

IN THE COURT OF THE JUDICIAL MAGISTRATE, 1<sup>ST</sup> CLASS, SONITPUR

Misc Case No. 105/12

Mstt. Mofiza Begum.....Petitioner

-v-

Md. Farkun Ali.....Opposite Party

**PRESENT :** Panchali Shyam,  
Judicial Magistrate, 1<sup>st</sup> Class,  
Sonitpur.

For the Petitioner : Abdul Aziz, Advocate

For the Opposite Party : Sri. D. Borah, Advocate

Date of Hearing : 03-04-13,

Date of Argument : 08-10-13

Date of Order : 15-10-13

**ORDER u/s 125, CrPC**

1. The case of petitioner is that she got married to the opposite party in the year 2006 as per Muslim laws of Shariat. Within the wedlock petitioner gave birth to a baby boy. His name is Raja Ali and is three years of age. Two years of marriage passed off well between the parties. But with change of time, the opposite party started torturing the petitioner by demanding money from her

father's house. The petitioner tolerated such atrocities hoping something good and thinking about her son and his future. But that did not happen and things turned worst. It is stated that the petitioner is the second wife of the opposite party and the fact that the opposite party had his first wife was concealed by the opposite party at the time of marrying the petitioner. It is further stated that a year ago the opposite party assaulted the petitioner and drove her out from his house along with her son. The petitioner then took shelter in her father's house. Since then the petitioner and her son is in her father's house. Petitioner stated that she is passing her days in great pain with her child. It is also stated that recently the father of the petitioner expired and that has added to more pain and misery. The opposite party has not provided maintenance to petitioner and her child. Petitioner has no source of income. On the other hand opposite party is a driver and has landed properties. The opposite party earns rupees ten-twelve thousand per month. The petitioner claimed Rs. 5,000/- for herself and her child, per month, from the opposite party and hence, the instant case.

2. The opposite party contested the case by filing written statement, wherein he stated that he had never committed any atrocities on the petitioner. He admitted petitioner to be his wife and has fathered her son. He denied that he concealed about his first marriage to the petitioner at the time of marriage. The opposite party stated that after marriage, the petitioner often used to go to her father's house without his permission and the opposite party had to bring petitioner back to his house. But few months ago, the petitioner went away to her father's house and this time she refused to come to her matrimonial home inspite of several request from the opposite party. It is stated that the opposite party's mother and relatives tried their best to bring the petitioner but the petitioner refused to comply with their request. It is stated that the petitioner and her family members asked the opposite party to build a house on the land belonging to the father of petitioner and stay there. But the opposite party refused such demand from the petitioner's side. The opposite party stated that he has his old mother to look after and therefore cannot fulfil such demand of the petitioner. Opposite party denied having landed properties and monthly income of Rs 10,000/- to 12,000/- as stated by petitioner. The opposite party admitted that he is a driver on daily wages and earns Rs 3,000/- to Rs 3,500/- per month. The opposite party denied that he neglected to maintain his wife or child and that he never looked up on his wife and children, and hence prayed to dismiss the case.

#### **ISSUES FOR DETERMINATION**

3. During hearing of the case, the petitioner led evidence of two witnesses while the opposite party adduced no evidence from his side. The issues which arise for determination are as follows:-
  - (i) Whether the opposite party neglected to maintain the petitioner and the children, who are his wife, son and daughter ;
  - (ii) Whether the petitioner is unable to maintain herself and the children ;  
and

- (iii) Whether the petitioner deserves maintenance for herself and the children from the opposite party?

#### 4. DISCUSSION, DECISION AND REASONS THEREOF:

##### ISSUE NO1

The petitioner, Mofiza Begum, presently resides in her father's home with her son. PW1 Mofiza Begum is the petitioner. She stated that her husband/OP tortured her in demand of money as dowry and assaulted her and drove her out from his house on her failure to meet his demands. Petitioner stated that OP did not provide maintenance to her as well as her child. PW1 stated that the opposite party concealed the fact of having his first wife. She denied that the opposite party or any of his family members went to bring her back to her matrimonial home. PW1 denied that she asked the opposite party to stay in her house as Ghorjuwai. She further denied that she voluntarily left her matrimonial home.

