

**IN THE COURT OF Ld. JUDICIAL MAGISTRATE, 5TH COURT ,
ASANSOL, PASCHIM BARDHAMAN**

**Present : Ms.PRATIKA RAI
JO Code – WB1481**

Misc Case No.- 526/2020

Soma Addya -----Petitioner

vs.

Surojit Pal -----Opposite Party

Interim Maintenance Order dated: 12.02.2024

Today is fixed for interim maintenance order. Both parties are present.

Brief facts of the Petitioner's case is that she is the legally married wife of the Opposite Party (who shall be addressed as OP herein onwards) and their marriage was solemnized on 19.04.2019 according to Hindu rites and customs. After marriage, Petitioner went to her matrimonial house at vil- Ballavpur Roy Para, PO- Ballavpur, PS - Raniganj, Dist- Paschim Bardhaman and started to live with OP and in-law and their marriage was duly consummated. After some days of marriage, OP and in-laws started physical and mental torture upon the Petitioner for demand of further dowry for Rs. 1,00,000/- and when Petitioner showed her parents' inability to fulfill further dowry, on this she was tortured both mentally and physically on daily basis. OP and his family used to abuse the Petitioner in filthy languages and also assaulted her with fist and blows and there after on 24.07.2019, finally, drove her out from the matrimonial home. Thereafter, Petitioner with great difficulties managed to reach her parental house. Petitioner several times requested OP and his family members to take back her to the matrimonial house but they denied. Out of the said wedlock on 07.01.2020, one female child was born to Petitioner at Trivina Health Care, Raniganj, M.J.M. Eye Hospital, Raniganj, Dist- Paschim Bardhaman. OP did not make any effort to take information of well-being of Petitioner or of her new-born child and neither paid a single penny for medical expenses nor took any other obligations. Petitioner contended that OP is an employee of Super Iron and Steel Company Ltd., posted as Supervisor at Jamuria, Paschim Bardhaman branch and receives a handsome salary of Rs. 26,000/- per month. On the other hand, Petitioner has no source of income and spending her life in difficulty and vagrancy along with her minor daughter. Petitioner claimed Rs. 6,000/- per month for herself and Rs. 3,000/- per month for her minor daughter as interim maintenance.

OP appeared in this case and contested the matter by filing show-cause and his affidavit for disclosure of assets and liabilities. OP even on direction did not file his written objection against the interim maintenance petition, hence his show-cause was treated as written objection.

OP stated in his show-cause/written objection that even though marriage was conducted in between him and the Petitioner according to Hindu rights and customs on 19.04.2019 but it was a pretended marriage on the part of the Petitioner, who suppressed material facts and circumstances and as such the marriage is null and void in law. OP refuted all allegations of the Petitioner as false and fabricated story and far from iota of truth. OP also denied to be the father of the minor child though submitted that the marriage between the parties to have been consummated. OP submitted that the

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Petitioner herself withdrew from the conjugal relation of OP and denied to have ousted the Petitioner from the matrimonial home. OP submitted that he is an employee of Giridhan Metal Pvt. Ltd. and working as a technician where from he earns Rs. 12,000/- only per month and somehow passing his daily livelihood along with his old aged parents. OP also submitted that Petitioner is an able bodied person and she works in a private company under the name and style of Jaiswal Motors, Raniganj and earns of Rs. 15,000/- per month and as such she is able to maintain herself and her child. OP submitted a declaration issued by Jaiswal Motors dated 28.11.2023 showing that Petitioner's salary as telecaller in the company is Rs.8,000/- .

Heard both sides in full. Perused the case record, petitions and documents submitted by both the parties.

Before adjudicating upon the matter, it is pertinent to understand the provision under which maintenance can be allowed to an aggrieved wife. Section 125 of Cr.P.C. 1973 provides that "Magistrate may, during pendency of the proceeding regarding monthly allowance for maintenance for interim maintenance of his wife and her child, father or mother, and expenses of such proceeding which Magistrate considers reasonable, and to pay the same to the such person as Magistrate may from time to time direct." Section 125 also defines the term "wife". It lays down that "wife includes woman who has been divorced by or has obtained divorce from, her husband and has not re-married."

Sec.125 Cr.P.C. also provides that a Magistrate of first class may , upon proof of such neglect or refusal , order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct. Thus it is clear that before passing an order for maintenance Magistrate is to satisfy that there was some 'neglect' or 'refusal' on the part of the O.P.

In ***Chaturbhuj vs. Sitabai CrAN 1627 of 2007***, Hon'ble Supreme Court has held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.

Further, in ***Anju Garg & anr. vs. Deepak Kumar Garg, CrAN 1693 of 2022***, it was observed by Hon'ble Supreme Court that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children and to fulfill this obligation, the husband is required to earn money even by physical labour, if he is able bodied, and could not avoid his obligation, except on legally permissible grounds mentioned in the statute.

At the outset, this Court would like to observe that since the Court is adjudicating this petition at the interlocutory stage, even though evidence lead by both the parties, the Court is not inclined to discuss the facts of the case in detail prior to trial. Having held as above, this Court would now like to delve upon the petition itself. Given the fact that the relationship of the parties is admitted, this Court is of the view that no further deliberation is required in this respect.

Finally, this Court has to assess the amount of interim maintenance which the petitioner is required to receive. The **Hon'ble Supreme Court** in ***Rajnesh vs Neha & Anr***, has observed that *the objective of granting interim / permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.*

Under the circumstances, it appears from the record that the Petitioner has claimed a sum of Rs. 6,000/- per month for herself and Rs. 3,000/- per month for her minor daughter as interim maintenance. The Petitioner also contends that OP is an employee of Super Iron and Steel Company Ltd. posted as Supervisor at Jamuria, Paschim Bardhaman and crown a handsome salary of Rs. 26,000/- per month. On the other hand, OP stated that he is an employee of Giridhan Metal Pvt. Ltd. and working as a technician where from he earns Rs. 12,000/- only per month and somehow passing his daily livelihood alongwith his old aged parents. OP also submitted that Petitioner is an able bodied person and she works in a private company under the name and style of Jaiswal Motors, Raniganj and earns of Rs. 15,000/- per month and as such she is able to maintain herself and her child. OP submitted a declaration issued by Jaiswal Motors dated 28.11.2023 stating that Petitioner's salary as telecaller in the company is Rs.8,000/- but the signature on the said declaration was not in full and so the designation was not mentioned, hence, veracity of such document could not be confirmed.

In the interlocutory stage, this Court being unable to decide these aspects prior to trial, the interim maintenance at this stage should be assessed for mere sustenance and no more. Accordingly, given the financial condition of the Opposite party and the standard of living of the Petitioner including social status and present financial scenario, this Court is of the view that a monthly sum of Rs. 4,000/- per month for the Petitioner and Rs. 3,000/- per month for the minor daughter, in total Rs. 7,000/- per month, as interim maintenance is sufficient.

Hence, it is,

O R D E R E D

that the petition filed by the Petitioner seeking interim maintenance be and same is allowed on contest but without any orders as to costs. Opposite Party is directed to pay a sum of Rs. 4,000/- per month for the Petitioner and Rs. 3,000/- per month for the minor daughter as interim maintenance commencing from the date of the filing of the main maintenance petition. OP is to make the payment within 7th day of each succeeding month, till the final outcome of the case and/or modification of this order. This order shall take effect from the date of this order.

Let, a copy of this order be provided to the Petitioner as per statutory compliance.

Fix, 27.05.2024 for evidence of Misc Case.

Sd/-

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