

IN THE COURT JUDICIAL MAGISTRATE FIRST CLASS,
BILASIPARA

Misc Case No. 1/2019.

U/S 125 of Cr.P.C.

Musst. Saiful Bibi..Petitioner

-Vs.-

Abdulah Sk.... ... Opp. Party

PRESENT: *Smt. Mridusmita Hazarika,A.J.S.*
J.M.F.C., Bilasipara

For the Petitioner: Mr. T. B. Eyasmin, Mr. A. H. S. Islam, Learned
Advocate

For the Opp. Party: None

Date of Evidence: 26-3-2019

Date of Argument: 26-3-2019

Date of Judgment: 4-4-2019

JUDGMENT

1. Instant case has arisen out of petition filed by the petitioner Musst. Saiful Bibi against the opposite party Abdullah Sk U/S 125 of the Criminal Procedure Code.
2. Brief facts for filing the instant case is that the petitioner got married with the Opp. Party on 23.10.2016 by executing Kabin-nama as per Muslim rites and rituals. At the time of marriage, an amount of Rs.50,000/- along with ornaments and articles were given to the Opp. Party. But after few days of the marriage, the Opp. Party started inhumane torture upon the petitioner. However the petitioner continued her conjugal life with the Opp. Party by tolerating all the tortures. Thereafter about 4 months, the Opp. Party again

demanded Rs.50,000/- from the petitioner and while the petitioner refused to fulfill the demand, the Opp. Party had assaulted her severely and driven out from the matrimonial house. Finding no other alternatives, she had to take shelter at her father's house. It is stated that the Opp. Party is a mason and he is having 8/10 bighas of land. From all the sources, he earns an amount of Rs.50000/-. But the opp. Party in spite of having sufficient means did not enquire about petitioner and also failed to provide any maintenance to the petitioner. Hence petitioner has filed the instant case claiming monthly maintenance amount of Rs. 10,000/- for her.

3. After receiving notice, the OP did not appear in the instant case and hence the case proceeded ex-parte against him.
4. During course of trial, the petitioner adduced her evidence as PW 1. The Opp. Party neither cross-examined the PW 1 nor adduced any evidence.
5. I heard the argument advanced by the learned counsel for petitioner and perused the case record.
6. Upon perusal of the pleadings the following points are formulated for proper adjudication of the case:
 - 1) Whether the petitioner has got any just and reasonable ground for living separately from the opp. party?
 - 2) Whether the opp. party having sufficient means neglected or refused to maintain the petitioner?
 - 3) Whether the petitioner is entitled to get the maintenance as prayed for?

DISCUSSION DECISION AND REASON THEREOF

7. At first let me try to reproduce the relevant testimony of PW 1.
8. PW 1 Saiful Bibi in her examination in chief has deposed that her marriage was solemnized with the Opp. Party about 3(three) years back and continued happy conjugal life for a period of 5(five) months with the Opp. Party. Thereafter the Opp. Party started to assault her demanding an amount of Rs.50,000/- and finally drove her out due to non-fulfilment of the said demand. PW 1 has further deposed that OP is mason and he is having 7-8 Bighas of land and earns Rs.50,000/ per month. She has been residing at her father's house since 3(three) years and the Opp. Party has neither enquired about her nor provided any maintenance. Hence she filed

the instant case claiming monthly maintenance allowance of Rs. 10,000/ for herself.

9. Now let me state the legal provision applicable to the instant case. Section 125 of the Cr.P.C. casts a legal obligation upon every husband to maintain his wife, who is unable to maintain herself. The object of the law is to provide protection to destitute woman. It is pertinent to mention that scope of section 125 Cr.P.C extends to parents and children also.
10. Hence, keeping in mind the legal aspects as stated above and on the basis of evidence on record, let me try to decide the points formulated in the instant case:

Point no 1: Whether the petitioner has got any just and reasonable ground for living separately from the opp. party?

11. In this regard, PW 1 in her examination in chief has clearly deposed that the OP had driven her out of the matrimonial house, when she failed to fulfill his demand and thereafter he had not contacted her. She has also deposed that the OP used to cause physical torture upon her. The evidence of petitioner remained totally unrebutted during course of trial. The Opp. Party though received the notice of this case but he neither submitted WS nor cross-examined the PW1, for which the testimony of PW 1 has remained totally unrebutted. I don't find any ground to disbelieve in the testimony of PW 1 in the instant case. Thus from the evidence on record, it is clear that the Opp. Party used to torture the petitioner for demand of money, which is a quite satisfactory ground for the petitioner to live separately from her husband. Hence it can be safely concluded that the petitioner had just and reasonable ground for leaving separately from the OP.

Point no 2: Whether the opp. party having sufficient means neglected or refused to maintain the petitioner?

12. In the instant case, the PW 1 in her examination in chief has deposed that the Opp. Party is a mason and he is having landed properties. From all the sources, he earns Rs. 50000/ per month. But he never provided any maintenance to her. The Opp. Party has neither submitted WS nor cross-examined the PW 1 challenging the case of petitioner. Hence from the evidence on record, which has remained totally unrebutted, it has become

crystal clear that OP having sufficient means neglected or refused to maintain his wife.

Point no:3 Whether the petitioner is entitled to get the maintenance as prayed for?

13. The petitioner is the legally married wife of the OP, and she was deserted without any reasonable ground. As such, I am of the considered opinion that petitioner is entitled to get maintenance from the OP. Hence the fact to be considered here is the amount of maintenance to be awarded upon. But the petitioner has not adduced any specific evidence to show the exact monthly income of OP. However, considering the present cost of living, social status of both the parties, I am of the view that an amount of Rs. 3000/ per month will be proper and reasonable to meet the basic needs of the petitioner. Thus, OP is directed to provide monthly maintenance of Rs. 3000/ to the petitioner.

ORDER

14. Accordingly the opp. party is directed to give an amount of Rs. 3,000/- per month to the petitioner as maintenance allowance as per Gregorian calendar.
15. This order of maintenance allowance is to take effect from today, that is from 4.4.2019.
16. Furnish a free copy of the judgment to the petitioner.
17. Case is accordingly disposed of without contest.
18. Given under my hand and seal of this Court on this 4th day of April, 2019 at Bilasipara.

(Smt. M. Hazarika)
J.M.F.C., Bilasipara

APPENDIX

1ST Party/Petitioner's Witnesses:

1. Saiful Bibi PW-1

1ST Party/Petitioner's Exhibits: Nil.

2nd Party/Opp. Party's Witnesses: Nil.

2nd Party/Opp. Party's Exhibits: Nil.

(Smti. M.Hazarika)
J.M.F.C., Bilasipara