

Misc. Case No. 74/47 of 2022

Reg. 63/2022

Interim Order

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

Date: 15.09.2023

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

Petitioner is present with Ld. Lawyer's hazira.

Opposite Party is present with 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 Mousumi Hensh (Guin) the petitioner against Souvik Hensh 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 05.03.2015 as per Hindu Rites and Customs. At the time of marriage the petitioner's father gave Rs. 50,000/- (Rupees Fifty Thousand), 2 golden ring, golden bangle, golden ear ring, 7 dan samogri and clothes amounting to Rs. 15,000/- (Rupees Fifteen Thousand) to O.P. After marriage petitioner went to her matrimonial house and started her conjugal life with the O.P. After one months of marriage the O.P and his family members pressurized her to bring money 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 and abused her with filthy languages. O.P used to come home in a drunken condition and used to torture her physically and mentally and used to abused her with filthy languages. Thereafter, on 11.11.2017 petitioner gave birth of one male child. After the birth of the child O.P and his family members used to pressurized the petitioner to bring money from her parental house. Lastly, on 26.03.2019 the O.P and his family members assaulted the petitioner and driven her out 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 has two hand loom and he sell hand loom clothes and altogether he earns Rs. 40,000/- (Rupees Forty Thousand Only) per month. She further stated that O.P has two houses.

The petitioner filed this case under section 125 Cr.P.C. on 25-07-2022 praying for maintenance amount of Rs. 15,000/- (rupees fifteen 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 the same date and prays for an amount of Rs. 15,000/- (rupees fifteen thousand) P/M. for herself and amount of Rs. 5,000/- (rupees five 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 works at others house as hand loom worker and his income is Rs. 6,000/- (Rupees Six Thousand) per month from the said work 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. 15,000/- (Rupees Fifteen Thousand) per month for herself and Rs. 5,000/- (Rupees Five Thousand) per month for her minor child and the opposite party claims that he works at others house as hand loom worker and his income is Rs. 6,000/- (Rupees Six 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. 40,000/- (Rupees Forty 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 has two hand loom and he sale hand loom clothes 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 only) per month to the petitioner and Rs. 1,500/- (rupees one thousand five hundred only) 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 06.01.2024 for evidence.

Dictated & Corrected by me,

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

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