

Misc. Case 36 of 105 of 2022 (Rg. No. 89 of 2022)

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

Jhuri Khatun ---Petitioner
-versus-
Mainuddin Ali Khan -- the O.P.

Order dated 20-01-2024

Today is fixed for passing order on hearing of petition filed by the petitioner namely Jhuri Khatun praying for interim maintenance for herself and her two sons.

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 about 12 years ago as per Muslim Rites and Customs. During their wedlock they were blessed with two son children. The OP and relatives of the OP demanded more money to be brought from her paternal house. When she could not meet such demand OP inflict physical and mental torture upon. On so many occasions settlement was convinced and the OP has taken the petitioner at her matrimonial house again. In spite of that OP continued to inflict torture upon her. Finally on 17.03.2022 the OP deserted the petitioner and her two sons at Goghat Health Center. The petitioner has constrained to take shelter at her paternal house with her minor sons. Her mother is an widow. Since their separation OP did not provide any maintenance to the petitioner and her minor sons. The OP had business at Kolkata for making garments (Sherwani). From the said sources the OP used to earn Rs.50,000/- to Rs.60,000/- per month. Thus the petitioner prays for maintenance of Rs.7,000/- per month for herself and Rs.5,000/- each for her two minor sons per month.

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

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is that the petitioner has left her matrimonial house willfully. The petitioner had falsely filed this case against the OP u/s 498A of IPC. The petitioner was always busy for her phone call and does not do the household work properly. The petitioner tried to force the OP to stay at Kolkata at his rented accommodation and when the OP refused to do so, the petitioner left her matrimonial house taking all her documents and Stridhan articles from her matrimonial house. The petitioner had her landed property at her paternal house from which she earns Rs.30,000/- per month. In addition to that she also earns Rs.3,000/- for preparing packets. On the contrary OP is working as a labour under a Garments making Company and from the said sources he used to earn Rs.5,000/- per month. OP thus prays for rejection of the petition praying for interim maintenance. The OP has also filed a copy of Certificate for their financial condition.

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.17,000/- per month and claimed that the OP earns about Rs.50,000/- to Rs.60,000/- 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 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 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 or to his two children since their separation.

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 his children and the OP is duty bound to

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maintain his legally married wife and his two children 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 as well as her two minor children which should match to the standard of both spouses.

Hence, it is

Ordered

the application for interim maintenance of the petitioner succeed to the extent that Jhuri Khatun is entitled to get a monthly maintenance amount of Rs.2,000/- (Rupees Two thousand) per month for herself and Rs.1,000/- (One thousand) each per month for her two minor sons (total of Rs.4,000/- per month) from the date of passing of this order.

The OP Mainuddin Ali Khan is directed to pay the aforesaid amount of maintenance within seventh (07th) day of every succeeding month when it falls due. The petitioner Jhuri Khatun 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.

The petitioner is directed to submit the affidavit for assets and liabilities by the next date fixed id. necessary order.

Fixing **04-05-2024** for evidence.

D & C by

Judicial Magistrate, 2nd Court,
Bishnupur.

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