

**In the court of Sub Divisional Judicial Magistrate ,( Mufassil)**

**Biswanath Chariali, Sonitpur.**

**Misc Case No. 46/2013**

*u/s 125 Cr.P.C.*

**Smti Munu Kuch.....First Party/ Petitioner**

**Vs-**

**Shri Rajat Kuch..... Second Party/Opp. Party**

Present:- Mrs Audri Bhattacharyya.

SDJM(M).

-Biswanath Chariali, Sonitpur.

Appearances:-

For the petitioner : Mr. Sahidur Rahman( Advocate)

For the Opposite party : Shri Debananda Das .( Advocate)

Date of recording evidence: ,17-04-2014

Date of hearing argument : 20-05-2014.

Date of Judgment : 20-05-2014.

**JUDGMENT**

This case arose out of a petition filed by the petitioner Smti Munu Kuch u/s 125 Cr.P.C. claiming maintenance from the opposite party/ husband , Shri Rajat Kuch.

The First party/ petitioner contended in her petition u/s 125 of the Cr.P.C. that about 11 Years back the opposite party married the

petitioner according to Hindu Religious rites . After marriage both of them lived in the house of the opposite party as husband and wife. The petitioner also gave birth to one son out of the wedlock with the opposite party. But after a few years of their marriage the opposite party tortured the petitioner demanding dowry . The petitioner on several occasion had to bring money from her parental home. On 06-07-2013 the opposite party assaulted the petitioner and drove her out of his house and since then she has been residing in her parental home. She is leading a miserable life with her 7 year old son. The opposite party is not providing any maintenance to the peititoner to her 7 year old son. On the other hand the opposite party is a able bodied man and earns amount of Rupees Thirteen thousand per month and also owns landed property. So the petitioner has instituted the present case claiming maintenance at the rate of Rs. 2500/- each for herself and for her minor son.

On receipt of notice the opposite party appeared and filed his written reply against the petition of the petitioner. The opposite party denied the allegations made by the petitioner against him. In his written reply the opposite party denied that ne demanded dowry from the peititoner. The opposite party submitted that the petitioner out of her own will went away from his house along with his son children. The opposite party submitted that he has his old ailing father at home , who is bed ridden . The opposite is a daily wage earner and earns about Rs. 100/- per day. It is therefore prayed to dismiss the petition of the petitioner.

Considering the rival submission of the parties the following points for determination are taken up to arrive at a decision in the case:

*i). Whether the petitioner willfully left the house of the opp. Party ?*

*ii) Whether the opposite party has refused and neglected to maintain the petitioner and her child ?*

*iii). Whether the petitioner and her child is legally entitled to get maintenance from the Opposite party?*

*If Yes , what should be the quantum of maintenance?*

The petitioner and the opposite party adduced evidence of 2 witnesses each in support of their case. After recording of evidence argument was heard on behalf of both the parties .

**Discussion, Decision and reason thereof:-**

The issues are taken up one by one and the evidence available on record are gone through to arrive at a decision .

**Point No. 1 : Whether the petitioner willfully left the house of the opp. Party?**

PW1 Smti Munu Kuch deposed in her evidence in chief that she was married to the petitioner about 11 year ago and they resided as husband and wife. They have a seven year old son. On 06-07-2013 the opposite party drove out the petitioner and her son out of his house and since then she has been residing in her parental home. The opposite party also brought another woman into the house and has been torturing the peititoner .

The petitioner during her cross examination denied suggestion put forward by learned Counsel for the opposite party that the opposite party tried to bring her back to his house. Shr further deposed that the opposite party married her own sister.

Pw2 Shri Kunja Nath Gogoi, neighbour of the petitioner also deposed that the opposite party after bringing another woman into the

house tortured the petitioner and drove her away. They tried to settle the matter in between the husband and wife but ultimately the peititoner left her husband's place and came back to her parental home. During cross examination he deposed that he knew that father of the opposite party expired.

DW1 Shri Rajat Kuch deposed in his chief that the peititoner used to nfight with his mother. He had once slapped her and for that reason she had instituted a case against him and as a result he was taken to the jail .

Going through the evidence on record it is reflected that there was disharmony in the family life of the petitioner and the opposite party. Moreover the evidence of the petitioner's witness points to the fact that the opposite party brought another woman into his house and at present residing with.. Same is a strong ground for the petitioner for not residing with him. Considering this unhealthy family life it is held that the petitioner did not wilfully leave the house of the opposite party but the situation created was such that the petitioner had to leave her husband's place along with her son.

This issue is decided in negative and goes in favour of the petitioner .

***ii). Whether the opposite party has refused and neglected to maintain the petitioner and her child?***

PW1 Smti Monu Kuch deposed in her evidence in chief after bringing another woman into the house the opposite party drove out the petitioner along with her son and thereafter he never visited her nor

provided any maintenance to her or her son. She has no income of her own. At present she is staying in her father's house.

