

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, Hatsingimari, Dhubri

**Misc. Case NO: 46/2016
U/S. 125 Cr.P.C**

**Mahila Khatun
VS
Rafiul Sheikh**

**PRESENT: PRASENJIT DAS,
JUDICIAL MAGISTRATE FIRST CLASS,
Hatsingimari, Dhubri**

APPEARANCES:

Adv for the Petitioner: S. Hussain

Adv. for the Opposite Party: U.K.Begum

DATE OF EVIDENCE: 30.11.16

DATE OF ARGUMENT: 28.12.16

DATE OF JUDGMENT: 04.1.17

Final Order

1. This is a petition under section 125 Cr.P.C. The case of the petitioner in brief is that she is the legally married wife of the opposite party and out of conjugal life one female child/ Naznina Khatun was born and ever since her marriage in her matrimonial life she was physically and mentally tortured for dowry amounting to Rs One Lakh. It is specifically averred in her petition that she

was on her failure to meet the illegal demand she was driven out of matrimonial house on 20.02.2016 along with the minor child and she is living in her parental house. It is her claim that she be given Rs 7000/- per month as monthly maintenance and Rs 5000/- for her minor child as monthly maintenance as the opposite party/husband is failing to neglect her. It is the case of the petitioner that she has no source of income and that the opposite party is a businessman having more than Rs 40,000/- as income.

2. The opposite party received notice, did not contest the case and filed written statement but did not adduce any evidence and remained absent. It is the case of the opposite party that the allegations of physical and mental torture upon the petitioner is false and it is also denied that any dowry amounting to Rs One lakh was demanded. It is the case of the opposite party that on 02.02.15 the petitioner went to her parent's home taking away cash amount of Rs Fifteen thousand and ornaments valued at Rs twenty five thousand, on social visit and never came back to her matrimonial house. It is also the case of the opposite party that he tried to bring the petitioner by the help of village elders but the said village elders were chased away. It is also the case of the opposite party that the petitioner is willfully not coming to her matrimonial house and that he has been providing maintenance to her and the minor child. It is also the case of the opposite party that the petitioner is earning Rs six thousand in a Kaju factory and that he filed a restitution of conjugal rights case against the petitioner numbering T.S (R) 60/16. It is also the case of the opposite party that he is ill healthy, weak person and could not

even perform the work as day labourer and the case of the petitioner be dismissed. Heard Ld counsel for the petitioner.

3. FOLLOWING POINT HAS BEEN SET UP FOR DETERMINATION

- (a) Whether the opposite party being the husband of the petitioner and having sufficient means neglected or refused to maintain the petitioner and the four minor children?**
- (b) To what other reliefs the petitioner is entitled to according to the facts and circumstances of the case?**

4. DISCUSSION ON THE POINT FOR DETERMINATION AND DECISION ARRIVED THEREON WITH REASONS:

7.1. Evidence of PW1, the petitioner reiterated her claim in her evidence and it is not repeated herein for the sake of brevity. Her evidence has remained un-rebutted as the opposite party has not come to cross examine her. Section 125 Cr.P.C is a beneficial social legislation. In the case at hand I don't find anything to disbelieve the evidence of the petitioner. Her evidence remains unchallenged. The fact that the opposite party has sufficient income is not supported by any cogent evidence and section 125 Cr.P.C is a beneficial legislation so presumption will go in favour of the petitioner. The opposite party has filed written statement but has not adduced any evidence inspite of several opportunities given. In fact the opposite party has remained absent. As such I deem it fit to enforce the provisions of section 125 Cr.P.C against the opposite

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party. The opposite party will pay an amount of Rs 3000/- per month to the petitioner and Rs 1000/-per month to the minor child as maintenance, which I consider to be reasonable under the facts and circumstance of the case as there is no cogent evidence on record to show the opposite party's quantum of income. The petitioner is also entitled to cost of Rs 1000/- as per provisions of Section 126(3) Cr.P.C. Both the issues are decided in favour of the petitioner.

ORDER

The Petitioner is entitled to maintenance as claimed. The opposite party will pay an amount of of Rs 3000/- per month to the petitioner and Rs 1000/-per month to the minor child as maintenance. The petitioner is also entitled to cost of Rs 1000/- as per provisions of Section 126(3) Cr.P.C. from the date of this order. Free copy of the order of maintenance be given to the petitioner.

Given under my hand and seal of this Court on this the 4th day of January 2017.

Prasenjit Das, A.J.S

APPENDIX

A. Prosecution Exhibit:

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B. Defence Exhibit: Nil.

C. Exhibit produced by witness: Nil

D. Prosecution Witnesses:

- **P. W. 1: Mohila Khatun/Petitioner.**

E. Defence Witnesses: Nil.

F. Court Witness: Nil.

Prasenjit Das.A.J.S