

M 161 of 2022

Order dated 15.05.2023

Today is fixed for passing order in respect of the application for interim maintenance being filed by the petitioner on 13.10.2022.

Petitioner is present and files attendance.

The record is now taken up for passing such order.

By way of this application the petitioner has alleged that she got married to the Opposite party and the same was registered under Special Marriage Act on 20.06.2013 and they married socially as per Hindu Rites Customs on 10.02.2015 and that their marriage was a love marriage and she met the opposite party on social media in April 2012 and in December 2012 she came to know that the opposite party was a divorcee and in March 2013 both the parties to the case at hand went to Singapore for studying in retail management and such expenses were borne by the father of the petitioner that is Rs. 6.5 lakhs were spent and the opposite party had promised to repay the said amount to the father of the petitioner.

The petitioner further alleges that pre and post marital demands of the opposite Party were met by the parents of the petitioner and after her marriage the petitioner went to her matrimonial house to reside with the Opposite Party and she entrusted all her stridhan article with her mother in law and the Opposite Party but the Opposite party started demanding more money and gadgets from her but she refused and then the Opposite Party started torturing the petitioner mentally and physically.

The petitioner further alleges that around Rs. 6 lakhs were given by the parents of the petitioner to the Opposite Party but the Opposite Party did not resolve his dispute with the petitioner and rather continued his bad habits of consuming alcohol and he had illicit relationship and when the petitioner became pregnant in April 2015 she miscarried owing to torture of the Opposite Party on her and she ruptured her ear drum and she was forced to leave her matrimonial house.

The petitioner further alleges that then she went to reside at her parental house but in June 2015 she went back to her matrimonial house and she was made to sign on a document and admit that the Opposite Party did not demand anything from her and they threatened to kill her if she would not sign the same.

The petitioner further alleges that the Opposite Party continued to torture her and in December 2015 the Opposite Party informed her that he had a job in Benaras and she shifted with him thereat and the parents of the petitioner came to meet them but the Opposite Party again started tortured the petitioner and drove her out of his house along with her parents on 25.01.2016 and since then the petitioner is at her parents house.

The petitioner goes on to allege that she was dependent on her parents and they tried to reconcile the matter but in vain and April 2016 she came to know that the Opposite Party went to Saudi Arab for a job in construction company called Albawani and the petitioner tried to contact the Opposite Party but he refused to be in touch with her and on 02.12.2018 and January 2019 the Opposite Party and his family came to the

house of the petitioner's parents and pressurized her for divorce and on 25.03.2021 and 29.03.2021 the parents of the petitioner passed away.

The petitioner accordingly alleges that the Opposite Party is an able bodied man and he does private service at Saudi Arabia and earns more than Rs. 2 lakhs per month and he has neglected to maintain the petitioner and the petitioner has no source of income to maintain herself.

Accordingly, the petitioner has prayed for Rs. 30,000/- per month as interim maintenance for herself.

The petitioner in support of her allegations has relied upon copy of her marriage certificate and medical documents.

In support of her allegations she has also filed her affidavit of assets and liabilities which is found to be in sync with her allegation as mentioned above.

It is also to be noted her that the Opposite Party despite entering into appearance did not take steps and hence the case was directed to proceed ex parte against him vide order dated 03.02.2023.

In this backdrop, all the relevant materials on record have been perused and considered by this Court.

Upon a perusal of the application and other materials on record it appears that the petitioner has alleged by way of the application at hand that the petitioner is the wife of the opposite party and that the petitioner is not residing at the house of the Opposite Party since the Opposite Party tortured her and assaulted her and ousted her from his house on 25.1.2016 and he has not been maintaining her and has rather neglected her and the Opposite Party is an able bodied man and does private service at Saudi Arabia and earns more than Rs. 2 lakhs per month and the petitioner has no income of her own to maintain herself and the said allegations of the petitioner has been made on affidavit by her against the Opposite Party.

In the light of the same, it is required to be mentioned here that in the case of Chaturbhuj Vs Sitabai (2008) 2 SCC 316 the Hon'ble Apex Court has held that "The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support." Further, it has also been held in the said case that "It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves."

Further Hon'ble Apex Court in Captain Ramesh Chander Kaushal vs. Mrs. Veena Kaushal and others AIR 1978 SC 1807 in respect of provision of Section 125 of Crpc has noted inter alia that "This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by Courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker

sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause--the cause of the derelicts.”

