

Miscellaneous Criminal Case No. 679 of 2023

(CNR No.WBND02-006624-2023)

Moumita Mallick

.....Petitioner

-versus-

Krishnendu Mallick

.....Opposite Party

Order dated: 07.11.2024

Today is fixed for passing interim order.

Both the parties have entered appearance by way of filing respective Haziras.

The Opposite Party has filed his Written Objection against both the original application for maintenance as well as the application for interim maintenance on 19.03.2024.

Both the parties have also filed declaration of their assets and liabilities as per the proforma as directed by the Hon'ble Supreme Court of India in the case of **[Rajnish -vs- Neha, (2021) 2 SCC 324]**.

The record is taken up for passing order in respect of the petition for interim maintenance filed on behalf of the Petitioner.

The Petitioner's case, in a nutshell, is that the marriage of the Petitioner and the Opposite Party was solemnized on 18.04.2017 observing Hindu rites and customs and their registry marriage was solemnized on 30.01.2021. At the time of the aforesaid marriage, the father of the Petitioner had allegedly given a dowry of cash amounting to Rs. 2,00,000/-, along with gold ornaments weighing about 05 bhoris, almirah and valuable articles. Thereafter, the Petitioner had allegedly gone to her matrimonial home to live her conjugal life thereat. Soon after the marriage, the Petitioner had come to know that the Opposite Party had many illicit relationships with other women. Upon protesting against the same, the Opposite Party had allegedly started inflicting physical and mental torture upon the Petitioner. Later on, the duo were allegedly blessed with a female child on 10.10.2020 namely Tanishka Mallick. Since the birth of the girl child, the Opposite Party and his family members had allegedly increased the quantum of torture upon the Petitioner. Moreover, the Opposite Party had an illicit relationship with one Rimpa De. The Opposite Party often used to return home late night and upon protesting against the same, the Opposite Party had allegedly physically assaulted the Petitioner and driven the Petitioner out of her matrimonial home along with her minor daughter. Since then, the Petitioner had been residing at her paternal house. On the other hand, the Petitioner earns none and is unable to maintain herself. Since then, the Opposite Party had not inquired about the well being of the Petitioner and her minor daughter. Furthermore, allegedly the Petitioner earns nothing. Per contra, allegedly the Opposite Party is an able bodied person, owns a dwelling house, runs a stock business and earns around Rs. 35,000/- to Rs. 40,000/- per mensem. Under such circumstances, the Petitioner prays for an interim maintenance of Rs. 15,000/- per mensem for herself and Rs. 10,000/- per mensem for her minor daughter, totaling to Rs. 25,000/- per mensem from the Opposite Party.

The Opposite Party has contested this case by filing the Written Objection dated 19.03.2024 challenging the maintainability of the instant Petition dated 25.09.2023. The Opposite Party has alleged that the allegations of demanding dowry, physical abuse, mental torture are false. The Opposite Party has also asserted that Petitioner had deserted the Opposite Party at her own will and volition and is presently residing at her paternal house. Furthermore, the Opposite Party used to reside at the paternal house of the Petitioner as 'gharjamai'. Moreover, he has asserted that the Petitioner had voluntarily left her matrimonial house.

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The Opposite Party amongst others has also asserted that he is a day labour and earns around Rs. 200/- per day and his ailing parents are dependent upon him. Moreover, the Opposite Party had also asserted that the Petitioner earns around Rs. 6,000/- per month by providing private tuition. The Opposite Party, on the above grounds, prays for the rejection of prayer of the Petitioner for interim maintenance.

It is well settled, that in order to obtain an order of interim maintenance allowance, the Petitioner has to prima facie prove that :- (I) the Petitioner is the legally married wife of the Opposite Party; (II) the Opposite Party has failed and neglected to maintain the Petitioner, in spite of having sufficient means; and (III) the Petitioner is unable to maintain herself.

POINT NO. I

In the instant case, without prejudging any of the points raised by the respective parties, it appears to this court that the date of marriage between the parties, has been admitted by the Opposite Party.

Now, standing on the footing of a husband, the Opposite Party is duty-bound to maintain his wife and in the instant case there is no statement or material from which it can be inferred that at least a single farthing has been paid to the Petitioner, as a bona fide gesture.

POINT NO. II

It has been alleged, that the Petitioner was driven out from her matrimonial home by the Opposite Party and since then the Opposite Party has been neglecting and refusing to maintain the Petitioner. Whatever may be the reason, the fact remains that Petitioner has been residing in separate house, id est her paternal house and this fact has not been emphatically denied by the Opposite Party. Nota bene, in this context that there is no whisper within the four corners of the instant record, depicting that the Opposite Party has ever provided any maintenance in favour of the Petitioner. The position being such, it can be prima facie said that Opposite Party has refused and neglected to maintain the Petitioner.

