Page 1 of 7 MR Case No. 172/2018

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS :HAILAKANDI

MR Case No. 178/2018

U/S 125 of Cr.P.C.

Smti. Sipra Das

- Petitioner

-Vs-

Sri Dipen Das

- Opposite Party

Present:

SANTANU KUMAR SARMA,

Judicial Magistrate First Class,

Hailakandi.

Appeared:

For the Petitioner:

Learned Advocate - N.M. Barbhuiya.

For the Opposite Party:

Learned Advocate - No representation.

Date of Petitioner Evidence: 03-08-2019.

Date of Opposite Party Evidence: Nill.

Date of argument: 03-08-2019.

Date of judgment: 07-09-2019.

<u>JUDGMENT</u>

 This miscellaneous case has sprouted out of a petition filed by the petitioner U/S 125 of Code of Criminal Procedure, praying for maintenance allowance from the opposite party.

Page 2 of 7 MR Case No. 172/2018

2. The facts in brief as reflected in the said petition are that, about 7/8 years ago, petitioner was married with the opposite party as per Hindu rites. For a little while their matrimonial life was peaceful. Thereafter the opposite party started assaulting the petitioner on demand of cash amount to be brought from her paternal house and also other domestic articles for monthly use. The petitioner accordingly brought the monthly domestic articles and in that way she spent 1 year in a miserable condition. The opposite party subjected her physical and mental torture and he also used to take intoxicating substance every night and assault the petitioner. She was also not given food properly. The petitioner sought bichar but it became fruitless. The opposite party also threatened the petitioner to kill her. Thereafter, about 6 years back, one day the opposite party attempted to kill the petitioner at night under drunken condition. It was informed to her father and he came then the petitioner went to her paternal house. From that time the petitioner is residing at her paternal house in a very pathetic condition. The opposite party has not enquired about the petitioner and also has not provided any maintenance allowance since then. On 01-10-2018, the opposite party sent a pleader notice to the petitioner on false pleading and accordingly the petitioner is compelled to filed this case for maintenance. The opposite party is a day labour. Opposite party has landed property and betel nut garden. Whereas the petitioner has no source of income.

Hence, petitioner has prayed for a monthly maintenance allowance of Rs.5,000/- for her.

- 3. This being the fact, notice was issued upon the 2nd party to appear before this court. The opposite party did not appear. Hence the matter proceeded exparte against the opposite party vide order dated 21-06-2019.
- 4. During trial, the first party has been examined and discharged.
- 5. I have heard argument put forward by learned Advocate N. M. Barbhuiya, appearing for the petitioner.
- 6. Perusing the records, considering the evidences, hearing the learned counsel appearing for the opposite party, the following points have been taken for determination.

Page **3** of **7** MR Case No. 172/2018

: POINTS FOR DETERMINATION:

- I. Whether the 1st party is the legally married wife of the 2nd party to claim maintenance U/S 125 Cr.P.C.?
- II. Whether the 1st party had just and reasonable grounds in leaving her matrimonial home and to live separately?
- III. Whether the 2nd party- husband has sufficient means to maintain his wife, but willfully neglected or refused to maintain her?
- IV. Whether the 1st party is entitled to get an allowance as maintenance.If yes, the amount of maintenance and its effective date.

:Evidence on Record:

7. PW1, Shipra Das, stated in her examination-in-chief that, she is the 1st party and she filed this case against her husband Dipan Das. About 7/8 years ago her marriage was solemnized with Dipan Das. They lived happily their conjugal life for 1 ½ / 2 years. They have no children. Thereafter 2nd party started assaulting her physically and mentally on demand dowry money. Her father maintained money somehow for earlier about 2 years. He even didn't give her food properly as a result she became physically unwell and in this condition 2nd party drove her out from his house. Thereafter, she took shelter at her paternal house. Thereafter 2nd party sent one advocate notice on 01-10-2018 for returning to his house but he never personally came. 2nd party has a betel nut garden, fishery, own homestead and his monthly income is 15/20 thousand from all sources. She has no source of income. She claim Rs. 5000/-pm as maintenance allowance for her and therefore she filed this case.

:DISCUSSION, DECISION AND REASONS THEREOF:

8. Regarding the first point 'whether the petitioner is the legally married wife of the 2nd party to claim maintenance U/S 125 CrPC', the petitioner herself deposed in her evidence as PW-1 and also in her complaint petition that she is the legally wedded wife of the opposite party or the opposite party is her husband. Again the petitioner deposed that the marriage was solemnized according to Hindu rites and rituals.

