

Misc. Case No. 18 of 2021

Reg. 18/2021

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

Date: 18.01.2023

Today is fixed for passing order.

Ld. Advocate on behalf of the petitioner filed hazira.

Ld. Advocate on behalf of the Opposite Party filed hazira.

Record is taken up for order.

This is a case u/s 125 of the Cr.P.C. filed by Pinki Chakraborty the petitioner against Manas Chakraborty 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 15.12.2015 as per Hindu Rites and Customs. At the time of marriage the petitioner's father gave Rs. 80,000/- (Rupees Eighty Thousand), golden ornaments, one steel almirah , dan samogry and one and half vories golden chain to O.P. During conjugal life petitioner gave birth of one female child. The O.P and his family members pressurized the petitioner to bring Rs. 1,00,000/- (rupees one lakh fifty thousand) from her parental house. When she expressed her mother's inability to pay the same then the O.P and his family members started physical and mental torture upon the petitioner. Lastly, on 10th day of Baisakh, 1427 BS 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 mother. The petitioner further states that she along with her minor child is living with extreme hardship at her parental house 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 petitioner states that O.P has 35-40 bighas of landed property and he has own business and altogether he earns Rs. 1,00,000/- (Rupees One Lakh) per month.

The petitioner filed this case under section 125 Cr.P.C. on 09.02.2021 praying for maintenance amount of Rs. 25,000/- (rupees twenty five thousand)P/M for herself and amount of Rs. 15,000/- (rupees fifteen 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. 10,000/- (rupees ten 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 labour and he does not have landed property as per the petition of the petitioner.

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 as labour and earns Rs. 48,000/- (Forty Eight 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 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. 15,000/- (Rupees Fifteen thousand) per month for herself and Rs. 10,000/- (rupees ten thousand) per month for her minor child and the opposite party claims that he earns Rs. 48,000/- (rupees forty eight thousand only) per year as labour. O.P. further stated that he neither has landed property and nor his total income Rs. 1,00,000/- (Rupees One Lakh) per month. 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. 1,00,000/- (Rupees One Lakh) per month as stated in the main application of maintenance in this case, but it is not clear whether the O.P. also has 35-40 bighas of landed property and own business and altogether he earns Rs. 1,00,000/- (Rupees One Lakh) 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. 2,000/- (rupees two 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 13.04.2023 for evidence.

Dictated & Corrected by me,

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

**Judicial Magistrate,
3rd court Bishnupur, Bankura.
J.O Code – WB 01291**