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MR. Case no. 81 of 2021
T.R 370/2021
Registration no. 81/2021
CNR No : WBUD-0600-1435-2021

Shiuli Barma (Singha)

.....**Petitioner**

Versus

Goutam Singha

.....**OP.**

Under Section. 125 of Code of Criminal Procedure.

Date of delivery of order – 02.07.2026

Factual Backdrops :-

The pertinent factual circumstances underlying the initiation of the present MR Case, instituted by the petitioner, **Shiuli Barma (Singha)** against her spouse, **Goutam Singha**, are hereby delineated, with superfluous particulars omitted, as follows:

Petitioner's case :-

The petitioner was married to the O.P. on 19.06.2010 according to Hindu rites and customs. The marriage was duly registered under S.L. No. 168/2010 dated 19.06.2010. At the time of the marriage, the petitioner's uncle and brother presented sufficient gifts and articles to the couple as a token of their love and affection. Out of the said wedlock, a daughter, namely Hiya Singha, aged about 8 years, was born, who is petitioner No. 2 in the present proceeding.

Soon after the marriage, the petitioner No. 1 was subjected to continuous physical and mental cruelty by the O.P. on account of his

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unlawful demand for additional dowry. Dissatisfied with the gifts presented at the time of marriage, the O.P. repeatedly harassed and tortured the petitioner for bringing more money from her parental family. The situation further deteriorated after the birth of their daughter, when the O.P. intensified his acts of cruelty and harassment.

The O.P. frequently threatened the petitioner that he would divorce her if his monetary demands were not fulfilled. He also openly threatened that he would marry another woman, namely Lipika Roy, with whom he was maintaining an extra-marital relationship. Such conduct caused immense mental agony and insecurity to the petitioner.

On 20.05.2021, the O.P. voluntarily left the matrimonial home without informing the petitioner or any of the family members. Having failed to trace his whereabouts, the petitioner was compelled to lodge a missing diary at Chopra Police Station. Subsequently, the petitioner came to know that the O.P. had illegally contracted a second marriage with the said Lipika Roy and had been residing with her at an undisclosed location.

Since abandoning the petitioner and the minor child, the O.P. has completely neglected and refused to maintain them. The petitioner No. 1 is presently working as a worker under the I.C.D.S. Project at Chopra and receives only an honorarium of Rs. 8,250/- per month. The said amount is wholly insufficient to meet the basic needs of herself and her minor daughter. As a result, both petitioners have been living in severe financial hardship and are struggling to maintain a dignified livelihood.

On the other hand, the O.P. is employed as a Primary School Teacher and is presently posted at Kamargach F.P. School under Chopra. Besides his government employment, he is also running a hotel business at Chopra. From these sources, he earns approximately Rs. 55,000/- to Rs. 60,000/- per month. Despite having sufficient financial capacity, the O.P. has deliberately failed and neglected to provide any maintenance whatsoever to the petitioner and the minor child.

In view of the neglect and refusal on the part of the O.P. to maintain his legally wedded wife and minor daughter, the petitioner has claimed

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maintenance of Rs. 10,000/- per month for herself and Rs. 20,000/- per month for petitioner No. 2, aggregating to Rs. 30,000/- per month.

The factual matrix of the written objection of the O.P is as follows

The O.P., having been duly served with the summons, contests the petitioner's allegations. In his objection, he asserts that the marriage between the O.P. and petitioner no.1 was solemnised according to Hindu rites and customs and that out of the said wedlock they were blessed with a daughter, namely Hiya Singha. He contends that after the marriage petitioner no.1 was accepted in her matrimonial home with love and affection and that both the O.P. and his mother took proper care of her and provided her with love, care and maintenance to the best of their ability. According to the O.P., the marriage was solemnised without any demand for dowry and neither at the time of marriage nor thereafter did he or his family demand any dowry. He, therefore, denies the allegation that he was dissatisfied with the articles presented at the time of marriage.

The O.P. further states that although the initial days of the marriage were cordial, petitioner no.1 gradually exhibited a short-tempered nature and remained indifferent towards household responsibilities. He alleges that she frequently quarrelled with him over trivial domestic issues, abused and humiliated him, and often expressed dissatisfaction with the marriage by stating that marrying the O.P. had ruined her life. According to him, petitioner no.1 paid little regard to his preferences, habits, tastes and needs, which resulted in a complete breakdown of mutual understanding and adjustment between the spouses.

It is further pleaded by the O.P. that petitioner no.1 repeatedly subjected him to verbal abuse and humiliation by using filthy and provocative language, thereby causing him severe mental stress and anxiety. He contends that her continuous conduct made his married life unbearable.

