

**IN THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS, SPECIAL
MOBILE COURT :: AT KHAMMAM.**

Present: *Smt M. Ushashree,*
J.M.F.C, Spl. Mobile Court,
Khammam.

Dated this the 25^h day of February, 2020

M.C. No:1 of 2018

Between:

- 1) Shaik Rubena, W/o Shaik Rasool, 25 Years, Household
- 2) Shaik Shaheed, S/o Shaik Rasool, 4 years, Student,
(Being minor rep by her mother and natural guardian P-1)
Both are R/o Nayakangudem, Kusumanchi Mandal, Khammam District
..... Petitioners

And

Shaik Rasool, S/o Galib, 31 years, Occ: Canteen worker., R/o Kodada
village, Suryapet District
.....Respondent

This petition came before me on 20-2-2020 for final hearing and disposal in the presence of Sri Salam Venkateshwarlu, learned counsel for petitioner, and Sri M.K.Jaleel, Learned counsel for respondent, upon perusing the material papers on record, stood over for consideration, till this day, this court delivered the following:

: O R D E R :

The petition is filed by petitioners under section 125 of Cr.P.C against the respondent, who is wife and son seeking monthly maintenance of Rs.8,000/- to petitioner No.1 and Rs.4,000/- to petitioner No.2.

2. The averments of the petition are follows hereunder:

It is alleged in the petition that, the petitioner No.1 is legally wedded wife of the respondent and the marriage took place on 16-3-2008 at Nayakangudem. At the time of marriage the parents of petitioner gave Rs.60,000 as cash towards dowry and Rs. 4 tulas of gold ornaments and spent 50,000/- towards marriage expenses. They led happy marital life for 5 yrs and out of the wedlock, the petitioner No.2 is born and after the birth of petitioner No 2 the respondent started harassing petitioner No.1 for want of additional dowry of Rs 1 lakh. The respondent also abused her in a filthy language and finally in the month of July 2016 respondent and his parents

necked her out of the house. The matter was placed before elders but respondent paid deaf ear to the words of the elders. Since then the petitioner No 1 is residing with her parents. As such, prayed the court to grant maintenance to petitioner no.1 and 2.

3. On careful perusal of the contents of the petition, this court registered the same as maintenance case and issued notice to the respondent.

4. Respondent appeared before this court and filed counter admitted the marriage with the petitioner no.1, but stated that after the delivery of the second child of petitioner No1 left him and started living with her parents. The respondent being fed up with the attitude of the petitioner gave talaq to the Petitioner No 1. And the marriage was dissolved in between the petitioner No 1 and the respondent on 24th of August 2016. Hence the Petitioner No.1 is not entitled to any maintenance. Hence prayed the court to dismiss the petition.

5. Heard the both counsels and perused the contents of the petition.

6. **Point for consideration is:**

1. **Whether there was any wilful neglect on the part of respondent?**
2. **Whether the petitioner was living separately after leaving the respondent on her own as U/s 125(4)crpc?**
3. **Whether the petitioner No 1 is entitled to the maintenance as the Petitioner and Respondent got separated by taking divorce?**
4. **If so, to what relief ?**

Discussion on evidence, reasons and decision.

7. In order to prove the case by the petitioners, the petitioner No.1 herself examined as Pw.1. and in the cross examination she stated that the dispute arose between herself and respondent since 2010, and they got united again by executing an agreement before the elders dated 12th December 2011, that they will not quarrel with each other. She admitted that the respondent eye was damaged when thumbs up bottle blasted. And she further admitted that she went to my parents house after the birth of

their second child. She admitted that she left to her parents house when the respondent was admitted in the hospital taking his eye treatment. And later changed the name of her second son. But she denied to the suggestion that when she did not return back in the year 2016 respondent gave Talaq notice. She denied to the suggestion that the respondent already paid Meher amount. She denied the suggestion of having entered into an agreement with the respondent on 30 August 2016 at the police station. She also denied to the suggestion that after getting separated she filed a criminal case against the respondent and his mother and brother on 24 October 2016, in Crime No 283/2016 before PS Kusumanchi. She denied the suggestion that suppressing the fact of taking divorce from the respondent she filed a maintenance case as such she is not entitled to any maintenance. She denied the suggestion that as the respondent lost his eye as such she left the company of the respondent.

