

Misc. Case No. 36 of 83 of 2023 (Rg. No. 76 of 2023)

Present : Sri C. Pramanik, J. M. 2nd Court, Bishnupur, (J.O. Code WB01207)

Smt. Mampi Rani Hazra and another ---Petitioner

-versus-

Shyamapada Hazra -- the O.P.

Order dated 18-07-2024

Today is fixed for hearing of petition filed by the petitioner namely Smt. Mampi Rani Hazra praying for interim maintenance for herself and her minor daughter.

Petitioner files Ld. Advocate's hazira.

OP also files Ld. Advocate's hazira.

Ld. Counsels of both sides are also present.

Heard Ld. Advocate on behalf of both parties.

This court has heard the submission of Ld. Counsel appearing for the respective parties and also perused the documents annexed with the petition as well as with written objection.

On perusal of the petition as well as written objection filed by the parties to the case, it appears that the petitioner got married with the OP on 18.04.2021 as per Hindu Rites and Customs. After marriage, the petitioner and the OP leading their conjugal life as husband and wife. At the time of their marriage, the father of the petitioner has given cash, golden ring and other articles to the OP as per their demand. The father of the petitioner also was given to the petitioner golden chain weighing six/seven bhories. After five /six months of their marriage, the OP and other relatives pressurized the petitioner to bring cash of Rs.20,000/- which was due during the negotiation of marriage and as the father of the petitioner did not pay the said due amount, the OP and his family members started to abuse the petitioner with filthy languages. The OP /husband occasionally returned to house at mid night in inebriated condition and when the petitioner came to know from reliable source that the OP has illicit relation for a long time with another divorcee lady namely Nice Khatun @ Bibi of Nababhut under PS Burdwan, Dist. Burdwan near Rubi Nursing Home and often he used to stay with her at night and he used to bear her food and clothes and other expenses. The OP and his family members used to abuse the petitioner with filthy languages and did not provide proper food to her and assaulted her. Even they tried to strangulate the petitioner and poured kerosene oil on her person to set ablaze but somehow she managed to rescue her.

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During their wedlock, the petitioner gave birth of one female child, who was aged about nine years.

After birth of female child of the petitioner, the OP and his family members demanded more cash of Rs.1,00,000/- including the due amount of Rs.20,000/- to be brought from her paternal house and as the father of the petitioner could not meet such demand, they used to physical and mental torture upon the petitioner. On many a occasions, her parents tried to settle the dispute with the OP and his relatives and but that goes in vain. On 02-09.2022, the OP and his relative assaulted the petitioner upon her head and other parts of her body. She sustained injury on her head, eyes and face. She was treated at Disha Eye Hospital and a Nursing Home at Burdwan. She was also treated at hospital at Bangalore. The family member of her paternal house had taken the petitioner and her daughter at her paternal house. As the financial condition of the paternal house of the petitioner was no so sound, her material uncle Manik Sain had taken them at her maternal house. During their separation, the OP did not provide any maintenance to them nor he provide any expenses for medical treatment of the petitioner. On 21.05.2023 the OP and his relatives came to her material house and assaulted the petitioner. The petitioner has no income of her own. The OP is a able bodied person and working at a Company from which he earns about Rs.15,000/- per month as salary. Besides that the OP has sweetmeat shop and retail business of Gas Oven and Electrical appliances. The OP has also cultivated landed property. From all the all the sources the OP used to earn Rs.1,50,000/- per month. The OP has also owned a four wheeler bearing Registration No. WB-42AT- 2794 and lead such luxurious life without taking care of his married wife and his minor daughter. The petitioner thus prays for interim maintenance of Rs.25,000/- for herself and Rs.15,000/- for her minor daughter. During hearing of the interim maintenance petition, the petitioner files photo copy of medical documents of the petitioner, copy of a Lagnapatra and copy of four wheeler details.

