

**IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE  
(SADAR), NORTH LAKHIMPUR, LAKHIMPUR**

**MISC. CASE No.71 of 2018**

**(U/S 125 OF THE CODE OF CRIMINAL PROCEDURE)**

**PETITIONER: MUSSTT. RIBENA BEGUM**

**-Vs-**

**RESPONDENT: MD. FAIZUL ISLAM**

**DISTRICT : LAKHIMPUR**

**PRESENT : Smti Sorbani Bhattacharjee, AJS  
Sub-Divisional Judicial Magistrate (Sadar),  
North Lakhimpur, Lakhimpur**

<b>ADVOCATE FOR THE PETITIONER</b>	<b>: Sri Ranjan Kumar Saha</b>
<b>ADVOCATE FOR THE RESPONDENT</b>	<b>: None</b>
<b>EVIDENCE RECORDED ON</b>	<b>: 26.02.2019</b>
<b>ARGUMENT HEARD ON</b>	<b>: 18.06.2019</b>
<b>JUDGMENT DELIVERED ON</b>	<b>: 25.06.2019</b>

**EX-PARTE JUDGMENT**

1. This is an application filed by Musstt. Ribena Begum, (herein-after called as 1<sup>st</sup> party) u/s 125 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) claiming maintenance for her and for her daughter Miss Farzin Sobnom from Md. Faizul Islam (herein-after called as 2<sup>nd</sup> party).

2. The case of the petitioner in brief is that the 2<sup>nd</sup> party is her husband. About 13 years ago she got married with the 2<sup>nd</sup> party as per Islamic rites and rituals. After their marriage they stayed together as husband and wife in her matrimonial house and out of their wedlock one girl child was born namely, Miss Farzin Sobnom who is now aged about 3 years. That since after few days of their marriage the 2<sup>nd</sup> party started to torture the 1<sup>st</sup> party physically and mentally by demanding dowry of Rs.2,00,000/-. When the 1<sup>st</sup> party could not fulfil the demand of 2<sup>nd</sup> party he continued his torture upon her and on 04.04.2018 the 2<sup>nd</sup> party ousted her along with her daughter from his house. Having no other alternatives the 1<sup>st</sup> party has been residing in her parental house along with her daughter. Since then the 2<sup>nd</sup> party did not make any contact with her and did not provide her any maintenance. That, the father of the 1<sup>st</sup> party is a poor person and he is a daily wage earner and hence, he is unable to maintain them. The 1<sup>st</sup> party has no any income of her own. On the other hand the 2<sup>nd</sup> party is a healthy-bodied person having business and landed property through which he earned Rs.40,000/- per month. Hence she has prayed for monthly maintenance of Rs.15,000/- from her husband and Rs.10,000/- as the cost of the proceedings.

3. The second party at first contested the case by filling his written statement admitting that the first party is his wife. In his written statement he inter alia stated that the 1<sup>st</sup> party has a tailor shop under the name and style Taalim Janakalyan Kendra. That, he is not entitled to maintain the 1<sup>st</sup> party or liable to provide any maintenance to her. 1<sup>st</sup> party's monthly income is Rs.58,000/- per month and 1<sup>st</sup> party is able to maintain herself and her daughter. That, he has no sufficient income as he is a daily wage earner.

4. In this case second party although contested the case at first by filing Written Statement but in the later stage when the case was fixed for hearing he failed to appear and the case proceeded ex-parte against him vide order dated 09.06.2019 after giving several opportunity to the 2<sup>nd</sup> party to contest the case in

the later part of the proceeding. First party in support of its case examined herself as PW-1 and Musstt. Rahima Khatun as PW-2. After conclusion of evidence heard the argument put forward by Id. Counsel for the 1<sup>st</sup> party.

#### **5. POINTS FOR DETERMINATION:**

1. Whether the 1<sup>st</sup> party has sufficient reason to stay away from the 2<sup>nd</sup> party ?
2. Whether the second party having sufficient means neglected or refused to maintain his wife and his minor daughter who are unable to maintain themselves ?
2. Whether the First party and her daughter are entitled to any maintenance and if so, what should be the quantum of maintenance?

#### **DISCUSSION, DECISION AND REASONS THEREON:**

6. For the sake of convenience all the points are taken up together for discussion. The evidence of PW-1 Musstt. Ribena Begum reveals that she reiterated in her evidence whatever she stated in her application filed under section 125 of Cr.P.C. According to her, she is the legally married wife of the 2<sup>nd</sup> party and she had been tortured by the 2<sup>nd</sup> party demanding Rs.2,00,000/- from her since after few days of her marriage. As she could not meet her demand hence, on 04.04.2018 she was ousted from the matrimonial house by the 2<sup>nd</sup> party. She has no income of her own and 2<sup>nd</sup> party is not maintaining her since the day he ousted her from the matrimonial house. 2<sup>nd</sup> party has his landed property and business having monthly income of about Rs.40,000/- per month. 2<sup>nd</sup> party is a healthy bodied person and has the capacity to give maintenance to her and her daughter.
7. PW-2 Musstt. Rahima Khatun who is the mother of the 1<sup>st</sup> party supported PW-1 and inter alia stated that 1<sup>st</sup> party is a legally

