

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

**Misc. Case NO: 519/2013
U/S. 125 Cr.P.C**

**Kohinur Khatun Bibi
VS
Omar Ali**

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

APPEARANCES:

Adv for the Petitioner: A. H. Sheikh

Adv. for the Opposite Party: M. Zaman.

DATE OF EVIDENCE: 29.10.15, 8.11.16 and 18.1.17

DATE OF ARGUMENT: 24.1.17

DATE OF JUDGMENT: 27.1.17

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 having married him on 25.12.11 as per Islamic Law and it was a social marriage and ever since her marriage, in her matrimonial life she was physically and mentally tortured by the opposite party at the instigation of his relatives. According to the

petitioner jewellery worth rupees four thousand six hundred, cloth worth rupees two thousand and cash rupees of twenty thousand were given as dowry and the same were kept by the opposite party and after four months of matrimonial life she was physically tortured and ousted from matrimonial house and after that the opposite party married one Nilima Khatun Bibi. It is her case that since then she is taking shelter in the house of her parents and once she and her father went to opposite party's house but were ill treated and asked to bring rupees fifty thousand as dowry. It is her case that the opposite party has landed property of 8/10 bighas, does computer work and earns about Rupees seven thousand per month and is a healthy man and has capacity to maintain her as she is helpless. Her prayer is for monthly maintenance of rupees four thousand only.

2. The opposite party received notice, appeared and filed written statement. In his written statement the opposite party denied the allegations made against him including his second marriage, demand for dowry or assaulting the petitioner. It is the case of the opposite party that the petitioner herself fled away from his house and although he tried to bring her back but she did not come. It is his case that he is not a rich man and has no landed property and he never earned Rs 7000/- per month. He also denied that he married for the second.

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?

(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 so it is not repeated herein for the sake of brevity. In her cross examination she stood her ground. DW1 in his evidence has only reiterated his contentions as stated in written statement and so it is again not repeated herein for the sake of brevity. He states that he is a day labourer and earns Rs 80/90 per day. He however admits that he married Nilima Khatun in his cross examination. DW2, is a co-villager and his evidence is a reiteration of the opposite party's case but surprisingly he doesnot know about the second marriage of the opposite party.

7.2 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 petitioner has established a prima facie case. She has claimed maintenance on the ground of ill treatment, cruelty, and demand for dowry. She is the wife of the opposite party and the opposite has not denied it. The opposite party also did not deny the fact that married for the second time. None the less, the opposite party is a healthy is a healthy man.

7.3 The claim of the wife for maintenance on the ground of cruelty and dowry demand is a just ground for claiming maintenance u/s 125 Cr.P.C. As such i deem it fit to enforce the provisions of section 125 Cr.P.C against the opposite party. The opposite party will pay an amount of Rs 4000/- per month to the petitioner, 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 from the date of this order. 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 Rs 4000/- per month to the petitioner as maintenance from the date of this order. The petitioner is also entitled to cost of Rs 1000/- as per provisions of Section 126(3) Cr.P.C.. Free copy of this order be given to the petitioner.

Given under my hand and seal of this Court on this the 27th day of January 2017

Prasenjit Das, A.J.S

APPENDIX

A. Prosecution Exhibit: Nil

B. Defence Exhibit: Nil.

C. Exhibit produced by witness: Nil

D. Prosecution Witnesses:

P. W. 1: Kohinur khatun Bibi/Petitioner.

E. Defence Witnesses:

D.W.1: Omar Ali.

D.W.2: Gulzar Hussain.

F. Court Witness: Nil.

Prasenjit Das.A.J.S