Per contra, the OP categorically denied all material allegations against him and the OP argued that petitioner had stated all false facts and the real situation is that the petitioner has left her matrimonial house willfully and falsely filed the

present case in order to harass the OP. The OP admitted the marriage with the petitioner and birth of their daughter in the year 2014. The OP admitted that he

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has a sweetmeat shop at Mirapota bazar. As the said business was not running smoothly, the OP has to start a business of Electrical appliances in a rented accommodation at Mirapota market. But the landlord the rental accommodation had instituted a Suit for Eviction against the OP. Due to COVID- 19 pandemic situation the said business of the OP suffered loss and for the said reason the OP has closed the business. The OP has compelled to take job of marking agent at a Nursing Home on commission basis from which he earns Rs.17,000/- per month. The OP has also admitted that he owned a four wheeler which bought by him by taking loan. The OP claimed that he incurred medical expenses for the treatment of the petitioner and treated at Bengal Faith Nursing Home at Burdwan where the petitioner was diagnosed of having Neurological problem. The OP has arranged treatment of the petitioner at Bangalore on 13.09.2022. But on 25.01.2023 the paternal family members of the petitioner along with her minor daughter at their maternal house. Thus the OP prays for rejection of the petition for interim maintenance.

During hearing Ld. Advocate for the OP submitted that marriage between the parties are admitted but the petitioner left her matrimonial house willfully. Ld. Advocate for the OP further submits that the petitioner has failed to submit any documents in support of landed property in possession of the OP.

On the other hand, Ld.Advocate for the petitioner argued that OP has admitted of having their several businesses and also earns of Rs.17,000/- per month and the same suggests that OP is able bodied and also able to earn money. In spite of having sufficient means the OP has neglected to maintain the petitioner and her minor daughter.

Both the parties filed their respective affidavits for disclosure of assets and liabilities. The petitioner in her said affidavit has mentioned that her general

monthly expenses including the education, medical expenses are about Rs.48,000/- per month and claimed that the OP earns about Rs.1,50,000/- per month.

At this stage no evidence have been comes forward. Both parties have made their assertion on affidavit. At the stage of hearing of an application for interim maintenance the court has to satisfy itself regarding the prima facie case for passing such order. Where a prima facie case has been made out, interim

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maintenance cannot be denied unless it is barred by other provisions of law. In the instant case, the marriage between the parties and birth of their children have been admitted by the OP. It is also admitted that the petitioner is living at her paternal/ maternal house and the OP has not provided sufficient maintenance to the petitioner since they are living separately. There is no plea on the part of the O.P that he is not an able bodied person. There is no plea also that OP provided sufficient amount of maintenance to the petitioner since their separation. Admittedly the petitioner is suffering from various illness and is under medical treatment. Even having knowledge of the medical condition of the petitioner, the OP did not provide any maintenance to the petitioner or her minor daughter. Thus, the primafacie case tilted in favour of the petitioner.

Considering all aspects and the declaration made by the parties to the case, this court is of opinion that there is presence of urgency to grant interim monetary relief as prima facie case is made out in favour of the petitioner. As there is no plea on the part of the OP that he is not an able bodied person, the liability cast upon the OP to take full care of his wife and the OP is duty bound to maintain his legally married wife and he cannot escape from such liability. It is admitted fact that the petitioner and the OP are living separately. A husband in affluent circumstances should pay maintenance in accordance with the status of the spouses. The principle laid down by the Hon'ble Apex Court is that the object being to prevent vagrancy and destitution, it has to be found out what is required by the wife to maintain a

standard of living which neither luxurious nor penurious, but is modestly consistent with the status of the family. Thus, having regard to the price hike of essential commodity, the status and requirement of the petitioner and also keeping in view the physical capacity of the OP, that a quantum of maintenance is to be awarded in favour of the petitioner which should match to the standard of both spouses.

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Hence, it is

Ordered

the application for interim maintenance of the petitioner succeed to the extent that Smt. Mampi Rani Hazra is entitled to get a monthly maintenance amount of Rs.5,000/- (Rupees Five thousand) only for herself per month and Rs.3,000/- (Rupees Three thousand) per month her minor daughter from the date of passing of this order.

The OP Shyamapada Hazra is directed to pay the aforesaid amount of maintenance within seventh (07th) day of every succeeding month when it falls due. The petitioner Smt. Pumpi Rani Hazra shall be at liberty to put the instant order into execution if the Opposite Party fails to abide by the same.

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

Fixing **27-09-2024** for evidence.

D & C by

Judicial Magistrate, 2nd Court,
Bishnupur.

Judicial Magistrate, 2nd Court,
Bishnupur.(JO Code WB01207)

