

Present: Tanmoy Roy
Additional Chief Judicial Magistrate, Kurseong, Darjeeling

Misc. Case 01/2024
CIS 01/2024
JO Code - WB01288

Sushma Tamang	Petitioner
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-VS-

Kewal Rai and others	Opposite party (OP)
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Order dated : 26.09.2025

Today is fixed for Interim hearing and further order.

Both parties are present by filing hazira.

The prima-facie case of the petitioners as it appears from the petition is that petitioner got married with OP on last 08.12.2009 as per Hindu rites and rituals. A male child namely Yogya Rai was born to them on 10.10.2016. It has been alleged by the petitioner that after the marriage she was mistreated by the OPs including the Respondent no. 2/mother in law as she belonged to different caste/tribe i.e. Tamang. In different times, the Respondent no. 2 abusing the petitioner by using filthy languages. Petitioner further contended that in the year 2012, when the Respondent no. 1 became ill and was bedridden for two years, respondent no. 2 torturing the petitioner physically and mentally. In 2019, as the respondent no. 1/husband could not able to earn, the petitioner started working but respondent no. 2 passed negative remarks with regard to the work petitioner was doing. In the end of 2020, the petitioner took initiative to start business of Homestay and respondent no. 2 directed the petitioner to get financial help from her parental side to which the family of the petitioner contributed approximately Rs.7 Lakh and beside this, the petitioner took loan amounting to Rs.7,55,000/- from different financial institutions like SHG, Bandhan, Annapurna to complete the work of Homestay. Later, the behaviour of the respondent no. 1 became change and he assaulted the petitioner physically and mentally. Even, the respondent no. 1 decided to lease the Homestay to third person without making payment to the loans borrowed by the petitioner. It was further contended by the petitioner that the respondent no. 1 also engaged in a extra marital affair with one working lady with the consent of the respondent no. 2. Later, due to the repeated assault of the respondents, the petitioner lodged complaint before Kurseong PS being case no. 168/2023 dt. 29.07.2023. Later on the respondents did not allow her to enter into their house and offered the petitioner of Rs.10 lakh to withdraw the case and also if she give Respondent no. 1 divorce. After that, the petitioner with his minor son staying in a small single room attached with the Homestay and facing severe problem. She further mentioned that she earns Rs.4,500/- as Health Worker under ASHA and being Driver the respondent no. 1 earns more than Rs.50,000/- and also earns Rs.70,000/- per month from Homestay. In this circumstances, petitioner has prayed for an interim order of maintenance to the tune of Rs.50,000 for herself and for her minor son and also prays for an order of protection from domestic violence from OPs.

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OPs in this case has appeared and filed WO. OP in his WO mentioned that he is unemployed at present and he denied all the material allegations against him and his mother. Furthermore, OP contended that he is an physically infirm person having ailments and for that reason he could not earn his livelihood. OP alleged that petitioner rather tortured him and his family member in different ways. OP also mentioned that he used to pay the school fees of their son, but petitioner willfully prevented him from making the payment. Apart of this, OP also alleged that Petitioner herself is an earning lady and she is not at all dependent for her survival upon him. OP with this submission has prayed for rejection of the prayer of interim maintenance and other relief sought for.

Heard the submissions of both sides.

Ld. Advocate of the OP at the time of hearing submitted medical documents, payment receipts of school fees in support of his case.

It is important to note here that no where in the WO OP denied the marriage with the petitioner and also he admitted the paternity of the minor son. From the asset declaration submitted by the OP, it appears to me that OP in the same mentioned that he is unemployed but he is B.A. qualified. OP also in the same in the column of expenditure of children stated that he incurred Rs.22000/- yearly for his child's education. Furthermore, it appears to me that he has medical expenses of Rs.15,000/- approximately. Also from the asset declaration it appears that OP is an owner of Bolero Vehicle bearing no. WB 74AJ 5984. Ld. Advocate for the petition at the time of hearing submitted that OP earns good money being a professional driver. Further from the asset declaration filed by the petitioner that she has monthly income of Rs.5250/- P.M. being an ASHA worker. Perused the medical documents submitted by the OP at the time of hearing, nowhere from the same it appears that OP is infirm to an extent that he is incapable to earn his livelihood. Also from the document submitted it appears that OP once used to pay the school expenses of the child of the petitioner. OP has not submitted any recent document from where it can be ascertained that he is doing the same till now. Petitioner has not filed any document in support of her contention that OP earns more than Rs.50,000/- per month as stated by her. Without trial at this stage it is quite difficult for this Court to apprise the real monthly income of the OP but OP being the legally married husband of the petitioner is bound to look after the petitioner and her minor child. OP cannot hide his face from such responsibilities. If OP can maintain a car, then it is expected that he can also maintain his family. Accordingly, petitioner is entitled to interim maintenance.

Considering the present facts and circumstances, status of the parties and other associated factors, I am of the opinion that the interim maintenance to the tune of Rs. 2000/- per month for petitioner and Rs.3000/- per month for the minor child would be just and proper at this stage till further order from this Court.

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Hence, it is

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that OP is directed to pay interim maintenance to the tune of Rs. 2000/- per month for petitioner and Rs.3000/- per month for the minor child.

This order shall remain in effect till any further order.

Interim maintenance for a particular month shall be paid within 10th of next corresponding English calendar month. The order shall take effect from the date of filing of this case.

From the report of DIR, it appears that there are prima facie allegations of domestic violence upon the petitioner by the OPs. Although the allegations are subject matter of trial but in my opinion, the petitioner must get an order of interim protection for the ends of justice.

Accordingly, it is ordered, OPs are also directed not to disturb the petitioner in her possession over the said house and also not to cause any domestic violence upon her in any form till the disposal of this case.

Let a copy of this order sheet be given to petitioner side free of cost.

Let a copy of order sheet also be sent to IC, Kurseong PS to look into this matter so that the order passed by this Court on this day be not violated by the OPs in any way.

To **22.12.2025** for evidence.

Dictated & corrected by me,

Tanmoy Roy
ACJM, Kurseong