

Misc Case 391 of 2024

15-11-25

1. Today is fixed for hearing of interim maintenance petition. Both parties are present through lawyer. Ld. Advocates representing both sides are present before the court.
2. The brief facts of the case indicate that the petitioner was married to the respondent on 25-04-2019. From this marriage, she bore a son named Md. Ali who is around 5 years old. The petitioner has alleged that she was subjected to cruelty and violence by the respondent. That ultimately on 16-06-2023 she was driven out of her shared household along with her minor son.
3. The petitioner has filed an application under the Protection of Women from Domestic Violence (PWDV) Act, seeking maintenance of ₹10,000 per month from the respondent no. 1 for herself and her child. In her application, she claimed that the respondent is a civil contractor and earns over ₹30,000/- per month and has no responsibility to maintain anyone. She also prays for a further sum of Rs 5000/- as alternative accommodation and ₹5,00,000/- as a compensation u/s 22 of the Act.
4. The respondent has denied the petitioner's claims, stating that there was no incident of domestic violence on the petitioner and that she left her matrimonial home on her own accord. That he tried his best to bring her back. He states that he works in a school bag manufacturing shop and his salary is Rs. 8,000 per month. He states that he wants to live with the petitioner and cannot afford separate maintenance. Hence, he requests the dismissal of the petition
5. the petitioner submits:
 - (i) that the petitioner is suffering immense hardship with her son
 - (ii) that the respondents inflicted severe torture upon her for dowry
 - (iii) that she is living her life in poverty and is in urgent need of maintenance.
6. On the other hand, denying the contentions of petitioner, the counsel for respondents submits:
 - (i) That his income is Rs. 8000/-.
 - (ii) that she left the matrimonial house on her own accord and that he wishes to live with her
 - (iii) that he cannot afford to maintain her separately from a separate household.
7. I have heard the parties and perused the documents. The occupation of the respondent is disputed here. The income of the petitioner is also disputed. Both parties are in contradiction on these aspects.
8. When it comes to the issue of maintenance, it is essential to recognize that the fundamental principle behind it is to improve the financial situation of the woman as well as to alleviate the mental distress she experiences when she is forced to leave her matrimonial home. The law requires that there be adequate arrangements for her support, enabling her to sustain herself.

9. This principle becomes even more significant when she has children with her. It's important to clarify that "sustenance" should not be interpreted as merely surviving. A woman who is compelled to leave her marital home should not feel as if she has fallen from grace or be forced to struggle for basic needs. According to the law, she has the right to live in a manner similar to that which she would have enjoyed while living with her husband.

10. She is entitled to provisions that allow her to lead a dignified life, rather than one of mere survival. This is where the husband's capacity, status, and legal obligations come into play. As long as the wife is entitled to maintenance, it must be sufficient for her to live with dignity, just as she would have in her marital home. She should not be put in a position where she becomes destitute or dependent on charity.

11. It is clear that a maintenance order can be issued if a person has the means to support their wife but neglects or refuses to do so. Occasionally, husbands claim that they cannot pay maintenance because they are unemployed or their business is struggling. These excuses are often just vague rationalizations and are not acceptable under the law. If a husband is healthy and capable of supporting himself, he has a legal obligation to support his wife. Unless disqualified, a wife's right to receive maintenance is absolute.

12. While determining the quantum of maintenance, the Hon'ble Apex Court in *Jasbir Kaur Sehgal v. District Judge, Dehradun*, (1997) 7 SCC 7, has held as follows: (SCC p.12 para 8)

“8. ... The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.”

13. Grant of maintenance to wife has been perceived as a measure of social justice by the Honorable Apex Court. In *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316, it has been ruled that: (SCC p. 320, para 6)

“6. ... is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Capt. Ramesh Chander Kaushal v. Veena Kaushal*, (1978) 4 SCC 70 falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat*, (2005) 3 SCC 636.”

14. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

15. In this context, I would like to quote a passage from the judgment delivered by the High Court of Delhi in the case of *Chander Parkash Bodh Raj v. Shila Rani Chander Prakash*, 1968 SCC OnLine Del 52, where it was opined:

“An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.”

16. I have perused the record, the affidavits declaring the assets and liabilities, and the DIR. Court has also considered that the minimum wages in the state for skilled labour is approximately ₹12,499/- and ₹10,329/- for unskilled labour. The claims of the petitioner and the respondent are drastically contradicting and hence at this interim stage considering the parameters of basic necessities of the petitioner, such as cost of her clothing, food, lodging, medical expenses, education of the child and other miscellaneous expenses such as electricity bills and others, I feel an amount of Rs. 5000/- would be necessary to meet her and her child's basic expenses at this stage. From this, Rs. 3000 is for the petitioner to meet her food, clothing and medical expenses and Rs. 2000 is for her child's fooding, education, medicines etc. The Respondent no 1 being an able-bodied young man, this appears to be a reasonable amount for him to pay. The respondent husband in his written statement does not plead that he is not an able-bodied person.

17. Hence it is,

ORDERED

that the respondent no 1 pay an amount of ₹ 5000/- (five thousand only) to the petitioner by the 10th of each successive month according to the Gregorian calendar. All the respondents are directed not to disturb the peaceful residence of the petitioner. This order is enforceable from the date of filing.

Any prayer not considered at this stage is deemed to be rejected at this interim stage and will be considered at the trial stage.

To **04-06-2026** for evidence. OP directed to appear and contest strictly hereafter. No time petition will be entertained to maintain justice and ensure speedy disposal of this record.

Sd/-
Ld. Judicial Magistrate
4th Court, Asansol
(In-Charge)