

CRR 2774 of 2002

In the matter of : Sk. Mustafa

None is appearing on behalf of the petitioner.

This revisional application stems out of an order passed by learned Judicial Magistrate, 1st Class, Bolpur, Birbhum in a proceeding under Section 125 of Code of Criminal Procedure registered as Misc. Case No. 129/2000, T.R. No. 250/2000. Depicting herself as legal married neglected wife of Sk. Mustafa, Rahima Bibi filed an application under Section 125 of Code of Criminal Procedure stating inter alia that she was tortured in her matrimonial home by her husband as she failed to fetch money so demanded by her husband. Her husband made an attempt to administer poison in food and ultimately compelled the petitioner to leave the matrimonial home with her children and to take refuge to the house of her father. Her husband despite having sufficient means failed to maintain the petitioner and her two minor children. The opposite party however, denied the allegations and even denied to have means to provide maintenance.

Learned Trial Court after considering the evidence on record was pleased to grant a sum of Rs. 500/-to the petitioner and a sum of Rs. 300/- each to her two minor children as maintenance allowance. Hence this application.

From the attending facts of the case relationship between the parties stand admitted. The petitioner before this Court being the husband has incurred the responsibility to maintain his wife

and children which is flowing from factum of marriage. Under Section 106 of the Evidence Act the income of the petitioner husband is something within his special knowledge which he has failed to prove. Considering the cost of living at the relevant point of time, and in my view, the amount awarded by the learned Trial Court in favour of the petitioner and her two minor children cannot be said to be either penurious or luxurious. The order of the learned Trial Court does not warrant any interference.

The criminal revisional application merits no consideration and is dismissed with cost of Rs. 5000/- C.P.

Let a copy of this order be sent down to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)