8. Her father is examined as P.W.2. And P.W.2 in his cross examination admitted that his daughter is not staying with the respondent after the respondent sustained an eye injury. He denied the suggestion of executing an agreement on 30 August 2016. He denied to the suggestion receiving Rs 6 lacks. He denied to the suggestion that after executing the agreement respondent sent a Talaq notice and gave divorce to the petitioner.

Repondent Evidence:

9. The husband of the petitioner is examined as RW1. And he stated that he is working in a canteen in cinema theatre. And stated that he paid the Iddat amount and also Meher amount to the Petitioner. He stated that he paid the amount as per exhibit R2 got separated from eachother on mutual consent in the year 2016. And he further stated that his wife and his son are staying at her parents house since 2014.

10. Respondent Brother got examined as RW2 and he stated that after the

birth of the second child petitioner No1 went to her parents house and staying with them. The petitioner filed a criminal case against them and executed an agreement at the police station also paid an amount of 6 lacks.

And the Respondent took the permission of the court to get secondary evidence marked in his favour as the original documents are with the petitioner. And court granted him permission vide CrImp Number 2244 of 2019.

Ex R1 photocopy of Sharatula patram dated 12.12.2011.

Ex R2 Oppanda agreement which shows that same is executed by the parties at the police station on 30th August 2016 and as per the agreement 6 lakhs was settled between the parties for getting separated.

Ex R3 is the FIR dated 24.20.2016.

Ex R4 is the Divoce certificate dated 2. 8. 2018.

Ex R5 is the copy of Talaq nama dated 24.8.2016.

Ex R6 is the postal receipt.

Ex R7 is the Demand Draft copy dated 24.8.2016.

Ex R8 is the copy of SBH Account 62296438738.

Point No 1 .

Whether there was any willful neglect on the part of respondent?

After going through a documentary evidence and the oral evidence the court is of the opinion that there were disputes between the petitioner and the respondent as an agreement was executed between both the parties on 12 December 2011 as per Ex R1. But on the contrary, the petitioner stated that she led a happy marital life with the Respondent for 5 yrs. And the respondent started harassing the petitioner for want of additional dowry and necked her out of the house.

But the respondent's counsel has elicited during the cross examination that

the petitioner left the respondent when he sustained the eye injury and was admitted in the hospital for treatment.

The father of the petitioner also stated that the petitioner is living with them since the respondent sustained injury. Petitioner has suppressed the factum of taking divorce and about the agreements entered between the parties and also refused to have taken the Iddat and Meher and came to the court that the respondent necked her out of the house. But the documentary evidence adduced by the respondent ie Ex R7 shows the Demand Drafts which are paid to the petitioner towards mehar and Iddat goes against the oral evidence of the PW1 and PW2.

No doubt that there were disputes between husband and wife , whatever were reasons for the dispute between them. When her husband sustained an injury and was hospitalised taking his treatment it is ought the duty of the wife to take care of her husband and give support to him till he recovers at this delicate situation. How could a wife be such harsh that she left the company of the respondent and went the parents house and did not return to the matrimonial home. All this shows her attitude, disrespect and carelessness and she being harsh .

And later she changed her son name also which shows that her bad attitude. Court does not see any valid reason for she leaving the company of the respondent except for the fact the she left the company when her husband lost his eye in an unfortunate accident.

Hence the point No 1 is answered in negative.

Point No 2

Whether the petitioner was living separately after leaving the respondent on her own as U/s 125(4)crpc?

Sec 125(4) crpc says that No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of

proceeding, as the case may be from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.