The aforesaid legal position was also highlighted in the judgement of Savita Ben Somabhai Bhatiya vs State of Gujarat and others 2005 (2) SC 503, where in it was reiterated by the Hon’ble Apex Court “This being the position of law it is the obligation of the husband to maintain his wife. He can not be permitted to plead that he is unable to maintain his wife due to financial problem as long as he is capable of earning”.

Also, in the case of Shamima Farooqui Vs. Shahid Khan, 2015 (3) AICLR 96, it has been held by the Hon’ble Supreme Court of India that wife is entitled to lead a life in similar manner as she would have lived in the house of her husband and she cannot be compelled to become a destitute or beggar and if the husband is healthy, able bodied and is in a position to support himself, he is under legal obligation to support his wife.

Further, Hon’ble Delhi High Court in Chander Prakesh Bodhraj vs Shilarani Chander Prakash, AIR 1968 Delhi 174 has held that “An able bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to family standard. It is for such able bodied person to show to the court cogent grounds that he is unable to reasons beyond his control or not enough to his legal obligations of maintaining his wife and child. When the husband does not disclose to the court the exact amount of his income the presumption will be easily presumable against him”.

Further, in the case of Raju Vs State of U.P 2010 CRLJ (NOC) 1201 All, it has been held by the Hon’ble Allahabad High Court that where wife lodged complaint in the police station against husband, there is reasonable ground for wife to live separately from the husband and the wife is entitled to maintenance order and the plea of desertion by the husband will not stand.

In Mannava Satyawati vs Mannava Malleswara Rao 1995 SCC (CRI) 836, the Hon’ble Supreme Court was pleased to hold that order setting aside maintenance award merely on the ground that wife and children left house on their own was not proper.

Further, Hon’ble Supreme Court in the case of Shamima Farooqui Vs. Shahid Khan, (2015) 5 SCC 705 has held inter alia that "A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar."

Accordingly, considering the seriousness of allegations being levelled by the petitioner on affidavit against the opposite party and as the opposite party has chosen not to controvert the said allegations of the petitioner which in turn tantamounts to an indirect admission by him of all such allegations, as the legislative intent behind enactment of this provision of law is to support the cause of women and to prevent the vagrancy and destitution and to provide a speedy remedy for supply of food, clothing and shelter to the deserted wife, considering the facts and circumstances of the case, at this stage of the case, in view of the above mentioned principle of law and as the allegations of the petitioner find prima facie support in the copies of documents filed by her, in the opinion of this Court the prayer in the application at hand for interim maintenance deserves to be allowed.

However, in the case of Jasbir Kaur Sehgal vs District Judge, Dehradun and others (1997) 7 SCC 7, the Hon'ble Supreme Court has held that the Court has to consider the status of the parties, their respective needs, capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and all those he is obliged under the law and statute but in fundamental payments or deductions the amount of maintenance fixed for the wife should be such as she can live in a reasonable comfort considering her status and the mode of life she used to live when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. Needless to mention by repetition, that grant of maintenance to the destitute wife, is to be passed by the Court taking the view to extend social and moral justice in the society.

Hence, in view of the principle of law enunciated above, this Court opines that the amount so fixed by this Court for interim maintenance should find a balance in between being extortionate for the husband and being reasonable and just for the wife to live with dignity.

Accordingly, considering the above mentioned facts and circumstances of the case and the averments of the petitioner in her affidavit of assets and liabilities at this nascent stage of the case when the trial has not begun, in the opinion of this Court, an order of interim maintenance of Rs. 10,000/- per month for the petitioner deserves to be passed.

Hence, it is,

ORDERED

that the prayer in the application filed by the petitioner on 13.10.2022 for interim maintenance is hereby allowed in part ex parte in view of the observations made above and the said application is accordingly disposed of.

The opposite party is hereby directed to pay interim maintenance of Rs. 10,000/- (Rs. Ten Thousand) per month to the petitioner within 10th day of each English calendar month, from the date of filing of this application that is 13.10.2022 and the opposite party is directed to pay the said arrear amount in twelve equal installments first of which shall

fall due on 10-06-2023, in default, the petitioner shall be at liberty to apply for execution of this order through Court.

Let a copy of this order be given free of cost to the petitioner.

Fix 21.6.2023 for exparte evidence.

D/C by me.

Poonam Singhi
JM, 6th Court, Sealdah

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JO Code : WB 01258