

Misc. Case No. 29 of 2022

Reg. 26/2022

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

Date: 21.12.2022

Today is fixed for passing order regarding interim maintenance allowances subject to filling affidavit of discloser of assets and liabilities.

Petitioner is present with hazira.

Opposite Party (herein in after referred as O.P) is present with Ld. Lawyer hazira.

Ld. Advocate for the O.P filed declaration 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 Mousumi Chowdhury (Das) the petitioner against Monidip Chowdhury the Opposite Party. The petitioner submits that the O.P is her husband and they got married on 12.12.2018 as per Hindu Rites and Customs. At the time of marriage the petitioner's father gave 20 vories golden ornament and other dan samogry to O.P. During conjugal life on 25.07.2019 petitioner gave birth of one female child namely Mayurakhi Chowdhury. After the birth of the said child the O.P started torture to the petitioner as O.P wanted to have a male child in place of female child. O.P pressurized the petitioner to bring Rs. 5,00,000/- (Rupees Five Lakh) for the purpose of flat interior decoration from her father. When she expressed her father's inability to pay the same then the O.P started physical and mental torture upon the petitioner. Lastly, on 03.03.2021 the O.P and his family members driven out the petitioner from her matrimonial house along with her minor child and since then she has been residing at her parental house along with her minor child at the mercy of her father. The petitioner further states that she along with her minor child is living with extreme hardship at her father's place as the O.P is not paying any maintenance to the petitioner and her minor child. Petitioner work at one shop in order to look after herself and her minor child . The petitioner states that O.P works at West Bengal Fisheries Corporation Limited as Govt. employee and he rented his flat and sanctioned building plan and altogether he earns Rs. 1,70,000/- (One lakh seventy thousand) per month.

The petitioner filed this case under section 125 Cr.P.C. on 13.04.2022 praying for maintenance amount of Rs. 35,000/- (rupees thirty five thousand) P/M for herself and amount of Rs. 25,000/- (rupees twenty five thousand) P/M. for her minor child. Petitioner also filed this instant application for interim maintenance on the same date and prays for an amount of Rs. 25,000/- (rupees twenty five thousand) P/M. for herself and amount of Rs. 20,000/- (rupees twenty thousand) P/M. for her minor child 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 submits that the petitioner left her matrimonial home out of her own wish and will. He further stated that he filed a case under section 22 of Special Marriage Act 1954 (for restitution of conjugal rites) on 09.12.2021 at District Judge, Barasat. After being informed about the case aforesaid the father of the petitioner became ferocious and started chalking plan how to falsely implicate the O.P and his close relatives, under various acts, since the existing laws are in favour of the females and accordingly, she has filed on 21.12.2021 a case being G.R No. 913 of 2021 under section 498A of IPC r/w section 3 / 4 of D.P Act at Bishnupur Court. The O.P is paying monthly EMI for car loan and Home loan of Rs. 7417/- per month and Rs. 9807/- per month respectively, apart from monthly Rs. 550/- for house maintenance etc.

Perused the declaration of asset and liabilities submitted by both sides.

O.P filled up in his affidavit of discloser of assets and liabilities showing that he work at State Fisheries Development Corporation Ltd. as Project Assistant Engineer and earns Rs. 63,000/- (Sixty Three Thousand Only) per month and he has to look after the medical expenses of his mother amounting to Rs. 3,000/- (Rupees Three Thousand).

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.

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 child 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 child. Therefore, at this stage the petitioner is entitled to claim interim maintenance for her subsistence and for her minor child.

Now the question is in respect of quantum of the maintenance amount. The petitioner claims/prays for an amount of Rs. 25,000/- (Rupees twenty five thousand) per month for herself and Rs. 20,000/- (rupees twenty thousand) per month each for her minor child and the opposite party claims that he work at State Fisheries Department Corporation Ltd. as Project Assistant Engineer and he earns Rs. 63,000/- (rupees sixty three thousand only) per month, but O.P denied to have his total income is Rs. 1,70,000/- (Rupees One Lakh Seventy Thousand) per month. As per the judgement 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. 1,70,000/- (Rupees one lakh seventy Thousand) per month altogether as stated in the main application of maintenance in this case, though the O.P stated that he works at State Fishiries Department Corporation Ltd. as Project Assistant Engineer and his monthly salary is Rs. 63,000/- (Sixty Three Thousand) per month but it is not clear whether he rented his flat and engaged himself for sanctioning building plan and altogether he earns Rs. 1,70,000/- (One lakh seventy thousand) per month.

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. 5,000/- (rupees five thousand) per month to the petitioner and Rs. 5,000/- (rupees five thousand) per month for her minor child from the date of this order 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 09.03.23 for evidence.

Dictated & Corrected by me,

**Judicial Magistrate,
3rd court Bishnupur, Bankura.**

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3rd court Bishnupur, Bankura.**