With regard to the incident dated 20.05.2021, the O.P. asserts that on that day petitioner no.1 again abused and humiliated him, and being

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unable to tolerate the prolonged mental torture, he left the matrimonial home out of anger with the intention of finding mental peace for a few days. According to the O.P., the missing diary lodged by petitioner no.1 at Chopra PS was filed only out of fear and apprehension that he might initiate criminal proceedings against her. He further claims that he returned to the matrimonial home after a few days, but petitioner no.1 continued to remain indifferent towards him, caring little for his habits, tastes or needs, and led her life independently on account of her own source of income.

The O.P. specifically denies the allegation that he had any extra-marital relationship with one Lipika Roy or that he had contracted a second marriage with her. According to him, these allegations are wholly false and have been deliberately made by petitioner no.1 to create a false case against him. He further contends that petitioner no.1 continues to reside in his house and has instituted a false criminal case under Section 498(A) I.P.C. as well as the present proceeding under Section 125 of the Cr.P.C. claiming maintenance, despite the fact that she and petitioner no.2 have been maintained by him. He also asserts that petitioner no.1 has an independent source of income which is sufficient for maintaining herself and petitioner no.2.

The O.P. further states that he is serving as an Assistant Teacher in a free primary school and receives a take-home salary of approximately Rs.24,400/- per month after deduction of loan instalments and other statutory deductions. He denies having any hotel business or any other independent source of income. According to him, out of his salary he is required to meet his own expenses and discharge his obligations towards his ailing mother as well as the petitioners.

On the basis of the aforesaid facts, the O.P. contends that the petitioners have no valid cause of action for claiming maintenance from him. He further submits that since petitioner no.1 is gainfully employed and has an independent source of income sufficient for her maintenance, she is not entitled to claim maintenance allowance from the O.P., and accordingly prays for dismissal of the petition.

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Accordingly, the OP prayed for dismissal of the maintenance application.

Evidence adduced:

To substantiate her claims, the petitioner, Shiuli Barma (Singha), testified as P.W.

On her examination she proved the following documents:-

A certificate in respect of her pay issued by CDPO, Chopra which has been marked as P1(PW1) with Objection.

postal receipt. Let the same be marked as Exhbt P2 (PW1).

The envelope addressed to herself which has been marked as Exhbt P3 (PW1) with objection.

The computer generated pay slip of her husband Goutam Singha, which has been marked as Exhbt P4 (PW1) with objection.

On the other hand, the O.P. did not adduce any oral or documentary evidence in support of his defence. Moreover, he failed to complete the cross-examination of PW1.

4) Points for Determination:-

- i) Whether the petitioner is entitled to get maintenance from the O.P. under Section 125 of the Cr.P.C. ?
- ii) If the petitioner is entitled to get maintenance what will be the quantum of the maintenance?

5) Decisions with reasons :-

In order to ascertain whether the petitioner is entitled to receive maintenance from the O.P., this court must adjudicate upon various related issues, including but not limited to:-

A) Whether the petitioner is lawfully wedded to the O.P.?

B) Whether the petitioner lacks the means to sustain herself?

C) Whether the petitioner declined to cohabit with her spouse without adequate justification?

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D) Whether the Opposite Party has neglected to provide maintenance for the petitioner despite possessing adequate financial resources?

A) The marital relationship between the petitioner No.1 and the O.P. is not in dispute. The petitioner (PW1) deposed that her marriage with the O.P. was solemnised on 19.06.2010 according to Hindu rites and customs and that the marriage was duly registered. She further deposed that out of the said wedlock a daughter, namely Hiya Singha (petitioner No.2), was born.

Significantly, in his written objection, the O.P. has admitted the marriage with petitioner No.1 as well as the birth of their daughter. His defence is confined to denial of the allegations of cruelty, dowry demand and neglect. Thus, the factum of marriage and the paternity of petitioner No.2 stand admitted.

There is no material on record disputing the validity of the marriage. Accordingly, this Court holds that petitioner No.1 is the legally wedded wife of the O.P. and petitioner No.2 is their legitimate minor daughter.

B) The petitioner (PW1) deposed that she is working under the I.C.D.S. Project at Chopra and receives only an honorarium. During her further examination-in-chief, she produced the certificate issued by the CDPO, Chopra, which has been marked as Exhibit P1 (PW1) (with objection), evidencing her remuneration.

The evidence on record, therefore, clearly establishes that petitioner No.1 is not a person without any income. However, the amount received by her is only an honorarium and cannot be equated with a regular salaried employment. Such meagre income is insufficient to maintain herself and her school-going minor daughter, particularly considering the ever-increasing cost of education, food, clothing, medical expenses and other day-to-day necessities.

