

Misc. Case No. 77 of 169 of 2023 (Rg. No. 158 of 2023)

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

Smt. Arnima Mordyana (Pramanik) ---Petitioner
-versus-
Sri Subhas Mordyana----- O.P.

Order dated 01-02-2025

Today is fixed for passing order on hearing of petition filed by the petitioner namely **Smt. Arnima Mordyana (Pramanik)** praying for interim maintenance for herself.

Both the parties filed Ld.Advocate's hazira.

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 05-08-2008 as per Hindu Rites and Customs. During their marriage, the father of the petitioner has given cash, golden jeweleries furniture, utensils and other articles to the OP. After marriage, she went to her matrimonial house. After her marriage, the OP and his relatives demanded more cash of Rs.1,00,000/- to be brought from her paternal house. Ultimately on 24-03-2023 the OP and his relatives outed her from her matrimonial house after assaulting her. She compelled to take shelter at her paternal house at Madhabganj, Bishnupur. On various occasion the matter was tried to settled ,but ,that yielded no positive result. The OP did not enquire about the well being of the petitioner. The petitioner has no income of her own. The petitioner is suffering from diabetes, hypothyroidism. On the other hand the OP is an able bodied person having his own house and cultivated landed properties from where he earns Rs.15,000/- per month. In addition to that, the OP is working at Medicine fact from where he also earns Rs.15,000/- per month and he further earns of Rs.20,000/- per month by supplying medicine. The Petitioner filed various medical documents of the petitioner in order to fortify his claim mentioned in the petition regarding her illness. Thus, the OP even having sufficient means, neglected to maintain the petitioner. The petitioner at this stage prays for maintenance of Rs.10,000/- per month.

Per contra the OP categorically denied all the material allegations against him and the OP argued that petitioner had stated all false facts and the real

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situation is that the petitioner has left her matrimonial house willfully and resides at her paternal house. The OP categorically denied all material allegations of infliction of torture upon the petitioner or allegation of not maintaining the petitioner. But the OP in paragraph no. 3 of his written objection admitted that marriage between the petitioner and the OP was solemnized on 05-08-2008 according to Hindu Rites and Customs. But he denied of having any demand of dowry and stated that other all allegations against the OP are nothing but concocted and fabricated story. The OP flatly denied of allegation of ousted of the petitioner from her matrimonial house on 24-03-2023. The OP in his WO stated that the petitioner had taken away all her valuable articles and Stridhan properties with her when she left her matrimonial house on account of her mother's illness and when she requested the OP to take her at her paternal house. The OP had requested the petitioner to return on many occasions and he sent Lawyer's letter to that effect. But in spite receiving the said letter, the petitioner did not return to her matrimonial house. The OP is a Tabla Teacher and he earns Rs.36,000/- per year.

During hearing of the interim maintenance Ld. Advocate for the petitioner submits that the marriage has been admitted by both the parties. Ld. Advocate alleged that the OP had forcibly taken away all her Stridhan properties and ousted her from matrimonial house. Ld. Advocate further submits that the petitioner has filed Criminal case against the OP for infliction of torture upon her which is still pending before the Ld. Court. Ld. Advocate thus prays that the petitioner has able to prove the prima facie case against the OP at this stage and prays for interim maintenance of Rs.10,000/- per month.

Ld. Advocate for the OP by referring various copy of documents of the petitioner, strenuously argued that the OP never neglected or refused to maintain the petitioner. Ld. Advocate further submits that after long 15 years of their marriage, the petitioner filed the present case in order to harass the OP. Ld. Advocate further submits that the petitioner in her affidavit stated that she has passed Standard-V, but, during negotiation of their marriage in the year 2008, her father sent the letter to the father of the OP wherein it has been mentioned that the petitioner has passed Standard-VIII. Thus, the petitioner has stated false statement in her affidavit and prays for rejection of the instant interim maintenance. Ld. Advocate by referring the observation of Hon'ble Court in Rajnesh Vs. Neha and Another reported in 2021(2) SCC 324 and submits that no wife shall

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entitle to receive an allowance of maintenance or interim maintenance and expenses of proceeding if the petitioner without any sufficient reason refuses to leave with her husband or if their leaving separately by mutual consent. Ld. Advocate thus, prays for rejection of the present petition for interim maintenance.

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 has been admitted by the OP. It is also admitted that the petitioner is living at her paternal house since 24-03-2023 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 since their separation. The OP in his affidavit for disclosure of assets and liabilities claimed that he had made voluntary contribution to her petitioner/wife of Rs.1,000/- on 05-08-2023 and Rs.1,12,000/- on 04-11-2023 through F.D. Account. But the OP at this stage did not file any copy of receipt or any receipt of Bank transaction in order to prove his claim provisionally.

Admittedly a Criminal case has been lodged against the OP. There is also allegation of physical assault upon the petitioner. Thus, this court is of opinion at this stage that prima facie case tilts in favour of the petitioner as there is no evidence of providing any maintenance to the petitioner since their stay separately.

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 the OP is duty bound to maintain his legally married wife 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.

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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 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 **Smt. Arnima Mordyana (Pramanik)** is entitled to get a monthly maintenance amount of Rs.2,000/- (Rupees Two thousand) only per month for herself from the date of passing of this order.

The OP Sri Subhas Mordyana is directed to pay the aforesaid amount of maintenance within seventh (07th) day of every succeeding month when it falls due. The petitioner Smt. Arnima Mordyana (Pramanik) 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.

Fixing **24-04-2025** for evidence.

D & C by

Judicial Magistrate, 2nd Court,
Bishnupur.

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