The next question automatically comes, as to whether the Opposite Party has sufficient means to maintain the Petitioner or not?

The Petitioner has contended that Opposite Party earns around Rs. 35,000/- to Rs. 40,000/- per mensem.

The Opposite Party on the other hand, has denied the same and specifically contended that he is a day labour and earns Rs. 200/- per day, out of which he has bear his family expenses

Now, it should be mentioned in this context, that the undermentioned two kinds of men are deemed to have sufficient means to provide maintenance to his wife, id est:

- (i) A man, who is weak and disabled thus incapable of earning, however he has a lot of properties generating good income; or,
- (ii) A man, who has no property but is healthy and able bodied, capable of working and earning money.

In the instant case, the Opposite Party has nowhere taken the plea of disability. Thus, he can be deemed to be a person of healthy mental and physical condition. In addition to the aforesaid, the Opposite Party has himself asserted that he is a day labour and therefore, he is deemed to have sufficient means to provide maintenance to his wife.

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In this context, it is pertinent to quote *[2005 Cri. LJ 3889 (3891)]*, wherein it has been held that *the question of necessity to grant interim maintenance is essentially a question to be decided on prima facie assessment of position of both the parties before the Court. A detailed inquiry is not contemplated while deciding an application for interim maintenance.*

POINT NO. III

Per contra, there is nothing on record depicting that the Petitioner has any source of income. Having said that, this Court finds no reason to disbelieve the assertion made by the Petitioner at this interim stage. In other words, it is being hereby presumed that the Petitioner is unable to maintain herself.

The provisions included in Chapter IX of the Code of Criminal Procedure, 1973 are intended to fulfill a social purpose. Its object is to compel a man to perform the moral obligation which he owes towards his wife and children. The legislative intent was to provide a simple, speedy yet a limited relief, aiming to ensure that the neglected wife and children are not left in the mercy of penury or destitution, on the scrap-heap of the society thereby ultimately being driven into a life of vagrancy, immorality and crying crimes, for their survival and subsistence.

Thus, keeping in view the benevolent nature of the Act, the provisions under the act should be interpreted broadly. In the case of *[Workmen of American Express International Banking Corporation -vs- Management of American Express International Banking Corporation, (1985) II LLJ 539]*, the Hon'ble Supreme Court has observed that:-

"The principles of statutory construction are well-settled. Words occurring in statutes of liberal import, such as social welfare legislations, and 'human rights' legislations, are not to be put in procrustean beds or shrunk to lilliputian dimensions. In construing these legislations, the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', 'content' and 'context' of such statutes".

Having said the aforesaid, this Court is of the opinion that, the Petitioner is entitled to get interim maintenance allowance for herself and for her minor daughter as well from the Opposite Party. The Petitioner though has claimed maintenance of Rs. 15,000/- per mensem for herself and Rs. 10,000/- per mensem for her minor daughter, totaling to a maintenance of Rs. 25,000/- per mensem from the Opposite Party, yet she has not appended a detailed description in respect of her claim for obtaining the same. Therefore, considering the source of income of the Opposite Party, present market prices, inflation and status of the parties, this court is of the firm opinion that a sum of Rs. 3,000/- per mensem in favour of the Petitioner and a sum of Rs. 2,000/- per mensem in favour of her minor daughter towards their interim maintenance allowance, would be reasonable and just for either of the parties at this interim stage.

Hence, it is,

ORDERED

That the present application for interim maintenance allowance is hereby allowed on contest in part in favour of the Petitioner but considering the circumstances without any order as to costs.

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(4)

The Opposite Party is hereby directed to make payment of a sum of Rs. 3,000/- per month, in favour of the Petitioner and a sum of Rs. 2,000/- per month in favour of her their minor daughter – totaling to a sum of **Rs. 5,000/- (Rupees Five Thousands only)** per month – towards their interim maintenance allowance, with effect from the date of filing of the application, that is, 25.09.2023. The payment must be made within the 10th day of each succeeding English Calender month failing which, the Petitioner is at liberty to realize the same through Court.

Such amount is adjustable with the maintenance, if any, paid by the Opposite Party to the Petitioner under any other statute.

Let a copy of this order be supplied to the Petitioner free of cost.

Fix 05.03.2025 for P/W.

Typed and printed by me :

**Judicial Magistrate, 3rd Court,
Krishnagar, Nadia
J.O.Code : WB01412**

**Judicial Magistrate, 3rd Court,
Krishnagar, Nadia**