

Misc. Case No. 73/46 of 2022

Reg. 62/2022

Interim Order

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

Date: 29.08.2023

Today is fixed for passing order.

Petitioner is present with Ld. Lawyer's hazira.

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 Halima Mallick the petitioner against Barkat Ali Mallick the Opposite Party (herein in after referred as O.P). The petitioner submits that the O.P is her husband and they got married on 21.12.2017 as per Muslim Rites and Customs. At the time of marriage the petitioner's father gave Rs. 50,000/- (Rupees Fifty Thousand), 4 bhories gold ornaments, silver anklet and bed to O.P. After few months of marriage the O.P and his family members pressurized her to bring Rs. 2,00,000/- (Rupees Two Lakh Only) from her parental house. When she expressed her father's inability to pay the same then the O.P and his family members started physical and mental torture upon the petitioner. Thereafter, on 25.02.2019 petitioner gave birth of one male child. Lastly, on 16.06.2022 the O.P and his family members assaulted the petitioner with fist and blows and 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 has no source of income of her own. The O.P works at Bankura Onamoye Nursing Home as Compounder and his salary is Rs.15,000/- (Rupees Fifteen Thousand Only) per month O.P also visit several houses for medical purpose from where he earns Rs. 7,000/- to 8,000/- (Rupees Seven to Eight

Thousand) and altogether he earns Rs. 22,000/- to Rs. 23,000/- (Rupees Twenty Two to Twenty Three Thousand Only) per month.

The petitioner filed this case under section 125 Cr.P.C. on 16-07-2022 praying for maintenance amount of Rs. 5,000/- (rupees five thousand)P/M for herself and amount of Rs. 3,000/- (rupees three thousand) P/M. for her minor child. Petitioner also filed this instant application for interim maintenance on 30.03.2023 and prays for an amount of Rs. 5,000/- (rupees five 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 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 is a day labour and earns Rs. 3,000/- to Rs. 4,000/- (Rupees Three Thousand to Four Thousand) per month 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 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. 5,000/-

(Rupees Five Thousand) per month for herself and Rs. 3,000/- (Rupees Three Thousand) per month for her minor child and the opposite party claims that he is a day labour and earns Rs. 3,000/- to Rs. 4000/- (Rupees Three Thousand to Rupees Four Thousand) per month. O.P denied to have income as stated in the petition of the petitioner. 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. 22,000/- to Rs. 23,000/- (Rupees Twenty Two to Twenty Three Thousand Only) per month as stated in the main application of maintenance in this case, and it is also not clear whether the O.P works at Bankura Onamoye Nursinh Home as Compounder 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. 1,000/- (rupees one thousand) per month to the petitioner and Rs. 1,000/- (rupees one 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 11.12.2023 for evidence.

Dictated & Corrected by me,

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

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