

MR 141 of 2021

CIS No. Mr Maintenance 9105 of 2021

Seuli Sarkar (Das) Vs Suman Das

CNR No. WBDJ0E-002242-2021

JO Code: WB01376

Order Dated 06.04.2022

Today is fixed for passing order in respect of interim maintenance petition.

Both parties file hazira.

On previous occasion heard Ld. Advocate for both parties in full in respect of the interim maintenance petition.

Now the record is taken up for passing order.

Petitioner has prayed for interim maintenance of Rs. 30,000/- for herself on the grounds inter alia that, marriage was solemnized in between the petitioner and OP Suman Das on 11.12.2019 as per Hindu law and customs. After marriage she started residing at her matrimonial home along with the OP. After two months, OP and his family members started to inflict physical and mental torture upon the petitioner in demand of further dowry. Due to non fulfillment of their demand the amount of torture upon the petitioner increased day by day. They neglected to provide proper food and care to the petitioner. The OP was engaged in a illicit relationship with one Sundari Biswas and subsequently he married her in spite of the protest of the petitioner. The petitioner was driven out from her matrimonial home on 30.11.2020 and prior to that she was severely assaulted on 21.11.2020. the petitioner was compelled to take shelter in her father's house. She has also lodged a complaint before Naxalbari P.S. The petitioner without having any independent income is living in a distressed condition without any financial support from the OP whereas the OP has business of supplying mineral water and a chowmin factory, he also has landed property, two toto and earns Rs. 60,000/- per month.

The OP denied all the material allegations of assault, abuses and demand of dowry made in the petition by the petitioner save and except the marriage. The OP submitted that, the petitioner had a relationship with one Jayanta Mallick prior to their marriage and even after marriage the petitioner continued her relationship with that person. She inflicted mental torture upon the OP as she was never willing to continue her marriage. She used to leave her matrimonial home without informing OP in order to maintain her illicit relationship with Jayanta. The OP requested the petitioner not to do any such acts but the petitioner did not pay any heed to the words. On 30.11.2020 she left her matrimonial home and started to reside with Jayanta Mallick. She is leading adulterous life since that day. The OP has already filed a suit for divorce. The OP is a toto driver and he earns only Rs. 5,000/- per month and from his income he has to maintain her ailing widowed mother. But the petitioner is capable of maintaining her as she has independent income of Rs. 35,000/- from her garment business. For all these reasons the petitioner is not entitled to get order of interim maintenance.

Perused and considered all the materials available on record including the

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affidavit declaring assets and liabilities of the parties.

Section 125 of Cr.P.C is a beneficial legislation which is enacted for providing reliefs to the destitute wife, parents and minor children.

From the pleadings of the parties it is found that the marriage is not disputed in this instant case.

From the pleadings and affidavits of the parties it is found that the petitioner and the OP are now living separately since 30.11.2020. It is not the case of the OP that he has provided any maintenance to the petitioner since 30.11.2020.

The petitioner has made allegation that the OP has remarried one Sundari Biswas and counter allegation is made by the OP that the petitioner is leading adulterous life with one Jayanta Mallick. Both parties have submitted photocopies of some documents in support of their respective contentions. After perusing the photocopy of voter list supplied by the OP this Court does not find any date or year on it. Thus it can not be ascertained whether it is reflecting the current stage or not. Moreover, in his affidavit he has stated that the petitioner is presently residing in her father's house which is contradictory to the claim in the written objection. Similarly, the document supplied by the petitioner also can not be relied upon to hold that the OP and Sundari Biswas are married and they have a daughter because the photocopy of document is reflecting that the name of the OP is written in the father's name column but another name was also found there, which was strike through by ink. But the gravity of the allegations and counter-allegations leaves no doubt in the mind of the Court that there is existence of strenuous relationship between the parties. So, at this stage it can not be held that the petitioner has voluntarily left the OP without any sufficient reason.

The OP in his pleadings has claimed that the petitioner is engaged in garment business and earns Rs. 35,000/- per month but in his affidavit he is silent about the claim and for that reason his contention loses its value. Hence it is prima facie established that the petitioner has no sufficient means to maintain herself. On the other hand the petitioner has claimed that the OP has income of Rs. 60,000/- per month from his businesses. But the contention is not backed by any documents. On the other hand the OP has submitted that he has monthly income of Rs. 5,000/- as Toto driver. He has supplied income certificate issued from Panchayet which can not be held to be sacrosanct as per provision of law before trial. He has not backed his contention regarding his own current expenses made in his affidavit. The affidavit is also silent about his expenses in respect of any dependent family members. Considering the materials on record at this stage, this Court finds that, OP has better financial condition than the petitioner to provide maintenance to her.

Now, the affidavit declaring assets and liabilities of the petitioner reflects that

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she has approximate monthly expense of Rs. 30,000/- but no documents in support of those claims has been filed by the petitioner. As none of the parties has been able to bring any clear picture about the income of the OP and expenses of the petitioner, the quantum of maintenance has to be ascertained as per the factors like prevailing socio-economic condition, status of the parties and basic need of the petitioner. Hence, keeping in view the above mentioned factors, this Court is inclined to fix the quantum of interim maintenance at the tune of Rs. 3,000/- per month for the petitioner.

In view of the decision of Hon'ble Supreme Court of India in the case of *Rajnish vs Neha*, the interim maintenance amount will be payable from the date of filing of this case, i.e. from 04.10.2021.

Hence, it is,

O R D E R E D

that the prayer for interim maintenance is considered and allowed on contest without any order as to costs.

The OP Suman Das is hereby directed to pay Rs. 3,000/- per month to the petitioner as interim maintenance till disposal of this case.

Such amount of interim maintenance shall be paid by the OP to the petitioner within the 10th day of every succeeding English Calender month.

This order will take effect from the date of filing of this case i.e. from 04.10.2021.

Arrear maintenance amount accrued in view of this order for the period 04.10.2021 to 05.04.2022 has to be paid by the OP within four months from the date of this order.

Let a copy of this order be supplied to the petitioner in terms of Section 128 of Cr.P.C.

BC-II to do the needful.

To **16.06.2022** for evidence by petitioner.

D/C by me.

Sd/-

Judicial Magistrate, 2nd Court,
Siliguri, Darjeeling.

Sd/- P. Pal

Judicial Magistrate, 2nd Court,
Siliguri, Darjeeling.