

**Misc. Case 86/2021**

**Order No 12**

**Dated : 17.08.2022**

Today the record is fixed up for hearing in respect of an application under Section 125 of Cr.P.C.

The petitioner is present by filing a hazira.

Ld. Advocate on behalf of the O.P. is also present.

Hd. Both sides. Perused the materials on record.

The record is taken up for passing order in respect of the prayer for interim maintenance.

The factual scenario of the petitioner's case is such that her marriage was solemnized with the opposite party on 07.03.2014 in accordance with Hindu rites and customs. After marriage, she went to her matrimonial house and resided with the opposite party as husband and wife. One male child namely Hardwik Kundu was born out of the said wedlock. The petitioner alleged that, she was subjected to physical and mental abuses. These tortures and torments aggravated day by day and the crescendo is reached when monetary demand was placed before her. The inability of the petitioner to meet the monetary demands took the shape of physical torture which ultimately compelled the petitioner to leave her matrimonial house. The petitioner further made out a case that the opposite party is a Constable of Police from which he gets salary of Rs. 36,000/- a month and having own house, pond and landed property from which he earns something.

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, the petitioner is not willing to lead their conjugal life with the opposite party and very often

contd...

*she misbehaved with the OP and used to create disturbance on various pretexts. She also having uncanny habit of visiting her paternal home. The opposite party admitted that he is serving as Constable of Kolkata Police from which he draws salary of Rs. 16,500/- 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 and such marriage is almost at its nascent stage. The OP also admitted that Hardwik Kundu is his son. There is no dispute that the petitioner is residing at her parental house with her minor son for whatever cause. If the marriage is new and if the opposite party has not made out any case that the petitioner's marriage was solemnized against her wish or that the petitioner has a special liking for some third person then the desolate living of the petitioner at the mercy of her parental inmates is not at all natural. When the petitioner is living separately in the initial period of her marriage 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 gets a salary of Rs. 16,500/- a month. Although no document of income came from the stable of either parties except affidavit on asset and liabilities in prescribe form. When the opposite party has admitted the factum of marriage and has not made out any case of income of the petitioner then it can be safely said that the petitioner is a entitled to an interim maintenance of Rs. 6000/- a month as interim maintenance for herself and Rs. 3000/- for her son to pull their livelihood till disposal of the case.*

*Consequently, the claim partly succeeds.*

*Contd...*

Hence,

**ORDERED**

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

The Petitioner is entitled to get Rs. 6000/- a month as interim maintenance for herself and Rs. 3000/- for her minor son from the Opposite Party to pull their livelihood till disposal of the case.

This order be effective from the date of filing of this application **i.e. 07.06.2021.**

Opposite party has a liberty to pay the arrear amount of maintenance by three (4) monthly installments starting from the month following this month within 10<sup>th</sup> day of each calender month But, such arrear amount must be paid by the opposite party within January, 2023. Opposite Party is further directed to pay the aforesaid monthly maintenance to the petitioners by the 10<sup>th</sup> 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 14.11.2022 for Evidence.

**Dictated and corrected by**

**SD/Jamshed Shaikh  
Judicial Magistrate  
2<sup>nd</sup> Court, Kalna**

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Judicial Magistrate,  
2<sup>nd</sup> Court, Kalna**

**(JO Code WB 01389)**