The petitioner also produced documentary evidence regarding the educational expenses of petitioner No.2 by filing the fee structure certificate of her school, though the same has only been marked for identification. These documents probabilise her assertion regarding the increasing financial burden of maintaining the child.

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The O.P., in his written objection, has contended that petitioner No.1 has sufficient independent income and is not entitled to maintenance. However, he did not enter the witness box nor adduce any oral or documentary evidence in support of such plea. He also did not complete the cross-examination of PW1. Consequently, the assertions made in the written objection remain unsubstantiated.

It is now well settled that merely because a wife earns some income, she is not disentitled from claiming maintenance if such income is insufficient to enable her to maintain herself in a manner commensurate with the status of her husband. Considering the evidence on record, this Court is satisfied that the income of petitioner No.1 is inadequate for maintaining herself and petitioner No.2.

C) The petitioner (PW1) has consistently deposed that after the marriage the O.P. subjected her to physical and mental cruelty on account of unlawful demands for additional dowry. She further stated that the torture increased after the birth of their daughter.

PW1 also deposed that on 20.05.2021 the O.P. left the matrimonial home and remained absent for two to three days, compelling her to lodge a missing diary at Chopra PS. She further stated that she subsequently came to know that the O.P. was residing with another lady, namely Lipika Roy, and that the said lady had even contacted her over telephone. During cross-examination, PW1 admitted that the aforesaid statement regarding Lipika Roy was not specifically mentioned in her affidavit-in-chief. Such omission may affect the evidentiary value of that particular allegation; however, it does not demolish her consistent version regarding neglect and marital discord.

The written objection of the O.P. contains a contrary version that it was petitioner No.1 who misbehaved with him and that he had temporarily left the house due to mental stress before returning after a few days. The O.P. has also denied the allegations of dowry demand and extra-marital relationship.

However, the O.P. neither entered the witness box nor produced any evidence to substantiate his defence. No witness was examined on his

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behalf and no documentary evidence was brought on record. Moreover, the cross-examination of PW1 remained incomplete. Consequently, the pleadings contained in the written objection have remained mere assertions without proof.

The burden of proving that the wife is residing separately without sufficient cause lies upon the husband once the wife establishes neglect and separate residence. In the absence of any evidence from the O.P., this burden has not been discharged.

Accordingly, this Court finds that there is no material to conclude that petitioner No.1 has withdrawn from the society of the O.P. without sufficient cause.

D) PW1 categorically deposed that the O.P. has not paid a single rupee towards the maintenance of either herself or petitioner No.2 since he left the matrimonial home. This part of her testimony has remained substantially unchallenged.

The petitioner further deposed that the O.P. is employed as a Primary School Teacher and also runs a hotel business under the name and style "Suruchi" at Teesta More, Chopra. She claimed that the O.P. earns approximately Rs.55,000/- to Rs.60,000/- per month.

During her further examination-in-chief, PW1 produced the computer-generated pay slip of the O.P., which has been marked as Exhibit P4 (PW1) (with objection). She specifically stated that the said document was obtained under the Right to Information Act from the office of the School Inspector, North Circle, Chopra. She also deposed that the O.P. is presently posted at Chopra Morning F.P. School.

Although the O.P. has denied his alleged income from hotel business and has asserted in his written objection that his take-home salary is only about Rs.24,400/- after deductions, he has not entered the witness box to prove such assertion. Neither has he produced any salary statement, bank account or any other document to substantiate his plea. The best evidence regarding his actual income was within his exclusive knowledge and possession, yet he deliberately withheld the same.

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An adverse inference, therefore, deserves to be drawn against the O.P. under Section 114(g) of the Indian Evidence Act for withholding the best available evidence regarding his income.

The uncontroverted testimony of PW1, coupled with Exhibit P4 (PW1), sufficiently establishes that the O.P. possesses adequate earning capacity. Despite such capacity, he has admittedly failed to provide any maintenance to the petitioners.

This Court is therefore satisfied that the O.P. has neglected and refused to maintain his legally wedded wife and minor daughter despite having sufficient means.

Overall Conclusion :

From the evidence on record, it stands established that petitioner No.1 is the legally wedded wife of the O.P. and petitioner No.2 is their minor daughter. The marital relationship and paternity are undisputed.

The petitioner has succeeded in proving that although she receives a modest honorarium under the I.C.D.S. Project, such income is insufficient to maintain herself and the growing needs of petitioner No.2. The law does not disentitle a wife from claiming maintenance merely because she has some independent income, provided such income is inadequate for her sustenance.

