining his wife and his sons as no wife could leave away from the husband and seek for maintenance without any rhyme, prima facie and since there is no substance in the contentions of the OP.

It would be further argued on behalf of the OP that since inception the OP had expressed his readiness and willingness to take back the petitioner and her sons, but the petitioner refused to return wilfully. It is a usual practice that whenever a wife claims maintenance or applies for enforcement of an order of maintenance, the husband has to counter it with a pretended offer to maintain her, if she lives with him. In a claim for maintenance it is no defence for a husband to say that he is prepared to take his wife back if the facts show that his wife has reasonable cause for fearing to return to the husband's house. There is no evidence from the end of the OP to counter the claim of the petitioner of the absence of any such incriminating incident since alleged. It is quite apparent from the evidence on record that PW1 would be ill-treated at her matrimonial house and that there are reasonable grounds for believing that if she would return, the ill treatment shall continue. This fear itself is a source of perennial trouble. It is therefore discernible that the petitioner may after all reside apart from the OP along with her sons for her safety in the matrimonial house may well be at stake. It is well

established that the OP has not offered the petitioner and her sons a single farthing towards their maintenance during her stay at her paternal house. Once refusal or neglect to maintain in the past is proved, an offer at the trial to maintain in future does not debar the Petitioner from claiming maintenance. There is nothing on record where from the Court can reasonably ascertain that the Op would be religious even after the separation to look after his wife and his daughter. There is no evidence of his tendering in favour of the petitioner of any amount for her to look after herself and her daughter. Considering the testimony of the petitioner, it is perhaps not quite hard for the Court to actually come to form a reasonable opinion that the OP has not discharged his obligation properly. Hence the offer advanced by the OP at the course of his examination, does not appear to this Court to be bona fide, and is made with the object of escaping obligation.

In our traditional Indian society, a lady, after her marriage would hardly leave her matrimonial house for uncertainty. This would obviously lead to an irresistible conclusion that she was otherwise compelled to leave her matrimonial house and such compulsion would obviously come due to abuse. The abuse may be physical, or mental, or economic or otherwise: **[2011(2) E Cr. N (CAL) 373, Prasanta Hazra vs Ranju Hazra]**. At the same time, the OP has also failed to show that he had duly maintained the petitioner and her sons.

Considering the above circumstances, this Court is inclined to hold that the OP was not at all assiduous in maintaining the petitioner and his daughter, and there exists ample material in opulence on the face of the record, from where the neglect and refusal by the OP to maintain the petitioner and her daughter can readily be inferred.

This Court has duly taken into consideration, the argument as advanced by Ld. Counsel in respect of the above points under discussion. It has been stated by PW1 in her evidence that the OP has a steady income from his possession of land and landed properties and himself being a skilled motor driver and having seasonal business whereby he makes an earning to the tune of Rs. **15,000/-** per monsem. On the other hand, the petitioner in her evidence has claimed that she has got no means and neither any income of her own from any corner to maintain herself and her sons. Ld. Counsel for the OP out and out denied such alleged income and profession of his client as expounded by the PW1 and has submitted that the OP is a mere day labourer having an income of Rs. **12,000/-** per monsem. OP would abnegate that he has any of the landed properties as alleged or has the said business. The Court is of the opinion the statement of the claimant pertaining to the existence of the landed properties may not be acted upon for want of proof. It is after all her agitation and she being the claimant in this respect, she has the liability to discharge her liability in this respect.

