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Misc. Case No. 84 of 43 of 2016

Reg. 229/2016

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

Date: 19.09.2024

Today is fixed for passing order.

Sabjan Midya is present with hazira on behalf of petitioner.

Opposite Party is present with Ld. Lawyer's hazira.

Record is taken up for order.

This is a case u/s 125 of the Cr.P.C. filed by petitioner Asmantara Bibi being represented by her father Sabjan Midya against Hamid Mallick the Opposite Party (herein in after referred as O.P). It is the case of the petitioner that his daughter is deaf and dumb and his daughter got married with O.P on 16th Jaistha 1417 (B.S) as per Muslim Rites and Customs. At the time of marriage the petitioner gave cash Rs. 1,00,000/- (rupees one lakh), one bigha cultivated land, clothes and other articles to the O.P and his family members. After marriage his daughter went at her matrimonial house to lead her conjugal life with her husband and during their conjugal life his daughter gave birth of one child and before giving birth of child the family members of the O.P tortured his daughter both physically and mentally and driven her out from her matrimonial house but he settled the dispute and kept her daughter back at her matrimonial house but again the O.P and his family members instigated her to take poison and used to keep her starve. At last in the year 2013 the O.P and his family members driven out his daughter from her matrimonial house along with her minor son by detaining all stridhan articles

and since then his daughter has been residing at his house along with her minor child. He further states that his daughter has no own source of income of her own. That the O.P has 10/12 bigha cultivated land and works at 5 star hotel and altogether he earns Rs. 40,000/- (Rupees forty thousand) per month.

The petitioner filed this case under section 125 Cr.P.C. on 19.11.2016 praying for maintenance amount of Rs. 10,000/- (rupees ten thousand) P/M for herself and amount of Rs. 5,000/- (rupees five thousand) P/M for her minor child. Petitioner also filed this instant application for interim maintenance on 21.11.2023 and prays for an amount of Rs. 4,000/- (rupees four thousand) P/M for herself and amount of Rs. 3,000/- (rupees three thousand) P/M for her minor child as interim relief.

The Opposite party appeared in this case and filed 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 OP submits that the petitioner left her matrimonial home out of her own wish and will. In his written objection the opposite party submits that he has no landed property and he is a farmer and use to earn Rs. 24,000/- to 25,000/- (Rupees twenty four thousand to twenty five thousand) per annum and O.P. has to look after his aged parents. That the petitioner use to earn Rs. 2,000/- (rupees two thousand) per month by doing lace work and cutting garland and petitioner also engage herself for rearing animals and from where she earns Rs. 15,000/- to 20,000/- (rupees fifteen thousand to twenty thousand) per annum.

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 and no witness has been given by the petitioner. Perused the declaration of asset and liabilities submitted by the petitioner and O.P..

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 minor child is in the custody of the petitioner. And the income of the O.P. is There is no single document submitted by the O.P in respect of any maintenance provided to the petitioner and her minor child. Though the O.P claimed that he is a farmer and use to earn Rs. 24,000/- to 25,000/- (Rupees twenty four thousand to twenty five thousand) per annum. Considering all this court is of the view that, at this stage the petitioner is entitled to claim interim maintenance for her subsistence and for her minor child, but O.P cannot be burden with exorbitant amount as his income is not proved yet.

Now the question is in respect of quantum of the maintenance amount. The petitioner claims/prays for an amount of Rs. 10,000/- (rupees ten thousand) P/M for herself and amount of Rs. 5,000/- (rupees five thousand) P/M for her minor child. As per the judgement of the Hon'ble Apex Court husband cannot deny the maintenance to his legally married wife and minor children. In this particular case the petitioner at this stage could not prove the income of the opposite party is Rs. 40,000/- (rupees forty thousand) per month as stated in the main application of maintenance in this case, and it is not clear whether OP 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 cannot 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 O.P to pay an amount of Rs. 1000/- (rupees one thousand) per month to the petitioner and Rs. 1000/- (rupees one thousand) per month for her minor child from the date of filing of this case 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 16.12.24 for evidence.

Dictated & Corrected by me,

sd/-

Judicial Magistrate,
3rd court Bishnupur, Bankura.
J.O.CODE.WB 01291

Sd/-

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