The evidence further establishes that the petitioners have not received any maintenance from the O.P. The O.P., despite filing a written objection, chose not to enter the witness box, did not adduce any oral or documentary evidence and did not even complete the cross-examination of PW1. Consequently, the defence raised in the written objection remains unsupported by evidence.

The materials on record, particularly the testimony of PW1 and the documentary exhibits produced by her, establish that the O.P. is employed as a Primary School Teacher and possesses sufficient earning capacity to maintain his wife and minor daughter. His failure to disclose complete particulars of his income or to produce the best available evidence justifies drawing an adverse inference against him.

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The object of maintenance proceedings is to prevent destitution and ensure that the wife and minor child are able to live with dignity. Having regard to the totality of the evidence, this Court is satisfied that the petitioners have successfully proved all the essential ingredients for grant of maintenance under Section 125 of the Code of Criminal Procedure. Accordingly, the petitioners are entitled to receive reasonable maintenance from the O.P. commensurate with his income, earning capacity and the needs of the petitioners.

ii) **Quantum of maintenance :-**

Having held that the petitioners are entitled to maintenance, the next question that falls for consideration is the appropriate quantum thereof.

In her Affidavit of Assets and Liabilities, petitioner No.1 has disclosed that she is engaged as an I.C.D.S. worker and receives an honorarium of Rs.8,250/- per month. Thus, it is evident that petitioner No.1 is not wholly without income. However, such honorarium cannot be equated with a regular salary and is by no means sufficient to maintain herself and her growing school-going daughter, particularly in view of the rising cost of living and educational expenses.

The O.P., in his Affidavit of Assets and Liabilities, has stated that after deduction of loan instalments and other deductions, he receives a take-home salary of Rs. 24,400/- per month. However, the computer-generated pay slip produced by the petitioner and marked as Exhibit P4 (PW1) reveals that the gross monthly salary of the O.P. is Rs. 50,940/-, while his net salary after statutory deductions, GPF contribution and PPF loan deductions is Rs. 44,240/-. It is settled law that voluntary deductions, including repayment of loans and provident fund advances, cannot ordinarily be permitted to diminish the statutory obligation of a husband to maintain his wife and minor child. The liability to maintain one's dependants is a paramount legal obligation and cannot be defeated by taking recourse to voluntary financial commitments.

While assessing maintenance, the Court is required to strike a balance between the reasonable needs of the claimants and the financial

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capacity of the person liable to maintain them. The maintenance awarded should enable the wife and the minor child to live with reasonable dignity consistent with the social and economic status enjoyed by the O.P., without imposing an excessive or oppressive burden upon him.

The O.P. is a Government Primary School Teacher having a stable source of income. The petitioners comprise his legally wedded wife and minor daughter, whose educational, nutritional, medical and other day-to-day needs necessarily require adequate financial support. Though petitioner No.1 is earning a modest honorarium, the same cannot absolve the O.P. of his statutory obligation to maintain her and the minor child. In particular, the welfare, education and overall development of petitioner No.2 deserve paramount consideration.

Considering the respective affidavits of assets and liabilities filed by the parties, the salary particulars of the O.P., the limited income of petitioner No.1, the status of the parties, the escalating cost of living, and the educational and other reasonable needs of the minor daughter, this Court is of the considered opinion that it would be just, fair and reasonable to award Rs. 3,000/- (Rupees Three Thousand) per month to petitioner No.1 and Rs.10,000/- (Rupees Ten Thousand) per month to petitioner No.2 towards maintenance.

Hence, it is

ORDERED

that the instant application u/s 125(1) Cr.P.C is allowed on contest for the petitioners. The O.P. is directed to pay maintenance at the rate of Rs.3,000/- (Rupees Three Thousand only) per month to petitioner No.1, Shiuli Barma (Singha), and Rs.10,000/- (Rupees Ten Thousand only) per month to petitioner No.2, Hiya Singha.

The OP is hereby directed to disburse such amount to the Petitioner by the tenth day of each succeeding month, according to the English Calendar month. If the Opposite Party fails to comply with the order then the Petitioner will be at liberty to put such order under Execution.

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The order shall its effect from the date of filing of this application ie. **18.06.2021**. OP is further directed to liquidate the entire arrear amount that would have accumulated by virtue of this order, after deducting the interim maintenance amount paid by him, if any, in favour of petitioner, in six (6) equal monthly installments along with the current amount.

Let a copy of this entire order be supplied to the petitioner free of costs.

The instant case is hereby disposed of.

D/C by me.

(Jamshed Shaikh)
J.M, , Islampur.

(Jamshed Shaikh)
J.M, , Islampur.
JO Code WB 01389)