

Misc. Case 42/2023
Regd. No. 42/2023

Order No.08

Dated : 08.03.2024

Today the record is fixed up for passing order in respect of the prayer for interim maintenance.

Both parties filed Hazira. Heard.

The factual scenario of the petitioner's case is such that her marriage was solemnized with the opposite party 14 years ago in the month of Maagh in accordance with Hindu rites and customs. At the time of marriage the OP was given cash of Rs.1,00,000/-, 3.5 bhories of gold ornaments, furnitures and other valuable articles by the father of the petitioner. After marriage, she went to her matrimonial house and resided with the opposite party as husband and wife and one male child namely, Deep Barui (11 years old) and one female child namely, Diya Barui (5 years old) were born out of the said wedlock. The petitioner alleged that, after few days of their marriage the OP and his family members used to inflict torture physically and mentally upon her due to demand of more dowry. Even the OP, in drunken condition used to inflict torture physically and mentally upon her due to demand. But she could not fulfil their demand. The tortures and torments were aggravated day by day. She also alleged that lastly, the OP and his family members assaulted and drove her out from her matrimonial home. Finding no other alternatives the petitioner took shelter at her paternal home along with her daughter. The petitioner made out a case for cruelty before Kalna PS. Thereafter the petitioner further made out a case that the opposite party has a shop of Electrical goods. He is a skillful electrician from these sources he earns of Rs. 60,000/- a month. As such petitioner claims Rs. 8,000/- for herself, Rs. 6000/- for her daughter per month from the OP.

Canvassing such case, the petitioner prayed for interim maintenance from the Court. On the other hand, the opposite party by way of written objection denied and refuted the material allegations levelled against him. According to the opposite party, he got married with the petitioner. Out of the said wed lock two children were born. It is alleged that the petitioner used to pressurized the OP to live separately. But the OP did not agree to this proposal. It is further alleged that the petitioner used to threaten him with dire consequences. Even she did not do any house-hold work. Having been protested by the OP she used to abused in filthy languages. He endured all such tortures for future happiness.

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It is also alleged that the petitioner was always busy in her mobile phone. The OP came to know that she developed an illicit relationship with one person of Rampurhat. Subsequently, she left her house on her own. The opposite party claimed that he is a labour of a shop of Electric where from he earns Rs. 8000/- a month.

Ventilating such case, the opposite party prayed for dismissal of the prayer for interim application.

I also peruse the Affidavits of Asset and Liabilities filed by both the parties.

At the outset, it can be said that marriage between the parties is admitted. It is also admitted that they have a daughter who stays with her mother. There is no dispute that the petitioner is residing at her parental house with her daughter for whatever cause. As the marriage was solemnized in accordance with Hindu rites and customs and one female child was born out of their wedlock then the desolate living of the petitioner at the mercy of her parents is not at all natural. When the petitioner is living separately with her children then there must be some caused which necessitates enquiry at the time of trial. In other words, it can be said that the petitioner has some prima facie case to go for trial.

It is the case of the opposite party that he earns Rs. 8000/- a month. This means that even in absence of document it can be said that the opposite party has an income to earn his livelihood. Although no document of income came from the stable of either parties except information mentioned in the Affidavit of Asset and Liabilities but, if I presume that the opposite party works as a labour then the monthly income of the opposite party as stated by him is not at all convincing to this Court. Nowadays an ordinary day labour earns Rs. 350/- to Rs. 400/- a day as wage then the OP should earn such amount in normal parlance. When the opposite party has admitted the factum of marriage and prima facie failed to establish that the petitioner has sufficient means to maintain herself then it can be safely said that the petitioner is entitled to get an interim maintenance till disposal of the case. Even if the income of the opposite party is equivalent to that of a simple day labour then also such income should not be less than Rs. 11,000/- to Rs. 12,000/- a month. If that is the position then the petitioner should get at least Rs. 2,000/- per month as interim maintenance for herself and Rs. 1,500/- per month for her daughter to pull their livelihood.

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Consequently, the claim partly succeeds.

Hence, ORDERED

that the interim prayer U/Sec. 125, Cr.P.C is allowed on contest.

The O.P. is directed to pay Rs. **2,000/-** (Two Thousand) per month in favour of the Petitioner **Babita Barui** and **Rs. 1,500/-** (One Thousand and Five Hundred) per month for her daughter **Diya Barui** as monthly maintenance.

This order be effective from the date of filing of this application **i.e. 10.03.2023.**

Opposite party has a liberty to pay the arrear amount of maintenance by three (3) monthly installments. But, such arrear amount must be paid by the opposite party within **June, 2024**. Opposite Party is further directed to pay the aforesaid monthly maintenance to the petitioners by the 10th day of every succeeding English calender month. In failure of which the petitioner will be at liberty to execute order by the process of law.

Let a Photostat copy of this order be supplied to the petitioner free of costs.

To **06.06.2024** for Evidence.

Dictated and corrected by

SD/ Jamshed Shaikh
Judicial Magistrate
2nd Court, Kalna

SD/ Jamshed Shaikh
Judicial Magistrate,
2nd Court, Kalna
(JO Code WB 01389)