

Misc. Case 109/2023
Regd. No.-109/2023

Order No.08

Dated : 06.04.2024

Today the record is fixed up for hearing in respect of interim prayer U/S 125 Cr.P.C.

Both parties filed Hazira. Heard.

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 03.06.1995 in accordance with Muslim rites and customs. At the time of marriage the OP was given cash of Rs. 30,000/-, 1 bhor of gold ornaments 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 female child namely, Paribanu Khatun and one male child namely, Sujauddin Sk were born out of the said wedlock. The petitioner alleged that, After few days of her marriage the OP used to torture physically and mentally due to demand of more dowry. These tortures and torments aggravated day by day when she expressed her inability. Subsequently, in 2013 she came to know that the OP developed an illicit relation with one lady. When she raised protest against the same then the OP pressed pillow on her mouth with a view to kill her. Having been protested the OP abused her and assaulted her with fists and blows and then the OP drove her out from her matrimonial home forcefully along with her children. Finding no other alternatives the petitioner took shelter at her paternal home. Presently, she came to know that the OP got married with one Sakila Bibi @ Dhuni Bibi. The petitioner made out a case that the opposite party is a mason and having 2 bighas of cultivated land, from which earns of Rs. 10,000/- a month. As such petitioner claims Rs. 5,000/- for herself.

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 leveled against him. According to the opposite party, he got married with the petitioner. Out of the said wed lock one male and female children were born. It is alleged that in the year of 2012 the petitioner left her matrimonial home on her own. Their daughter, Paribanu is an divorcee and presently she resides at her paternal house. Their son, Sujauddin also resides at his father's house. It is also alleged that the OP got married

again. The opposite party claimed that he is a day labour where from he earns Rs. 5,000/- 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 son and a daughter who stay with their father. There is no dispute that the petitioner is residing at her parental house for whatever cause. As the marriage was solemnized in accordance with Muslim rites and customs and one male and one female children were 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 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. 5,000/- 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. 3,000/- a month as interim maintenance for herself to pull her livelihood.

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. **3,000/-** (Three Thousand) per month in favour of the Petitioner **Papiya Bibi Sk** as monthly maintenance.

*This order be effective from the date of filing of this application **i.e. 14.08.2023.***

*Opposite party has a liberty to pay the arrear amount of maintenance by **four (4)** monthly installments. But, such arrear amount must be paid by the opposite party within **August, 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 **12.08.2024** for Evidence.*

Dictated and corrected by

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

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Judicial Magistrate,
2nd Court, Kalna
(JO Code WB 01389)**