

**In the court of Judicial Magistrate**

**Kalna Purba Bardhaman**

**Present:**

**Mrs. Najmus Sahar**

**Judicial Magistrate,**

**Kalna Purba Bardhaman .**

**Misc Case No 120 of 2020**

**CIS No. 118 of 2020**

**C.N.R No -WBBD1200-0884-2020**

**Khukumoni Bibi**

**.....Petitioner**

**-Vs-**

**Niraj Sk.**

**.....Opposite Party**

**Order NO 21 Date : 10.01.2023**

The case record is fixed today for interim hearing.

The petitioner is present today by filing hazirah.

The OP is present by filling hazira through his Learned Advocate.

Hd. both sides at length.

After perusing the case record it appears that at the pre-evidence stage, considering the pleadings of the parties and the submissions of their Ld. Advocates at the time of hearing of the interim petition, the following facts are prima facie evident:-

- The petitioner is the legally married wife of the Opposite Party (hereinafter referred to as the "OP).
- The parties are staying separately at present.
- The O.P. is an able bodied person and having landed properties and have sufficient income to maintain the petitioner .
- The said marriage was a negotiated marriage and still subsisting.
- The O.P has failed and neglected to maintain the petitioner .
- The petitioner, in her petition, inter-alia, states that the marriage between her and the Opposite Party was solemnized according to the

Hindu rites and customs 30 years ago. Out of their wedlock two female child and one male child were born. After the solemnization of the marriage the petitioner was taken to her matrimonial house but soon after her marriage the Opposite Party started torturing mentally and physically. The Petitioner and tried to lead happy conjugal life with the OP but in vain. At last on 30.10.2017 she was driven out from her matrimonial house along with minor son Alik Sk and till date she is staying at her father's house. The petitioner has no income of her own. She is totally dependent upon her husband.

The petitioner has prayed Rs. 5,000/- per month for herself and Rs. 4,000/- for her son as monthly interim maintenance from the Opposite Party.

On the point of income, the petitioner states that OP monthly income is Rs. 25,000/- to Rs. 30,000/- per month and the O.P is not paying a single penny towards the maintenance of the petitioner and her minor son since the date of driven out and she is totally dependent upon her parents.

On the other hand, the O.P. filed written objection against the interim maintenance petition denying and disputing material allegation raised by the petitioner. The O.P. also states that the petitioner has deserted him. The O.P., inter-alia, has stated that he is presently working as a day labour and earns only nominal amount of Rs. 4,000/- . The Ld. Advocate of the O.P further submitted that the petitioner has made a frivolous application as because firstly she has made application claiming maintenance for her 3 children but subsequently she has claimed maintenance only for her minor son by amending the petition when the O.P has raised this objection. The O.P has also pointed out that initially she claimed maintenance of Rs. 2,000/- for each of the 3 child but subsequently after amendment she has claimed maintenance of Rs. 4,000/- for her minor son without any justification.

At the time of hearing the petitioner has filed some documents in support of her claim. Let the same be kept with the record. Both parties have filed Affidavit of Asset and Declaration.

Ld. Advocate appearing for the petitioner has submitted that the petitioner is entitled to get an order of interim maintenance as petitioner is a house wife and dependent upon her husband .

Ld. Advocate appearing for the O.P. has submitted that the petitioner left her matrimonial home as per her own wish. So, she is not entitled to get any maintenance. She has willfully deserted the O.P. and residing separately and as such she is not entitled to maintenance. The O.P further submits that the O.P has several liability including the liability of his old aged parents and his two minor daughters.

The Ld. Advocate of the petitioner has also accepted that the two minor daughters are in custody of the O.P. and the only minor son is with her.

Both Parties have filed their respective affidavit of Asset and liabilities and on perusal of the same it transpires that the O.P. has admitted the marriage and the child.

The petitioner has mentioned that she has no income and she is not income tax assesses. While O.P has sufficient income and no contribution is being made by the O.P. for her maintenance.

With the above findings, relying on the affidavit filed by the petitioner and keeping in mind the very object of the enactment of Section 125 Cr.P.C which is to save needy wife, children and parents of a man from destitution, I am of the opinion that the petitioner is entitled to get interim maintenance.

Now this is to be decided what would be the amount of the interim maintenance allowance that it can be said to be just and proper. While deciding the instant interim petition u/s 125 of the Code it is incumbent upon me to come to a prima facie finding about the quantum of the income of the OP. In this context, in the event of conflicting claims about a husband's income, the wife's statement should be accepted and onus would be on the husband to disprove the same. Since the O.P. has not filed any document regarding his income though he states that he is a job card holder issued by the Government but the same was not produced. so this attitude of the O.P. is not desirable. Moreover the O.P. Though admitted the marriage but did not mention any thing about the maintenance, contribution paid by him.

In view of the facts stated by the petitioner in respect of Opposite Party's income, mentioned in affidavit of asset and liabilities, keeping in view the facts stated by the petitioner as well as the Opposite Party in respect of the regular expenses, the basic requirement of the petitioner status of the parties and striking a balance between penury and luxury I am of the opinion that OP should be directed to pay interim maintenance allowance at the rate of Rs. 3,000/- (Rupees three Thousand Only) per month for the petitioner and Rs. 2,000/- for her minor son namely, Alik Sk.. Considering the financial soundness of the OP this court is of the view that the amount is definitely not going to be a hardship upon the OP but would definitely save the petitioner as well as the minor son of the petitioner from destitution and vagrancy.

Hence, it is

**ORDERED**

that the prayer for interim maintenance made by the petitioner in this case is allowed in part on contest without any order of costs.

The OP is hereby directed to pay interim maintenance allowance to the petitioner at the rate of Rs.3,000/- (Rupees Three Thousand Only) for herself and Rs.2,000/- (Rupees Two Thousand Only) for maintenance for her minor son namely, Alik Sk, totaling Rs.5,000/- (Rupees Five Thousand Only) per month from date of the filing of this application till the disposal of this case. Such amount is adjustable with the maintenance, if any paid by the OP to the petitioner under any other statute.

He shall pay the amount of maintenance within the 10<sup>th</sup> day of each succeeding month for which it falls due.

The petition for interim maintenance is thus disposed of without costs.

Fix **02.03.2023** for evidence of P.W.

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

Petitioner is directed to be diligent in proceeding with the case and not to be indolent being complacent with the order of interim maintenance.

**Dictated & corrected by me.**

**Sd/-**

*Judicial Magistrate*

Kalna Purba

Burdwan

J.O. 1355