

MR 161/2022
Reg no. 98 of 22

Order number 5
dated 2/2/2023.

Today is fixed for passing necessary order in respect of the petition for interim maintenance filed by the petitioner in a proceedings under section 125 Cr.P.C praying for maintenance .

It appears that the petitioner has filed this prayer for interim maintenance along with Affidavit and has separately filed the affidavit of assets and liabilities as per the mandate of present proposition of Law.

The Opposite party in similar terms have filed written statement and also file the written objection against the instant interim prayer for maintenance. The Opposite party did not file the Affidavit of Assets and liabilities as per the mandate of law.

The crux of the contentions as it transpires from the pleadings of the parties is that admittedly the petitioner is married wife of the opposite party and the marriage took place on 27/08/2019 and it is also the admitted part of the case that the petitioner and the opposite party presently residing separated from each other .

The point of turmoil between the parties is that it is the claim of the petitioner that she was tortured in the matrimonial house by her husband being the opposite party and other family members of her husband and ultimately driven out from the house after being tortured and physically assaulted and being driven out from the house of the opposite party the petitioner is presently residing in her parents house being refused and neglected by the opposite party and the petitioner claims that she has no income of her own and is passing her days being totally dependent upon her parents for her day to day livelihood and she claims that she was driven out on an from 18/3/2022. In answer to such allegations the opposite party on the contrary alleged that the petitioner is residing separately on her own will as she is unable to adjust in the with the opposite party as the marriage of the petitioner and the opposite party was not done with the consent of the petitioner and it is the allegations of the opposite party that the petitioner has no willingness to continue a healthy conjugal life with the opposite party and so claims that she has left the matrimonial house on her own will and accord.

In midst of such allegations and counter allegations the petitioner has claimed that the opposite party is a government servant and has a monthly income of Rs 25,000/- and has prayed for monthly maintenance of Rs 15,000/- for herself. The opposite party in anser to such claim submits that he is a group D Staff and is a contractual employee of the irrigation department and has a monthly income of Rs 14,000/- per month and has to shoulder the burden of his old parents and also claims that the petitioner is residing separated and is living an adulterous life and has filed one case of Domestic violence Act as per section 262/2022 and so is not entitled to get maintenance as prayed for.

After considering all the available materials this court is of the view that as the instant proceedings is under section 125 Cr.P.C that to for interim maintenance which is determined at this stage this court restrains itself from entering into the determination of the minute matrimonial disputes. In this respect as it has been observed by the Hon'ble Supreme court of India in **Sunita Kachwaha versus Ani Kachwaha (2015)3 SCC Cri 589** that “ the proceedings under section 125 Cr.P.C is summary in nature and it is not necessary for the court to ascertain as to who was wrong and the minute details of the matrimonial dispute between the husband and wife”. So refraining to ascertain such matrimonial discord and the wrong committed this court finds it prudent to venture the point of maintenance that to in such interim stage.

As it appears that the petitioner is residing separated and has no income of her own and there appears no averments made by either of parties regarding the fact that during her stay in the parents house the petitioner has been provided by any maintenance by her husband being the opposite party . The opposite party also did not claims to have provided with any maintenance amount during the said period . So the pleading of the parties reflect that there has been no provision of maintenance made by the husband for the wife. On the contrary it has been stated by the opposite party that it is not possible for him to provide any maintenance for the petitioner in a separate way as he has liabilities of his parents to shoulder. It has also been stated that the petitioner has kept this court in the dark and did not mention about the filling of the petitioner under the Domestic Violence Act against the opposite party and his family and so the opposite party claims that the petitioner is not entitled to get maintenance in both the proceedings as prayed for.

In this respect this court is of the view that the opposite party has stated about the filling of the proceeding under the domestic violence act by the petitioner but no documents has been filed by the opposite party showing that any order of interim relief of maintenance has been awarded in connection with the said proceedings and in the affidavit of assets and liabilities the petitioner did not mention about any such order of maintenance. Moreover the opposite party did not file any affidavit of assets and liabilities. So from the available materials on record this court does not find any materials to show that there has been any order of maintenance passed in connection with the proceeding under the Domestic violence act .

The underlying principle behind granting of maintenance and fixation of quantum of income in a proceeding under section 125 Cr.P.C is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial house. The statute commands that has to be some acceptable arrangements so that she can sustain herself As it has been observed by the Hon'ble Supreme Court **Chaturbhuj Versus Sita Bai (2008) 2 SCC 316** that “ it is the obligation of the husband to maintain his wife and he cannot be permitted to plead that he is unable to maintain the wife due to financial constrains as long as he is capable of earning”. In this case it is the admitted portion of the case that the opposite party is a service man and works in a government office and although the opposite party claims himself to be a contractual employee but did not

file any documents to show the same but has admitted that his take home salary is around 14,000/-

As it has been observed by the **Hon'ble supreme court in Manoj Jadav versus Pushpa (2012)3 SCC (Cri) 1346** that the amount to be awarded as maintenance is the discretion of the magistrate. In this case in support of his contention prima facie except on such oath versus oath affirmations the husband could not satisfy the court with the documents of income and as per the section 106 of the Evidence Act that "When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him" So as the income of a person is specially within his knowledge so the opposite party is duty bound to prove prima facie his income is Rs 14,000/-

Section 125 is enacted on the premise that it is the obligation of the husband to maintain his wife, children and parents and it is for him to show that he lacks sufficient means for the purpose. As it has been observed in **Rajathi Versic C Ganesan (1999) 6 SC 326**. So merely stating that the opposite party has a low income with not absolve him from the responsibility to provide maintenance to his wife and mere filling of the petition of restitution of conjugal life does not ipso facto give a picture of no refusal and no neglect to the wife petitioner.

So considering all such things I am of the view that considering the status cost of living in the present day and day to day rising of the market value to sustain a livelihood it would be proper that the petitioner shall get a maintenance of Rs 5000/- per month. The opposite party is directed to make payment of Rs 5000/- per month to the petitioner as monthly maintenance and the said order shall take effect from the date of filling of the petition that from the month of October 2022. The opposite party is directed to make payment of the arrear maintenance amount from the month of October 2022 to January 2023 that is for four months which is equal to $5000 \times 4 \text{ months} = 20,000/-$ and the said amount of 20,000/- shall be paid in two equal installments and each installment shall amount to Rs 10,000/- . The opposite party is directed to make payment of the monthly maintenance amount along with the arrear maintenance month by month within 10 th day of each month positively. The petitioner shall be given a copy of this order sheet free of cost as per law. The petition for interim maintenance stands disposed on contest.

Fix 17.03.23 evidence .

Typed by me

Additional Chief Judicial Magistrate