married wife of the 2<sup>nd</sup> party and after their marriage they stayed together as husband and wife. They have one daughter namely Miss Farzin Sobnom who is aged about 3 years. Since the few days of her marriage 2<sup>nd</sup> party started to torture 1<sup>st</sup> party physically demanding Rs.2,00,000/- from her. As the 1<sup>st</sup> party could not meet the demand hence, on 04.04.2018 2<sup>nd</sup> party ousted the 1<sup>st</sup> party from the matrimonial house along with her children. Since then 1<sup>st</sup> party is staying in her house. 1<sup>st</sup> party has no income of her own and now she is not maintained by her husband. 2<sup>nd</sup> party is healthy-bodied person having his own business and landed property with a monthly income of Rs.40,000/-. 2<sup>nd</sup> party has the capacity to maintain the 1<sup>st</sup> party.

8. From the evidence of PW-1 and 2 as well as the pleading of first party it is evident that first party is the legally married wife of the second party and both parties have one daughter namely Farzin Sobnom. From the evidence of the PWs and the pleading of the 1<sup>st</sup> party it is apparent that 1<sup>st</sup> party was tortured physically and mentally demanding dowry of Rs.2,00,000/- and finally she was ousted from the matrimonial house by the 2<sup>nd</sup> party as she could not meet his demand. Hence the 1<sup>st</sup> party has sufficient reason to stay away from the 2<sup>nd</sup> party. It is also apparent that the first party has no income of her own and depending on her parents for survival as well as for her daughter. Although second party in his written statement has stated that she has a tailoring shop and has an income of Rs. 58,000/- per month but he has failed to prove the same by cogent evidence.

9. So far as having sufficient means is concerned it is evident that the second party is a healthy bodied person. From the evidence of the PW-1 and PW-2 it is found that second party has his landed property and business and he has his income of Rs.40,000/- per month. In her petition as well as in her evidence she has stated that 2<sup>nd</sup> party has landed property in his name but she has failed to give details of the landed property in this case.

10. Although there is no documentary evidence regarding the income of the second party but I found nothing to disbelieve the PW's that second party is a businessman. Thus, the first party has been able to prove her case by preponderance of probability. It is a settled position of law that a person has the obligation to maintain his wife, children and parents and he cannot run away from his responsibility. In a case U/S 125 of CrPC husband has to show that he lacks sufficient means to maintain his wife and children. Sufficient means is not confined to only visible means such as real property or a job. It refers to the earning capacity of a man. If a man is healthy and able-bodied then he is presumed to have earning capacity and has the responsibility to maintain his children and wife even if he may be unemployed. In the present case second party has his employment and thus he has the obligation to maintain his wife and daughter. In this case second party has filed his written statement and contested the case till the stage of submission of written statement but he has failed to adduce any evidence in this case to prove the averments made in his written statement. Although 1<sup>st</sup> party has stated that second party is a businessman but she has failed to give any details about the business. Second party on the other hand stated in his written statement that he is a daily wage earner. There is not documentary evidence before this Court to decide whether the 2<sup>nd</sup> party is infact a businessman or not as claimed by 1<sup>st</sup> party.

11. Therefore, considering the status of the parties, cost of living, increasing price hike, income of the second party, I find that an amount of Rs. 4,000/- (Rupees Four thousand) per month for the first party and Rs. 2,000/ (two thousand) per month for her daughter namely, Musstt. Farzin Sobnom totalling an amount of Rs. 6,000/- per month will be a reasonable amount of maintenance. In this case I do not find any reasonable ground to grant the cost of proceeding to the 1<sup>st</sup> party and hence, the prayer regarding cost of proceedings is rejected.

**ORDER**

12. In result, the petition filed by the first party/ petitioner is allowed granting an amount Rs. 4,000/- (Rupees three thousand) per month for the first party and @ Rs. 2,000/ per month for her daughter Farzin Sobnam totalling an amount of Rs. 6,000/- per month as maintenance allowance against the second party from the date of this order till the recipients entitled thereto as per law. The second party shall pay the amount of maintenance on or before 10<sup>th</sup> day of every succeeding month. Furnish a free copy of this judgment to the first party.

**Given under my hand and seal of this Court on  
this 25<sup>th</sup> day of June, 2019 at North Lakhimpur.**

**Smti Sorbani Bhattacharjee,  
Sub-Divisional Judicial Magistrate (Sadar)  
North Lakhimpur, Lakhimpur**

**MISC. CASE No.71 of 2018**

**APPENDIX**

***Exhibits of First party:***

**NIL.**

***Exhibits of Second Party***

NIL

***Witnesses for First Party:***

1. PW-1 Musstt. Ribena Begum
2. PW-2 Musstt. Rohima Khatun

***Witnesses for Second party :***

None

**Smti Sorbani Bhattacharjee,  
Sub-Divisional Judicial Magistrate (Sadar)  
North Lakhimpur, Lakhimpur**