

Misc. Case No. 05 of 04 of 2023

Reg. 05/2023

Interim Order

**Present: Miss Sosanna Rai
Judicial Magistrate 1st class,
3rd Court, Bishnupur.**

Date: 05.03.2024

Today is fixed for passing order regarding interim maintenance subject to filing affidavit of discloser of assets and liabilities for the O.P.

Petitioner filed Ld. Lawyer's hazira.

Opposite Party filed Ld. Lawyer's hazira.

Ld. Advocate for the opposite party filed affidavit of discloser of assets and liabilities. Perused. Let it be kept with the case record.

Record is taken up for order.

This is a case u/s 125 of the Cr.P.C. filed by Mita Lohar the petitioner against Jiten Lohar the Opposite Party (herein after referred as O.P). The petitioner submits that the O.P is her husband and they got married in the year 2013 corresponding to 13th day of Chaitra, 1419 BS as per Hindu Rites and Customs. At the time of marriage the petitioner's father gave 50 gm golden ornaments, 16 kasa pital dan, khat , almirah and other household articles to O.P and his family members. After few days of marriage the O.P and his family members pressurized the petitioner to bring Rs. 1,00,000/- (Rupees One Lakh) from her father's house. When she raised objection for the same then the O.P and his family members assaulted her and tortured the petitioner both physically and mentally and she was not provided with proper food and clothes. During conjugal life petitioner gave birth of two female children. After the birth of two female children the O.P increased torture upon the petitioner and her minor children and assaulted the petitioner with fist and blows. Furthermore, she came to know that the O.P is in illicit relationship with another lady when he was posted at Joypur. Lastly, on 10.06.2019 the O.P and his family members assaulted the petitioner and driven her out from her matrimonial house along with her minor children. Since then the O.P is not paying any maintenance to the petitioner and her minor child. Petitioner has no source of income of her own. That the O.P is an able bodied person and he has 4 bigha of three seasonal cultivated land and he does fishiculture as well.

O.P is a Home guard at West Bengal Police and altogether he earns Rs. 60,000/- (Rupees Sixty Thousand) per month.

The petitioner filed this case under section 125 Cr.P.C. on 07.01.2023 praying for maintenance amount of Rs. 20,000/- (rupees twenty thousand)P/M for herself and amount of Rs. 5,000/- (rupees five thousand) P/M. each for her two minor children. Petitioner also filed this instant application for interim maintenance on the same date and prays for an amount of Rs. 20,000/- (rupees twenty thousand) P/M. for herself and amount of Rs. 5,000/- (rupees five thousand) P/M. each for her two minor children as interim relief.

The Opposite party appeared in this case and filed written objection against the interim maintenance application. In his written objection the opposite party denied the entire allegation alleged against him by the petitioner in her application. The O.P submits that the petitioner left her matrimonial home out of her own wish and will. He further stated that he has to look after his aged ailing parents. He further stated that he works as Home guard and he earns Rs. 18,000/- (Rupees Eighteen Thousand) per month and O.P has loan and he received net Rs. 10,000/- (Rupees Ten Thousand) after deduction of loan amount and he denied to have income as stated in the petition of the petitioner.

In these circumstances the opposite party prays for rejection of the interim maintenance application.

Heard both sides. Considered.

In this case there is no denial in respect of the marriage by the opposite party. The case is at the initial stage as no evidence has been given by the petitioner. Perused the declaration of asset and liabilities submitted by both sides.

In this case there is no denial in respect of the marriage by the opposite party. The case is at the initial stage as no evidence has been given by the petitioner.

In these circumstances in view of this court as the petitioner is legally married wife of the opposite party, and whether the petitioner left her matrimonial house voluntarily is a matter of trial and the same can not be decided without adducing evidence. On perusal of declaration of assets and liabilities submitted by both sides, and as per the petition it appears that the minor children is in the custody of the mother. There is no single document submitted by the O.P in respect of any maintenance provided to the petitioner and her minor children. Therefore, at this stage the petitioner is entitled to claim interim maintenance for her subsistence and for her minor children.

Now the question is in respect of quantum of the maintenance amount. The petitioner claims/prays for an amount of Rs. 20,000/- (rupees twenty thousand) per month for herself and Rs. 5,000/- (Rupees five Thousand) per month each for her two minor children and the opposite party claims that he works as Home Guard and his salary is Rs. 18,000/- (Rupees Eighteen Thousand) per month, and his net income is Rs. 10,000/- (Rupees ten Thousand) per month after deduction of the loan amount. O.P denied to have income as stated in the petition of the petitioner. As per the judgment of the Hon'ble Apex Court husband cannot deny the maintenance to his legally married wife and minor child. In this particular case the petitioner at this stage could not prove the income of the opposite party is Rs. 60,000/- (Rupees Sixty Thousand Only) per month as stated in the main application of maintenance in this case, and it is also not clear whether O.P is having income from the source of works as stated in the application of the petitioner as it is a matter of trial and it can not be decided at this stage as no evidence yet been adduced.

Considering all the above facts and circumstances, this court is inclined to allow the application of the petitioner with a direction to the opposite party to pay an amount of Rs. 1,500/- (rupees one thousand five hundred) per month to the petitioner and Rs. 1,000/- (rupees one thousand) per month each for her two minor children from the date of filing of this case ; failing which the petitioner will be at liberty to put the order into execution till disposal of the case.

The Opposite party is also directed to pay the interim maintenance of each month within the 10th day of each month.

Let a copy of this order be given to the petitioner with free of cost.

Fix 26.07.2024 for evidence.

Dictated & Corrected by me,

Sd/- S.Rai
Judicial Magistrate,
3rd court Bishnupur, Bankura.

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Judicial Magistrate,
3rd court Bishnupur, Bankura.