As discussed in point No 1 as the petitioner left the company of the respondent for the reason that he sustained an eye injury and did not want to live with him and left him in a lurch. Hence court opines that without any sufficient reason she left the company of her husband, she was never necked out from matrimonial home as such she is not entitled to any maintenance.

Point No 3.

Whether the petitioner No 1 is entitled to the maintenance as the Petitioner and Respondent got separated by taking divorce?

It is opinion of the court that the wife would become a divorced by two ways i.e., 1) by being divorced by the husband 2) by obtaining divorce from the husband and 3) by putting the end to the marriage by mutual consent. Only for the first 2 categories, the wife would be entitled to maintenance.

And the Ex R4 shows that Divorce certificate dated 2-8-2018 issued by Telangana state waqf board.

Now the first question before the court is whether the wife is entitled to maintenance as she has obtained divorce from the respondent.

Sec. 125 (1) Cr. P.C explains be reads as: “the wife includes a woman who has been divorced by, or has obtained divorce from, her husband and has not remarried”.

So from the explanation it is clear that the divorced wife is entitled to maintenance. Unless she is remarried in this case the petitioner is a divorced women and she is not remarried hence the contention of the Respondent that divorced wife is not entitled to any maintenance does not hold much water.

But at the same time It is not denied by this court that as per Sec.125 (4)

which shows that the wife is not entitled to receive maintenance if she left the company of the respondent without any reason

Sec.125 (1) makes it abundantly clear that the woman who has been divorced by her husband or who has obtained divorce from her husband is entitled to maintenance. But in this case court is of the opinion that as the petitioner has left the company without any valid reason she is not entitled to any maintenance as per sec 125(4) crpc .

Point No 4.

If so, to what relief ?

The court has already reached to a conclusion that the petitioner no 1 is not entitled to any maintenance not on the ground that she is divorced but on the ground that she left the company of the husband without valid reason. But the petitioner No 2 who is the son of the Respondent is entitled to the maintenance. As court is of the opinion that the child should not suffer between the battle of husband and wife. And for good education, and for his well-being he needs maintenance. Hence the point is partially answered in favour of the Petitioner.

12. **IN THE RESULT**, the petition is partly allowed directing the respondent to pay an amount of Rs.4000/-(Rupees three thousand) per month to the petitioner No. 2 from the date of this order till the time he attains the majority. And with regard to Petitioner No.1 the petition is dismissed. Respondent is directed to clear the interim maintenance, if any, pending.

The respondent is directed to pay the regular maintenance to petitioner No .2 on or before 10th of every succeeding month. Accordingly, the petition is allowed, without costs.

Typed by me directly in my laptop and pronounced by me in the open court, today, this the 25th day of February, 2020

**Judl. Magistrate Of I Class,
Spl. Mobile Court, Khammam**

Appendix of Evidence
Witnesses examined:

For petitioners :

P.W.1: Sk Rubina – Petitioner

P.W.2:Md Lateef Sharief – Father of petitioner

For respondent:

RW1 Sk Rasool

RW2 Sk Jani

Documents marked:

For petitioner :

Ex.P.1: Original Wedding card, Dated 16-3-2008

Ex.P.2: Marriage photograph

Ex.P.3: Aadhar card of the petitioner No.1

For respondent :

Ex.R.1: Xerox Copy of Sharathulapatram dt.12.12.2011

Ex.R.2: Xerox Copy of oppanda agreement dt. 30-8-2016

Ex.R.3: Xerox First information report dt. 24.10.2016

Ex.R.4: Divorce certificate dt. 2-8-2018 issued by Telangana State Wagf board

Ex.R.5: Talaqnama

Ex.R.6: Postal receipt

Ex.R.7: Demand drafts along with receipt dt24-8-2016

Ex.R.8: Copy of account book SBH A/c No.62296438738 of Rubeena Shaik

Ex.R.9: Salary certificate

**Judl. Magistrate Of I Class,
Spl. Mobile Court, Khammam**