5. PW2 Sikander Ali stated that opposite party had tortured petitioner in demand of money as dowry and drove her out from his house. He stated that the petitioner and her child are passing their days in great pain and misery. He stated that he came to know about torture to petitioner by opposite party after petitioner was driven out. He stated that he is associated with a social organisation and therefore know about the petitioner's pitiful condition.
6. Opposite party in support of his contention did not adduce evidence from his side.
7. From the above evidence what transpires is that the after marriage the parties happily started their conjugal life. But it did not last long and the opposite party tortured the petitioner in demand of money and drove the petitioner out from his house. The opposite party has not shown anywhere that he shouldered expenses of his child and his wife, who were residing in parental home of petitioner. The opposite party has not been able to prove that petitioner left his house of her own volition to satisfy her whims and fancies. At the same time, the opposite party has also not been able to dislodge testimony of petitioner that she was driven out from her matrimonial home on her failure to meet his demand. Hence, the opposite party is responsible for petitioner not being in his house presently. Along with it, he has not been able to show in any manner that he has provided for his child or his wife in any manner whatsoever. The petitioner and the child with her are being taken care of in her parental home by her family members. There has been no contribution of opposite party in fending for them. Hence, this issue is decided in the affirmative.

##### ISSUE NO2.

8. The petitioner has been living with her parents ever since she had to come to her parental home after being driven out from her matrimonial home. It has not been brought about in evidence that opposite party is working somewhere or earning anything. Opposite party contended that petitioner voluntarily left her matrimonial home. But there is no rebutting

evidence from the opposite party's side to disprove the same. As such it remained a mere plea only.

Hence, this issue is also decided the affirmative.

### ISSUE NO3

6. The law binds a man to maintain his wife, children and parents. There are no two ways about it. Therefore, with issues no. 1 and being decided in the affirmative, it is absolutely clear that the petitioner deserves maintenance from the opposite party for herself and her child and it is also essential that the opposite party should provide maintenance to them. Having married the petitioner, it is the bounden duty of the opposite party to maintain her and his child. It is a responsibility which he has undertaken under the vows of marriage and an obligation which he has to shoulder. It is not a joke that a man will marry a woman and then leave her on the breadline with his children simply because she was unable to remain in his house and keep suffering the torture inflicted on her. The opposite party, who is father of the child with the petitioner, has also not shouldered any responsibility of being a father. There is no excuse for that. Sec.125, CrPC, is quite clear that any person, with sufficient means, has to maintain his wife and child, who are unable to maintain themselves. The petitioner and her child definitely deserve maintenance from the opposite party, who is husband of the petitioner and father of said child. This issue, therefore, is decided in the affirmative as well.
7. The cumulative effect of decisions in all these issues are that the case of petitioner is proved by preponderance of probabilities.
8. The petitioner has stated that the opposite party is a driver and has landed properties. He earns Rs 10,000/- to 12,000/- per month. The opposite party admitted that he is driver, but stated to have earnings of Rs 3,000/- to Rs 3,500/- per month. It is also admitted that the opposite party has his first wife. The question therefore, is why the petitioner and her child feel deprived of what they are entitled to as per law? Be that as it may, the opposite party is bound to maintain his wife and children. He cannot escape that responsibility. Keeping all aspects in consideration, a monthly maintenance allowance of Rs. 2,001/- for the petitioner and of Rs. 1,501/- for child, ie a total of Rs. 3,502/- per month appears sufficient in this case to meet the ends of justice.
9. With the aforesaid observations, I hereby direct that the opposite party, Md. Farkun Ali, shall pay maintenance allowance towards his wife @ Rs. 2,001/- per mensem and @ Rs 1,501/- per month towards his child residing with the petitioner, ie Rs 3,502/- per month in total, with effect from the date of this petition.
10. Petition of Msstt. Mofiza Begum, the petitioner, is, therefore, allowed.
11. Given under my hand and the seal of this court on this, the 15th day of October,2013.

Judicial Magistrate,  
1st class, Sonitpur