

Misc. Case 47 of 126 of 2022 (Rg. No. 109 of 2022)

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

Smt. Soma Karmakar ---Petitioner

-versus-

Swapan Karmakar -- the O.P.

Order dated 23-08-2024

Today is fixed for passing order on hearing of petition filed by the petitioner namely Smt. Soma Karmakar praying for interim maintenance for herself.

Petitioner is present and filed hazira.

Petitioner files a Money receipt of Rs.2,000/-.

OP is also present and files 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 is the legally married wife of the OP and their marriage was solemnized on 01-05-2006 as per Hindu Rites and Customs. During their wedlock they were blessed with one child. As the petitioner was unable to bring money from her father the OP and his relatives used to ill treat with the petitioner and assaulted her and ousted her from her matrimonial house on 12-10-2022. Then the petitioner constrained to take shelter at her paternal house and since then she is living with her parents. She somehow staying at her paternal house in miserable condition. The OP is habitual drunker and assaulted the petitioner and uttered filthy, foul and abusive languages to her. One dialogue of settlement was convened and the OP was directed to take back to the petitioner but not yielded any fruitful result. The petitioner was apprehended to danger her life. The OP has neglected and refused to maintain the petitioner and did not allow the petitioner to meet her child. The OP used to create mental pain and tress in the mind of the petitioner and pressurized her to visit and consult with mental doctor and also pressurized her for divorce. The petitioner has no source of income of her own. The OP is working as a land broker and having a business of computer and he used earns money from pisciculture and from all sources he used to earns Rs.55,000/- to Rs.60,000/- per month. The petitioner also averred in her petition for

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maintenance that the OP has filed one Mat. Suit being No. 344 of 2022 for dissolution of their marriage u/s 13 (1) of Hindu Marriage Act. Thus, the petitioner prays for monthly interim maintenance of Rs.20,000/- for herself and litigation cost of Rs.15,000/-.

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 situation is that the petitioner has left her matrimonial house willfully and residing at her paternal house. The OP on many occasions went to the paternal house of the petitioner in order to take petitioner back at her matrimonial house but the petitioner refused to return her matrimonial house. Their son is residing with the OP and OP has to bear all the necessary expenses of his son including for his study. The OP denied to having any demand of dowry during his marriage. The OP declined to have landed property and working was a day labour at Garage and he used to earn Rs.400/- per day. Thus, in the said circumstances he was not able to pay any maintenance to the petitioner and he prays for rejection of the instant petition. The OP has filed a Mat. Suit before Ld. Court at Arambag for decree of divorce and the Ld. Court has pleased to pass an ex-parte decree vide order dtd. 06.02.2024. Thus, in the said circumstances he was not able to pay any maintenance to the petitioner and he prays for rejection of the instant petition.

During hearing Ld. Advocate for the OP submitted that marriage between the parties are admitted but no documents in support of landed property in possession of the OP, has been submitted. Admittedly the minor son of the petitioner is living with his father ie in the custody of the OP.

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.20,000/- per month and claimed that the OP earns about Rs. 60,000/- per month.

Ld. Advocate for the OP submitted that Ld. ADJ, Court at Bishnupur has pleased to pass a decree of divorce between parties to this case in ex-parte on 06.02.2024 in connection with Mat. Suit 344 of 2022. But in the explanation of section 125 (1) of Cr.PC, provides that 'wife' includes a woman who has divorced by, or has been divorced from, her husband and has not remarried. Till date there is no averment in the WO that the petitioner has remarried after passing of decree of divorce by the Ld. Court. Therefore, the petitioner can files petition praying for maintenance u/s 125(1) Cr.PC.

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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 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. Filing a case for praying for decree of divorce does not prevent the petitioner to file a case praying for maintenance u/s 125 of Cr.P.C. Moreso, there is no pleading of the OP that petitioner has remarried after passing a decree of divorce by the Ld.Court.

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. 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.

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Hence, it is

Ordered

the application for interim maintenance of the petitioner succeed to the extent that **Smt. Soma Karmakar** is entitled to get a monthly maintenance amount of Rs.4,000/- (Rupees Four thousand) only per month for herself from the date of passing of this order.

The OP Swapan Karmakar is directed to pay the aforesaid amount of maintenance within seventh (07th) day of every succeeding month when it falls due. The petitioner Smt. Soma Karmakar 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 **06.11.2024** for evidence.

D & C by

Judicial Magistrate, 2nd Court,
Bishnupur.

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