DW1 Shri Rajat Kuch the opposite party also deposed in his cross examination that he never went to visit Munu Kuch or her son after she left his home and started residing in her parental home. He also deposed that he did not provide her any maintenance. Her son is a school going child

Thus the evidence of the opposite party is also silent with regard to providing any expenses to the petitioner or her child for maintaining themselves. As a father he is duty bound to bear day to day daily expenses as well as educational expenses of his children. Hence it is held that the opposite party refused and neglected to maintain the petitioner and her child.

***iii). Whether the petitioner and her minor child are legally entitled to get maintenance from the Opposite party? If Yes, what should be the quantum of maintenance?***

It is already discussed and held in point No. 2 that the opposite party has refused and neglected to maintain the petitioner and her children. Hence prima facie the petitioner is entitled to get maintenance for herself and her two children from the opposite party.

Learned Counsel for the opposite party submitted that the petitioner was earning some income as she deposed in her chief that she sometimes works as daily wage earner.

But the above submission is not sufficient to rule out application of section 125 Cr.P.C. It has to be established that with the amount she earned the petitioner was able to maintain herself as well as her child..

In case of **Chaturbhuj Vs. Sitabai, (2008) 2 Supreme Court Cases 316** dismissing the appeal, the Hon'ble Supreme Court held that *“The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. S.125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves.”*

Hence even if the petitioner earns something for her living , the same cannot be a ground for refusing maintenance, as because the opposite party is unable to prove that she can survive out of her mere income along with her child.

So far as quantum of maintenance is concerned , the income of the opposite party as well as the financial status of the petitioner is taken into consideration .

The petitioner submitted that financial condition of the petitioner is not well to do. Her father has four children and he is a daily wage earner and has a merge income. The petitioner has no income of her own. On the other hand the opposite party deals in the business, he owns land and works in wielding garrage. He earns monthly about 13,000/- rupees.

On the other hand the opposite party as DW1 submitted that submitted that he earns Rs. 130 per day by working as a daily labour in a wielding garage and his income is not regular. DW2 Smti Niru Kuch, mother of the opposite party also deposed that his income is Rs. 120 to Rs. 140 per day.

From the evidence on record it is seen that the petitioner failed to adduce substantial evidence that the opposite party owns land and earns Rs. 13000/- per month as alleged in the petition u/s 125 Cr.P.C. . But considering the evidence of the petitioner and the opposite party together, it is reflected that the opposite party has a regular monthly earning so as to provide the minimum amount of maintenance to his wife as well to his minor child. The Opposite party is an able bodied person and having regular source of income. Considering the same, together with the present price of day to day articles in the market and educational expenses of the minor son of the petitioner, the quantum of maintenance to be paid by the opposite party to the petitioner and her minor child is fixed at the rate of Rs. 2,000/- ( Two thousand )per month from the date of order. The petitioner and her minor child are granted maintenance at the rate of Rs. 1000/- each per month.

**Order**

Considering the above mentioned facts and present cost of living and also the high price rise of the essential commodities in the market and also keeping in view the financial status of both the parties , the opposite party is directed to pay Rs. 1000/- ( One thousand ) per month to the petitioner and Rs. 1000/- ( One thousand ) per month to the minor child of the petitioner as maintenance from the date of order . In total Maintenance amount of Rs. 2000/- ( Rupees Two thousand ) is allowed from date of order .

A copy of judgment and order be furnished to the petitioner free of cost.

Judgment is pronounced in open Court and is given under my hand and seal of this Court on this the 5<sup>th</sup> day of June , 2014.

Mrs Audri Bhattacharyya.

SDJM(M).-

Biswanath Chariali, Sonitpur.

**Appendix**

**List of petitioner's witness:**

PW1 Smti Munu Kuch

PW2 Shri Kunja Nath Gogoi

**List of defendant's witness:**

DW1 Shri Rajat Kuch

Dw2 Smti Niru Kuch

Mrs Audri Bhattacharyya.

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**Order**

05-06-2014 Both the sides are present .

Judgment is ready and pronounced in open court.

Considering the above mentioned facts and present cost of living and also the high price rise of the essential commodities in the market and also keeping in view the financial status of both the parties , the opposite party is directed to pay Rs. 1000/- ( One thousand ) per month to the petitioner and Rs. 1000/- ( One thousand ) per month to the minor child of the petitioner as maintenance from the date of order . In total Maintenance amount of Rs. 2000/- ( Rupees Two thousand ) is allowed from date of order .

A copy of judgment and order be furnished to the petitioner free of cost.

Detail judgment is written in separate sheet , kept in the case record.

Mrs Audri Bhattacharyya.

SDJM(M).-

Biswanath Chariali, Sonitpur.