Page 4 of 7 MR Case No. 172/2018

In Dwarika Prasad Satpathy vs. Bidyut Prava Dixit & Anr. (1999) 7
 SCC 675, Honourable Supreme Court held,

"The validity of the marriage for the purpose of summary proceeding under s.125 Cr.P.C. is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence under section 494 of the IPC. If the claimant in proceedings under s.125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouse, and in such a situation, the party who denies the marital status can rebut the presumption."

Again in the same judgment, Honourable Supreme Court held

"if the Magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under S.125, Cr.P.C. which are of summary nature strict proof of performance of essential rites is not required."

Here in this particular case, petitioner through her deposition, has proved prima facie, to the satisfaction of this court that she is legally married wife of the opposite party making her entitled to claim maintenance from the opposite party. Thus the point No-I is decided in positive and in favour of the petitioner.

10. As regards point no. II, that is, 'whether the 1st party had just and reasonable grounds in leaving her matrimonial home and to live separately?', the 1st party in her petition as well as in her deposition, has stated that after going to her matrimonial house on being married, they stayed peacefully for some time. Thereafter, the opposite party started assaulting the petitioner on demand of cash money and domestic articles for monthly use. Thereafter, the petitioner spent 1 year in miserable condition. The opposite party also didn't provide food properly and as a result she developed physical problems. The opposite party used to come at night in drunken condition and beat her mercilessly. The opposite party even went to the extent of attempt to kill the petitioner.

Page 5 of 7 MR Case No. 172/2018

All these elaborations point in clear and unambiguous terms that the petitioner had just and reasonable grounds in leaving her matrimonial home and to live separately. Again the evidence of the petitioner remained un-rebutted as the opposite party has not entered appearance to defend him. Hence point no. II is decided in the positive.

- 11. Looking into point no. III, that is, 'whether the 2nd party/husband has sufficient means to maintain his wife, but willfully neglected or refused to maintain her?' the petitioner/wife has stated in her complaint petition and deposition corroborating with the petition that, the opposite party is a day labour. Opposite party has landed property and betel nut garden. Whereas, the petitioner has no source of income and at present the petitioner is residing at her paternal house in a very pathetic condition.
 - The materials brought on record vividly establish the fact that the opposite party might have sufficient means to maintain his wife/petitioner although, it is evident that whether he has sufficient means or not, he needs to maintain his legally married wife. However, the question of willful negligence or refusal has not been proved as there is nothing brought on record to show that the opposite party has willfully neglected or refused to maintain her. However, it has been found that the opposite party also has not turned up to disprove the fact that the petitioner has willfully left the matrimonial house. Thus this point is decided in favour of the petitioner.
- 12. Taking point no. IV, that is, 'whether the 1st party is entitled to get an allowance as maintenance? If yes, the amount of maintenance and its effective date', it is of utmost necessity to travel towards the provision laid down u/s 125 of Cr.P.C. Section 125 states,
 - "(1) If any person having sufficient means neglects or refuses to maintain-
 - (a) his wife, unable to maintain herself, or
 - (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
 - (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

Page 6 of 7 MR Case No. 172/2018

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct."

The language of the aforesaid section bears no ambiguity. Section 125 (1)(a) denotes in clear terms that, if the wife is unable to maintain herself, it is the responsibility of the husband to maintain herself. The husband may not have sufficient means, but it does not absolve him from the liability of maintaining his wife as he is under an obligation to take care of his wife on all aspects. But, there must be refusal or negligence to maintain the wife and it must be proved to the satisfaction of this court. But the silence of the opposite party has shown that there is laxity on the part of the opposite party.

Discussions and deliberations done regarding the fourth point bears testimony to the fact that, point no. IV too tilts its balance in favour of the petitioner.

Hence, under the provision of law the petitioner is entitled to get maintenance from the opposite party.

<u>ORDER</u>

- 13. For the reasons discussed above the petition of the petitioner namely Sipra Das is hereby allowed. The opposite party/husband Dipen Das is hereby directed to pay an amount of Rs.2,000/- per month as maintenance allowance to the petitioner/Wife Sipra Das from the date of this order.
- 14. The instant case is disposed of ex-parte.
- 15. Given under my hand and the seal of this court on this 07thday of September, 2019.

SANTANU KUMAR SARMA

MUNSIFF NO.1-CUM-JMFC, HAILAKANDI

Page **7** of **7** MR Case No. 172/2018

Annexure

| B. Petitioner Exhibit: |
|------------------------------------|
| NILL |
| C. Name of opposite party witness: |
| NILL |
| D. Opposite party Exhibit: |
| NILL |
| E. Court witness. |
| NILL |
| |
| |

SANTANU KUMAR SARMA

MUNSIFF NO.1-CUM-JMFC, HAILAKANDI

A. Name of petitioner witness:

1. Shipra Das