

Order no. 7

Order dt. 5/8/2025

Both sides are present. OP has filed written objection along with affidavit of assets and liabilities along with some photographs.

The record is taken up for hearing of interim maintenance application.

Heard argument of both sides. The record is taken up for passing order.

This is a case under Section 144 BNSS. The petitioner, Rajeswari Sardar has filed an application seeking interim maintenance from husband, Gopal Ghorai.

The petitioner's case, in brief, is that she was married to the opposite party on 27th Falgun, 1430 B.S. It is alleged that she was subjected to mental and physical cruelty by the opposite party on several occasions, including due to demands for dowry. It is further alleged that the opposite party is involved in an extramarital relationship with another woman. On 05.08.2024, the petitioner was allegedly assaulted by the opposite party, sustained injuries, and was forcibly driven out of the matrimonial home. Since then, she has been residing at her parental home at Putsuri under Monteswar Police Station, Purba Bardhaman.

The petitioner asserts that she has no independent source of income and is unable to maintain herself. It is further alleged that the opposite party is an able-bodied person employed at a medicine shop, earning approximately ₹25,000 per month, but has wilfully neglected and refused to provide any financial support to her.

The opposite party, in his written reply, has denied all allegations. While admitting the marital relationship, he contends that the petitioner herself has been involved in extramarital relationships with multiple men. He further alleges that the petitioner voluntarily left the matrimonial home without any justified cause and has since entered into a second marriage with one Prasun Ghorai, with whom she now resides as husband and wife. The opposite party claims to be employed at a medicine shop with a monthly income of approximately ₹4,000. He further states that the petitioner is self-employed, earning about ₹8,000 per month as a handicraft artisan, and is otherwise maintained by her parents. On these grounds, he has prayed for dismissal of the application for interim maintenance.

During the hearing, the petitioner was present and was shown the photographs filed by the opposite party. Upon being shown the photographs, the petitioner, in open court, verbally admitted on doc that she has recently entered into marriage with one Prasun Ghorai. She also stated that the opposite party has refused to return her Stridhan articles.

Decision with reasons: -

Section 144 BNSS is a beneficial provision enacted with the object of preventing vagrancy and destitution among dependents who are unable to maintain themselves. It empowers the Magistrate to order a person having sufficient means to provide maintenance to his wife, legitimate or illegitimate minor child (whether married or not), who is unable to maintain himself/herself, or to his parents. The provision specifically enables the court to grant interim maintenance during the pendency of the proceedings to ensure speedy relief and prevent hardship to the applicants. It is settled proposition of law that the purpose of interim maintenance is to provide immediate support to the wife in distress, without delving into a detailed inquiry at this stage, which is reserved for the final hearing.

The entitlement to maintenance under this section is not absolute but is subject to the conditions that: (i) the person from whom maintenance is claimed has sufficient means; (ii) he neglects or refuses to maintain the claimant; and (iii) the claimant is unable to maintain himself/herself. In cases involving a wife, as clarified in *Rajnesh v. Neha* (2021) 2 SCC 324, even if the wife has some earning capacity, maintenance can be granted if her income is insufficient to sustain a dignified life commensurate with the standard of living enjoyed during the matrimonial cohabitation.

However, Section 144(5) BNSS explicitly provides that no wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

The quantum of maintenance is to be determined based on factors such as the income and earning capacity of both parties, the standard of living, the needs of the claimants (including food, clothing, shelter, education, and medical expenses), and the local cost of living. It is not intended to be a punitive measure but a reasonable allowance to meet basic necessities. In interim proceedings, the court relies on a prima facie assessment without requiring strict proof.

On a prima facie perusal of the record, it appears that the petitioner and the opposite party were married on 27th Falgun, 1430 B.S. The marriage is admitted by the opposite party. The petitioner's allegation of being subjected to mental and physical torture on several occasions, including due to demands for dowry, and the opposite party's alleged extramarital relationship, culminating in an assault on 05.08.2024 resulting in injuries and being driven out of the matrimonial home, has been noted. Since then, the petitioner has been residing at her parental home. While the opposite party denies these allegations and claims that the petitioner has been involved in extramarital relationships and has voluntarily left the matrimonial home, entering into

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a second marriage with one Prasun Ghorai, these contentions were supported by photographs filed by the opposite party.

Significantly, during the hearing, the petitioner was shown the photographs and, in open court, verbally admitted that she has recently entered into marriage with one Prasun Ghorai. This admission establishes, on a prima facie basis, that the petitioner is living with another man as husband and wife while her marriage with the opposite party subsists, which amounts to living in adultery within the meaning of Section 144(5) BNSS.

In view of this admission, the petitioner is disqualified from claiming interim maintenance under Section 144 BNSS, as the provision explicitly bars entitlement to interim maintenance in cases where the wife is living in adultery. The petitioner's statement regarding the non-return of her Stridhan articles is noted but does not pertain to the present application for interim maintenance and may be pursued in appropriate proceedings if so advised.

Hence, it is

ORDERED

that the interim maintenance application filed by the petitioner is hereby dismissed on contest.

Let the matter be referred to the Mediation. BC II is directed to send referral order.

Fix 01-12-2025 for evidence/order.

T/C by me.

Sd/-

JM, Kalna