

**IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, Hatsingimari, DHUBRI**

**Misc. Case NO: 261/2013  
U/S. 125 Cr.P.C**

**Husnera Begum  
VS  
Abdul Latif**

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

**APPEARANCES:**

**Adv for the Petitioner: A.S.M Jahangir, Zulekha Khatun  
Adv. for the Opposite Party: Reshma Easmin**

**DATE OF EVIDENCE: 12.1.17, 5.4.17**

**DATE OF ARGUMENT: 7.9.17**

**DATE OF JUDGMENT: 12.9.17**

**Final Order**

1. This is a petition under section 125 Cr.P.C. The case of the petitioner/ Husne ara Begum is that she is the legally wedded wife of the opposite party whom she married as per Islamic Law on 8.7.2002 in which Rs 250/- was given as prompt dower and Rs 45,250/- was kept as deferred dower. After her marriage with the opposite party she went to her matrimonial house and lived there

peacefully for some months and later the opposite party gave her physical and mental torture for dowry and on many occasions drove her out of matrimonial house for non fulfillment of dowry. However the father of the petitioner by bichar and chalisa managed to keep the petitioner in her matrimonial house and the petitioner somehow torturing all managed to live in her matrimonial house and in the process two child namely Hussain Ahmed and Hasanur Islam were born and finally on 30.9.2012 she was driven out of matrimonial house for non fulfillment of dowry demand of Rs 50,000/- and she took shelter in her fathers house. It is her case that the opposite party is earning Rs 40,000/- to Rs 45,000/- per month as opposite party is a mason and contractor, has landed property and tempo and accordingly claimed Rs 5,000/- as maintenance per month for herself and Rs 2,500/- each per month for her two child.

2. The opposite party received notice, and filed written statement. In the said written statement the opposite party denied all the allegations against him. It is the case of the opposite party that the petitioner is in habit of leaving the matrimonial house to live in her father's house as per her wish and with the help of local mohila samiti and police she was made to return to the matrimonial house. It is also submitted that the incident dated 30.9.12 is false, concocted and is a conspiracy against him. It is his case that he never demanded dowry or tortured the petitioner or tortured her and when the petitioner finally left the matrimonial house then he on several occasions tried to bring her back but she did not come as per ill advice of her parents. It is his claim that the two minor children is under his care and custody and the younger son

Hasanur Islam occasionally visits the petitioner and so the petitioner has no right to claim maintenance for the two minor child. The opposite party submits that he is a day labourer and earns Rs 100/- to Rs 250/- per day whenever he gets work and that he is the only earning member of his family having two sons from the first wife and two daughters from the second wife and his second wife along with his aged parents. Opposite party submitted that the petitioner has very high demands (not specified) and has sweet and tea business at her parental house and she rears cattle, goat, sheep, hen and cock and earns Rs 15,000/- per month and as such has sufficient means and therefore she is not entitled to any maintenance under law. However it is also submitted that if the petitioner returns back to him and resumes conjugal life in common house then he will provide maintenance to her. It is important to mention her that the present case was filed in the year 2013 and evidence was recorded only in the year 2017 in the month of January. And after the close of evidence of petitioner when the case was fixed for evidence of opposite party on 16.5.17 then and there after the evidence of the opposite party could not be recorded as on 16.5.17 the parties prayed for adjournment on ground of compromise, then on 20.6.17 the opposite party prayed for adjournment vide petition no 529/17, then on 17.7.17 again on ground of compromise, then on 6.9.17 opposite party remained absent without steps and again on 7.9.17 opposite party remained absent without steps and accordingly the case was fixed for final order after hearing 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?**
- (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:**

4.1. Evidence of PW1, the petitioner reiterated her claim in her evidence and so it is not repeated herein for the sake of brevity. Petitioner has submitted Ext-1 which is Marriage Kabin Nama, Ext-2 which is pass certificate of her son Habibul Basar and Ext-3 as character certificate of Hasunur Islam. PW2 also supports the case of the petitioner and nothing was elicited in their cross examination to disprove their version. PW2 is a witness to kabinnama. Section 125 Cr.P.C is a beneficial social legislation. The marriage between the parties is admitted as per written statement. I don't find anything to disbelieve the evidence of the petitioner. Her evidence remains unchallenged. Petitioner has a prima facie case. The fact that the opposite party has landed properties and sufficient income is not supported by any cogent evidence but section 125 Cr.P.C is a beneficial legislation so presumption will go in favour of the petitioner. As such I deem it fit to enforce the provisions of section 125 Cr.P.C against the opposite party. I have considered the price index and the status of parties and accordingly the opposite party

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12.9.17

will pay an amount of Rs 5000/- 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 as well as Rs 2,500/- per month each to the two minor children from the date of appearance of the opposite party in court, as claimed by the petitioner. The petitioner is also entitled to cost of Rs 2000/- as per provisions of Section 126(3) Cr.P.C. Both the issues are decided in favour of the petitioner. Free copy of this final order be given to the petitioner.

#### ORDER

The Petitioner is entitled to maintenance as claimed. The opposite party will pay an amount of Rs 5000/- per month to the petitioner and Rs 2500/- per month to the two minor children as the petitioner has established a prima facie case from the date of appearance of the opposite party in court. The petitioner is also entitled to cost of Rs 2000/- as per provisions of Section 126(3) Cr.P.C. Free copy of this final order be given to the petitioner.

Given under my hand and seal of this Court on this the 12th day of September 2017.

**Prasenjit Das, A.J.S**

## **APPENDIX**

### **A. Prosecution Exhibit:**

- .Ext-1: Kabin Nama
- Ext-1(1): Signature of Petitioner.
- Ext-2: Pass Certificate.
- Ext-3: Character Certificate.

### **B. Defence Exhibit: Nil.**

### **C. Exhibit produced by witness:**

### **D. Prosecution Witnesses:**

- **P. W. 1: Husne Ara Begum/Petitioner.**
- **P.W.2: Ekhtiar Hussain**

### **E. Defence Witnesses: Nil.**

### **F. Court Witness: Nil.**

**Prasenjit Das. A.J.S**