

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

Misc Case No. 66/12

Mstt. Majida Begum.....Petitioner

-v-

Md. Chan Miya.....Opposite Party

**PRESENT : Panchali Shyam,**

Judicial Magistrate, 1<sup>st</sup> Class,

Sonitpur.

For the Petitioner : Sri Jibon Dam, Advocate

For the Opposite Party : Nizamuddin, Advocate

Date of Hearing : 20-05-13, 10-06-13

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 on 11-10-10 by registering Kabinnama and as per Muslim laws of Shariat. Within the wedlock the petitioner gave birth to a girl child. Her name is Nazima Begum and her age is ten months. It is stated that after three months of marriage the opposite party started to torture the petitioner in demand of Rs 20,000/- as dowry.

Petitioner tolerated all atrocities hoping for something good. But that did not happen and things turned worst. Petitioner stated that unable to fulfil the demand of the opposite party, the opposite party linked her up with another man and maligned her character and assaulted petitioner and dropped her in her father's house. The petitioner then filed a case against the opposite party for cruelty. It is stated that right after filing of this case, the opposite party compromised the matter with the petitioner and successfully withdrew the case against him. The petitioner then returned to her matrimonial home and started her marital life fresh. All was well for two-three months. But again the opposite party started to torture the petitioner in demand of money as dowry and also asked for the expenses which he had to bear because of the case. The petitioner stated that when she objected to such claim of the opposite party, she was assaulted by the opposite party and the opposite party obtaining her signature on a blank paper, sent her to her father's house. At that time the petitioner was pregnant and her child was delivered in her father's house. She is passing her days in great pain with her child. Opposite party has not provided maintenance to petitioner and her child. Petitioner has no source of income. On the other hand opposite party does business of potato and onion and has landed properties. Opposite party earns rupees nine to ten thousand per month. The petitioner claimed Rs. 6,000/- 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 stated that after marriage the petitioner showed her unwillingness to start conjugal life with the opposite party. The opposite party stated that the petitioner often used to go away to her father's house and he used to bring her back with the help of some village people. He stated that the petitioner never performed any duty of a wife and without any reasons quarrelled with his parents and led life as per whims and fancies. The opposite party stated that the petitioner often threatened to commit suicide and set herself in fire. Opposite party denied having monthly income of Rs 9,000/- to Rs 10, 000/- as stated by petitioner. Contrary to averments made in the petition, he stated that he only is a daily wage earner and earns Rs 1,200/- per month. He stated that he has his parents to look after and with this meagre amount he cannot provide maintenance to the petitioner separately. 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 and the opposite party also examined two. 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 and daughter ;
  - (ii) Whether the petitioner is unable to maintain herself and the child ; and

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

4. DISCUSSION, DECISION AND REASONS THEREOF:

ISSUE NO1

The petitioner, Mazida Begum, presently resides in her matrimonial home with her daughter. She reiterated the same facts stated in the petition. She denied that she voluntarily left her matrimonial home.

5. PW2, Nur Hussain, is the uncle of petitioner. He stated that after of the parties marriage, opposite party started to torture the petitioner in demand of money and sent away petitioner to her father's house. He stated that the petitioner has filed a case against the opposite party for inflicting cruelty and the opposite party successfully got the case withdrawn by assuring to keep the petitioner happy thereafter. But the opposite party failed to keep his promise and again demanded money from the petitioner and drove her out from his house during her pregnancy and the petitioner gave birth to a baby girl in her father's house. He denied that the petitioner voluntarily left her matrimonial home and that the petitioner never wanted to continue her marital life with the opposite party.
6. Opposite party in support of his contention adduced evidence of two witnesses. DW1 Chan Miya is the opposite party. He admitted that the case which the petitioner had filed against him was withdrawn by the petitioner after he promised to keep the petitioner happily. He admitted that he has two kathas of land.
7. DW2, Abdul Matin, stated that the petitioner used to often run away from her matrimonial home and once he caught hold of petitioner while she was trying to run away from the opposite party and took her back to her matrimonial home. He stated that he even went to the house of the petitioner to bring her back. But petitioner refused to come and her father also voiced same opinion. He stated that he often visits the house of opposite party. But does not the reason behind fight between the parties. DW2 stated that a village meeting was held to settle the matter regarding the petitioner leaving her matrimonial home and running away.
8. From the above evidence what transpires is that after marriage the parties happily started their conjugal life. But it did not last long as after three months of marriage opposite party begun to torture petitioner by demanding money. DW2 stated that petitioner had the habit of running away from the house and one day he caught hold of her and took her to her matrimonial home. But this very episode as stated by DW2 is not mentioned by opposite party either in his written statement or in his evidence. For the matter, opposite party made no mention of DW2 bringing petitioner either from road or from her house. It is like DW2 has done what opposite party never stated to have experienced. This is something neither possible nor acceptable and reeks of false exaggerated statements.

9. 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 forced to leave his house on account of cruelty, physical and mental, inflicted on her. 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.

10. The petitioner has been living with her parents ever since she had to come to her parental home during state of pregnancy. It has not been brought about in evidence that the petitioner is working somewhere or earning anything. The opposite party has also not denied that the petitioner is not working or that she has no source of income. Hence, this issue is also decided in 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 businessman and has landed properties. He earns Rs 9,000/- to 10,000/- per month. DW-1, the opposite party stated that he is a daily wage earner and earns Rs 1,200/- per month. DW1 stated that he works as a labour in a shop. DW 1 admitted that he has three kathas of land. That being so, DW1 has the capacity to fend his wife i.e the petitioner and the child, who are not being able to maintain themselves. Moreover opposite party is bound to maintain his wife and child. He cannot escape that responsibility. Keeping all aspects in consideration, a monthly maintenance allowance of Rs. 2,001/- for the petitioner and of Rs. 2,001/- for child, ie a total of Rs. 4,002/- 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, Chan Miya, shall pay maintenance allowance towards his wife @ Rs. 2,001/- per mensem and @ Rs 2,001/- per month towards his child residing with the petitioner, ie Rs 4,002/- per month in total, with effect from the date of this petition.

10. Petition of Msstt. Majida Begum, the petitioner, is, therefore, allowed.

11. Given under my hand and the seal of this court on this, the 15<sup>th</sup> day of October,2013.

Judicial Magistrate,  
1st class, Sonitpur