This Court has meticulously scanned the evidence of the parties to this case and has concluded regarding the income and occupation of the OP. It may not be held that the OP has tried to hide his true income from any corner. He has of course denied the contention of the claimant that he would otherwise be in possession of a monthly income to the tune of almost fourth thousand rupees from the sources stated in the body of the application. But he has come clean respecting his assertion pertaining his income. It is true that he has not tendered the pay slip at the time of tendering of his affidavit in chief. But he has ultimately filed the same. There is no question respecting its

authenticity as the one filed with the Court is specifically issued from the system and otherwise not requiring the signature of the head of the organization to which he would be attached to. It is clear that his salary as on the date of 30th of October of 2018, Rs. 37,470/- per month. He has a provident Fund being continued with a subscription of Rs. 10,000/- every month. Hence the amount that he is actually receiving in his hand is near about twenty-seven thousand rupees. The knowledge of the OP respecting the income of his is far better than that of his wife and that this may genuinely be held u/s 106 of the Evidence Act of 1872. This is one such provision wherein the OP would stand in a position to prove his own income just like the claimant hers. The OP never has come to this Court with an evidence in the form of the pay slip where from, it may reasonably be ascertained that his income as stated by him is what since portrayed from the initial stand. Of course, he, would not consider the amount that is otherwise given towards Dearness Allowance while he would make that statement respecting his income per monsem. But in the end, he has filed with the Court the copy of the pay slip wherefrom all the income and the details of his pay structure can be ascertained. There is hardly any scope for embellishment of this document since it is generated not by the sweet will of the OP, but through a system that is run and maintained by the State of West Bengal. The disbursing authority is the Superintendent of Police of the District of Murshidabad. It is not a document that is otherwise capable of being manufactured, but is a remnant of system the information of which is stored in a media beyond the control of any beneficiary and maintained and looked after by the State of West Bengal. The genuineness of this document should be acted upon. Even if the OP has not been cross examined

respecting this particular document, there is hardly any doubt in the mind of this Court that there is plenty of room for acting upon the same and otherwise not deny the authenticity of this. At least, the OP has not tried to evade from disclosing his true income. He has at least co-operated with the Court so that his income may be ascertained.

It can only be stated that the knowledge of the OP respecting the income of his is far better than that of his wife and that this may genuinely be held u/s 106 of the Evidence Act of 1872. This is one such provision wherein the OP would stand in a position to prove his own income just like the claimant hers. No document would be filed by the OP to show his income. The OP is late in filing this document, but that is at least better than filing the same never.

The OP has tried to convince this Court that he is devoid of sufficient means to pay separate maintenance to the petitioner and her issue as he has to meet the family expenses as well. This Court is of the view that the claim of the OP is repulsive and that it does not stand to be reliable to the extent of proving his occupation and income. The OP could not show that the petitioner is in a position to maintain herself and her minor sons, not much below the status which she was used to as her husband's place. "Means" does not signify visible means. It has never been denied by the OP that he is an able-bodied person. If he is healthy and able-bodied, he must be held to have means to support his wife and his issues. The OP cannot avoid his liability merely on the ground that the petitioner has left her matrimonial house voluntarily (taking this note for argument's sake). When the husband is an able-bodied person, it has to be inferred that he has means to pay maintenance to his wife and his sons. A man, by

merely professing to be a monk cannot rid himself from the obligation of maintenance. In this context, this Court opines that when a husband in a proceeding under Section 125 of the Cr.P.C. alleges about the quantum of his income, it is within his special knowledge. The burden of proving the quantum of his income is on the husband (OP) and not on the petitioner. The Court is of the opinion that there is a clear picture of his income.

Considering the above facts and circumstances, this Court is of the opinion that the OP has reasonably failed to counter the evidence of refusal and neglect and the evidence on record only goes to show that the opposite party neglected in maintaining the Petitioner and her minor son. Section 125 of the Cr.P.C is a beneficial legislation to protect the weaker section of the society and to prevent vagrancy, and having carefully perused the record, this Court does not find any reason to deny the prayer of the petitioner for allowing maintenance to her and sons u/s 125 of the Cr.P.C. Accordingly, the points for determination stands disposed of.

