

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

**Misc. Case NO: 12/2016  
U/S. 125 Cr.P.C**

**Akruma Khatun  
VS  
Raju Babu**

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

**APPEARANCES:**

**Adv for the Petitioner: M. Begum**

**Adv. for the Opposite Party: M. Rohman**

**DATE OF EVIDENCE: 19.12.16, 30.5.17, 5.9.17**

**DATE OF ARGUMENT: 6.9.17**

**DATE OF JUDGMENT: 14.9.17**

**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 her marriage was solemnized as per Islamic Law on 18.8.15 and thereafter she went to live in her matrimonial

house and after 2/3 months of her conjugal life she was physically and mentally tortured for dowry regularly by the opposite party and she was driven out of matrimonial house on 23.10.2015 for non-fulfillment of dowry of Rs 50,000/- by the opposite party and his family members and finding no alternative she is living in her father's house. It is also her case that she had lodged a written F.I.R before the O/C Mankachar P.S being Mankachar P.S case No 761/15 against the opposite party and his family members. It is also the case of the petitioner that the opposite party and his family has kept her jewellery, articles and clothes and garments and house hold articles with a warning that if he comes back she will be killed. It is her claim that she be given Rs 10,000/- per month as monthly maintenance from the date of filing of this case as the opposite party has not been taking care of her and neither visited to bring her back. It is her case that the opposite party is a healthy and wealthy man and has a pick up van, is a driver and has 20 bighas of landed property and earns more than 40,000/- per month from all sources.

2. The opposite party received notice, filed written statement and the case proceeded on contest. In his written statement the opposite party denied all the allegations against him and his family as being false. It is his case that after marriage the petitioner wanted him to build a pucca house and live separately but he being the only sole earning member of his family and being a simple day labourer was helpless and that on 04.11.15 the petitioner left the matrimonial house for ten days and never came back and despite his attempts to bring her back she refused to come to matrimonial house. It is his case that the petitioner willfully without any reason

is refusing to come to the matrimonial house. It is submitted by him that he is a day labourer earning Rs 150/- to Rs 200/- per day whenever he gets work and that he has not a single bigha of landed property. Heard counsel for the both sides.

**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. Petitioner deposed as PW1 and her father deposed as PW2. They revealed the same facts as stated in their petition so it is not repeated for the sake of brevity. They stood upright in their cross-examination. It is revealed by PW1 and PW2 that opposite party has married another women form village Jordanga whose name is Sharmina D/O Shahajamal, and on this point there was no cross examination. PW1's cross examination also reveals that she is willing to live with her husband if the opposite party desires to take her to matrimonial house.

4.2 Opposite party deposed as DW1 and one witness as DW2. DW2, who is a supari and kaju business man stated that opposite party works as labourer in his factory and earns about Rs 5000/- to Rs 6000/- per month during supari and kaju season which runs for 4-5 months and for the remaining period he does not work and has no other source of income. It is further revealed from Dw1 that, from that income opposite party is supporting his age old parents and his second wife. DW2 further reveals that opposite party has a Max Pickup van in his house and a driver is used to transport kaju and supari. Opposite party as DW1 apart from what he has stated in his written statement raised a new plea in his evidence-“ghar jamai”. He deposed that opposite party proposed him to stay as ghar jamai. He admitted being healthy and fit and marrying another women. He admitted being arrested by police in a case filed by petitioner.

4.3 It admitted that the opposite party is healthy and has a second wife. It is also admitted that the petitioner is not living with the opposite party. It is also on record that the opposite party has not been able to explain properly by cogent evidence that he did not neglect the petitioner or the petitioner wilfully is not staying with him. The opposite party also failed to adduce evidence to show that he tried to bring back his first wife/ petitioner. The opposite party failed to explain the presence of Max Pick Up van at his home. The opposite party within a short span of time married another woman. If he is poor and a day labourer working for four/five months in a year and earning Rs 150/- to Rs 200/- per day, then why did he marry for the second time? Why did he take

the burden to feed another stomach when his condition is pathetic as he is living hand to mouth? Then again what will happen to his first wife/petitioner? Doesn't he has any responsibility towards the well being of the petitioner/ his first wife? Is she to be left in destitution, hardship and poverty?

4.4 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. She has established a prima facie case and her evidence inspires confidence. The fact that the opposite party has landed properties and 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. 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, cost of living, status of parties, age of petitioner. Petitioner is a young person. She has a right to live in dignity and nothing should fall short to deny her that right. Accordingly the opposite party 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, from the date of filing of this petition. 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 as she has established a prima facie case. Petitioner has right to live in dignity. The opposite party will pay an amount of Rs 5000/- per month to the petitioner from the date of filing of this petition. 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 14th day of September 2017.

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

## **APPENDIX**

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

- Ext-1: Registered Kabin-nama.
- Ext-1(1): Signature of Petitioner.

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

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

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

- **P. W. 1:** Akruma Khatun/**Petitioner.**
- **P.W.2:** Rofial Hoque.

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

- D.W1: Raju Babu./Opposite Party.
- D.W2: Nur Islam.

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

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