A man may have difficulty and difference with his wife. But that is no reason for denying his own issues maintenance. That is not what is the spirit of the provision of Section 125 of the Code of 1973 speaks or intends. There is no proof that the issues would not be born of the wedlock of the OP with the claimant of this case. The paternity of the issues has not been challenged. There is no reason for the Court to disbelieve that the issues of the claimant would not be of the OP. despite the difference and the tussle between the Op and his wife, the claimant of this case, there is no way that he can escape or even think of letting off with his responsibility towards them. He has the liability to provide for his minor issues and this Court cannot let off this eventuality that

he has not maintained them post removal of his wife. He has both moral as well as legal liability to provide for his sons.

Now, this Court has to decide as to what should be the quantum of maintenance. It is really difficult in a case U/s 125 of the Code of 1973 to actually determine the actual income of the OP owing to the ignorance of the provision of law and other factors like education and rest of the stuffs. But in this respect, the income of the OP is perhaps not so much hidden from the purview of the Court. The pay slip is right in front of it. The document filed with the Court is otherwise perfect and is not liable to be questioned on flimsy ground. The status of the parties as this Court has observed before itself while the hearing of this case would go on may be relied upon in order to actually consider the possible income of the OP. Pleading may be over rated. But the circumstance transpiring before the Court from where the apparent status and the best of the ability of the OP to earn can be perceived of, would not lie. The life that a man leads may reasonably leave an impression in his attitude and behavior and this trait is all the more apparent respecting persons not up to the mark of education and economic prowess. This Court has to strike a balance in so far as the determination of an amount is concerned so that the same may be payable by the OP and to see that the amount so determined to be paid would not become cumbersome enough that the purpose of Section 125 of the Code of Criminal Procedure of 1973 would itself become frustrated. This Court had the chance to witness the bare appearance of both the parties to this case. The Court has had the chance to observe the reality that could subsist behind the terminology of the clever drafting and the evidence that would come to this Court. It is discernible that the OP would be a constable. It is not the fault on

the part of the OP that the document has been filed at the stage of argument. The OP is a layman. He is not expected to know the law respecting the filing of documents. He has to follow the way as taken by his learned counsel. The concerned counsel has filed the piece of evidence after his examination would be over and he discharged. But the question is if this document is absolutely without any value merely because of technical issue. The intention of the OP had it been to evade from his liability, he would never ever have filed the pay slip. At least the intention of the OP has not been to leave the Court in a situation of guessing the income of his. He is a constable as per his submission. His pay scale is right therein the pay slip. His category of service is also appreciable. Every detail respecting his finance is right there in the pay slip and rejecting the same merely on technical issue would cause hardship even on the claimant. The Court has to determine a reasonable amount for the maintenance of hers and of her son. The Court cannot remain silent or otherwise unmoved from a document wherefrom the details of the income of the OP may reasonably be ascertained and that too without any score of embellishment. It would ultimately be beneficial for the cause of the claimant only as there is a definite mark for the Court to rely on and the amount of maintenance determined with relative ease. Now, the fixation of amount is the key to strike the balance against the conflicting interest of garnering maintenance and the ability to pay the same by the OP. In order to determine the quantum of maintenance, this Court has considered the status of the respective parties, and having regard to the expenses for providing food, clothing, medical treatment etc. In the context of ever-increasing prices of essential commodities, this Court is of the view that the OP **Utpal Halder** should be directed to pay

Rs.35,00/- (Rupees Three Thousand and Five Hundred only) to the **Petitioner Banasree Halder**, as her monthly maintenance. This Court is also inclined to allow the prayer of the Petitioner to the effect that her minor issue is found entitled to a maintenance to the extent of **Rs. 15,00/- (Rupees One Thousand and Five Hundred only)** and this amount to be paid in favour of his son shall be paid in favour of the Petitioner on a monthly basis in along with that paid in her favour.

Both the claimant as well as her minor son has bene directed to be provided with interim allowance. Accordingly, this Court is not inclined to allow maintenance from the date of filing. The liability of the OP to maintain his wife and his son would be from the date of passing of order.

Accordingly, it is,

ORDERED

That the application u/s 125 of the Code of Criminal Procedure, 1973 is hereby disposed of on contest, but without any costs.

That the claim of the Petitioner succeeds to the extent that the Petitioner **Banasree Halder**, is found entitled to get a monthly maintenance amount of Rs. **35,00/-** per monsem from the OP **Utpal Halder**, being her husband. It is also found expedient to award Rs. **15,00/-** as monthly maintenance towards the **minor Son** of the petitioner.

The OP **Utpal Halder** is hereby directed to pay a cumulative amount of Rs. **50,00/-** to the Petitioner **Banasree Halder** which amount comprises Rs. **35,00/-** as her monthly maintenance, and Rs. **15,00/-** as such for her minor issue as named in the body of the Application since stated above, with effect from the date of the passing of order i.e. from **15.12.2018**.

The OP **Utpal Halder** is directed to pay the aforesaid amounts to the Petitioner **Banasree Halder**, as monthly maintenance for herself and for her minor issue since stated above within the 15th day of every succeeding month when it falls due. Accordingly, the Opposite party shall pay the first of the regular maintenance amount of Rs. **50,00/-** within 15.01.2019, without fail.

He is also directed to make payment of another Rs. 50,00/- towards the maintenance of the claimant and her son for the month of December of 2018 in the month of January of 2019 in along with the payment of that month.

The Petitioner **Banasree Halder**, shall be at liberty to put this instant order into execution, for herself and for and on behalf of her minor Son if the Opposite Party fails to abide by the same.

The liability to provide maintenance in favour of the minor Son of the OP shall continue till he attains the age of his majority.

Let a copy of this Judgment be given to the Petitioner **Banasree Halder**, free of cost forthwith.

Note in T.R accordingly.

Samitinjoy Pal,
J.M. 2nd Court,
Diamond Harbour,
24 Parganas (S)

Maintenance Case 260 of 2014

Order dated 15.12.2018

The date is fixed for the passing of final order respecting this instant case.

The order is ready to be delivered.

As such the operative portion of the order has been read over in presence of the party concerned.

The relevant portion of the final order is reproduced below:

“Accordingly, it is,

ORDERED

That the application u/s 125 of the Code of Criminal Procedure, 1973 is hereby disposed of on contest, but without any costs.

That the claim of the Petitioner succeeds to the extent that the Petitioner **Banasree Halder**, is found entitled to get a monthly maintenance amount of Rs. **35,00/-** per monsem from the OP **Utpal Halder**, being her husband. It is also found expedient to award Rs. **15,00/-** as monthly maintenance towards the **minor Son** of the petitioner.

The OP **Utpal Halder** is hereby directed to pay a cumulative amount of Rs. **50,00/-** to the Petitioner **Banasree Halder** which amount comprises Rs. **35,00/-** as her monthly maintenance, and Rs. **15,00/-** as such for her minor issue as named in the body of the Application since stated above, with effect from the date of the passing of order i.e. from **15.12.2018**.

The OP **Utpal Halder** is directed to pay the aforesaid amounts to the Petitioner **Banasree Halder**, as monthly maintenance for herself and for her minor issue since stated above within the 15th day of every succeeding month when it falls

due. Accordingly, the Opposite party shall pay the first of the regular maintenance amount of Rs. **50,00/-** within 15.01.2019, without fail.

He is also directed to make payment of another Rs. 50,00/- towards the maintenance of the claimant and her son for the month of December of 2018 in the month of January of 2019 in along with the payment of that month.

The Petitioner **Banasree Halder**, shall be at liberty to put this instant order into execution, for herself and for and on behalf of her minor Son if the Opposite Party fails to abide by the same.

The liability to provide maintenance in favour of the minor Son of the OP shall continue till he attains the age of his majority.

Let a copy of this Judgment be given to the Petitioner **Banasree Halder**, free of cost forthwith.

Note in T.R accordingly.”

Samitinjoy Pal