

**IN THE COURT OF JUDICIAL MAGISTRATE, 2nd COURT, SERAMPORE,
HOOGHLY.**

M. Case no. 333 of 2022
CNR- WBHGO60021602022
J.O. Code: -WB01414

Order dated 30.03.2024:

Today is fixed for passing order.

Petitioner is present by filing hazira.

O.P is absent without steps.

Heard both the sides in full on earlier date.

The record is now taken up for passing order.

The present petition has been filed by petitioner Azmira Bibi against her husband Habil Molla claiming interim maintenance towards her upkeep and sustenance. Petitioner's case in brief is that she has two sons from her first marriage and being divorced by her first husband in the year 2018, her second marriage was solemnized on 16/10/2021 as per Muslim customs and rites with the O.P and after her marriage she went to her matrimonial house along with her younger son. But, the petitioner being a divorced lady, the family members of the O.P never treated the petitioner and her son properly and further tried to drive out the petitioner and her younger son from her matrimonial house inflicting mental and physical torture upon her and finally in the year 2022 in the month of March, the petitioner and her son started residing at a rented accommodation along with the O.P. The petitioner states that she was willfully and regularly neglected and ignored, and was shown lack of utter empathy by her husband and was thus subjected to cruelty during her stay with her husband on instigation of the family members of the O.P. She has further stated that on 24/04/2022, the petitioner got admitted to Serampore Walsh Hospital for her tumor operation, but during the said time also, the O.P neither enquired about the wellbeing of the petitioner nor paid for the expenses of her treatment. Subsequently, as per her petition, when the petitioner being released from the hospital went to her matrimonial house along with her younger son, she was driven out from her matrimonial house

after being beaten by her husband and his family members and as such she was compelled to return to her rented accommodation along with her younger son.

The petitioner has averred that she does not have any source of income while her husband has a monthly income of around Rs. 20,000/- - Rs.22,000/- from his clothes business and further earns a monthly income of Rs. 8,000 - Rs.9,000/- from his toto van and as such the O.P earns around Rs.30,000/- in total per month. The petitioner, therefore, prays for interim maintenance @ Rs.15,000/- per month for herself and Rs.10,000/- as litigation expenses till the disposal of the main application.

The O.P. has contested the case by way of filing written objection against the application for interim maintenance. The O.P. has denied all allegations against him including the factum of marriage. The O,P has further stated that a suit for nullity of marriage between the petitioner and the O.P being No. 37/2022 is pending for adjudication before Ld. Civil Judge (Jr. Div.) 2nd Court. O.P. has objected to his alleged income to be Rs. 30,000/- per month as inflated and has stated that he earns Rs.4,000/- per month as a toto driver and further he has a dependent mother and other family members upon him whereas petitioner earns arounds Rs. 700-800/- daily and approximately 21,000-24,000/- monthly by running a tea-shop and as such prays for rejection of the instant application filed by the petitioner.

The O.P has filed an original councillor certificate relating to his income, original marriage certificate and photocopies of some other documents by way of firisti for perusal of court.

At the very threshold of this discussion, it would be quite apposite to mention herein that the power of granting of interim maintenance during pendency of a maintenance case is specifically provided in Second proviso clause of SubSec(1) of Sec.125 of Cr.P. Code and on being satisfied with a prima facie case such relief can be granted to a wife if she is not otherwise disentitled on the grounds enshrined under Sec.125(4) of the Cr.P. Code.

The question of entitlement and disentitlement of such interim maintenance has to be construed at this pre trial stage from the set of facts and circumstances of this case to

be demonstrated by the rival parties upon swearing affidavits.

Now, it is pertinent to mention herein that the allegations and counter allegations set forth by the parties in their respective pleadings are all subject to proof at trial stage in the light of the provisions of Indian Evidence Act and at this pretrial stage there is hardly any scope of its evaluation. In deciding the entitlement of the petitioner to get an order of maintenance as sought for, this Court is only concerned with the existence of a prima facie case of the petitioner in her interim maintenance petition.

The Hon,ble Apex Court in its decision of **Dwarika Prasad Satpathy v. Bidyut Prava Dixit**, (1999) 7 SCC 675 observed that “ *If there is prima facie material on record to suggest that the parties have married or are having relationship in the nature of marriage, the Court can presume in favour of the woman claiming maintenance.*”

On perusal of the record, this court is of the view that there is a prima facie case in favour of the petitioner and it appears that there is nothing on the record that suggests that the marriage between the petitioner and the O.P has been nullified by the order of the competent Court. Petitioner has stated that she has no source of income and she is unable to maintain herself. Further it appears, that the O.P is a physically able-bodied man having capacity to earn. It is pertinent to note that the object of Section 125 of Cr.P.C is to give social justice to the women, child, and infirm parents and to prevent destitution and vagrancy by compelling those who can support themselves and have a moral claim to support. Considering the same, this court is of the view that an interim maintenance in tune of Rs. 3000/- would serve the purpose and it would be justified and proper so as to enable the petitioner to maintain herself for the time being until determination and adjudication of the instant maintenance case finally. Moreso, this Court is also of the view that such amount would neither be luxurious nor be penurious and the same would meet the ends of justice.

Hence, it is

ORDERED

that the interim maintenance petition be and the same is allowed on contest in part

but without any order as to cost.

O.P. is hereby directed to pay maintenance @ Rs. 3000/- per month for the petitioner.

The O.P is hereby directed to provide the money to the petitioner within 15th of every succeeding English Calendar month.

Failing to comply this order, the petitioner is at liberty to proceed as per law.

The instant interim order would be operative on and from the date of filing of the interim application i.e. 06.12.2022.

The O.P. is hereby further directed to pay the outstanding arrear maintenance quantified for the period (date of filing of the interim application, 06.12.2022 to date of passing of this order, 30.03.2024) by nine installments (equal and standard) within a period of nine months simultaneously with the payment of regular monthly interim maintenance.

The petitioner is also hereby given the liberty to raise claim of such unpaid installment of a particular month or months of such outstanding interim maintenance after it falls due either in execution matter which may eventually come into being in default of O.P. to pay regular maintenance or by preferring an execution as per law to that effect seeking the legal enforcement of such order.

The order shall remain in force until disposal of the instant Misc. Case.

Let a copy of this order be supplied to the petitioner free of cost.

To **11.06.2024** for evidence.

Typed and corrected by me

**Sd/-(Ankita Gupta)
Judicial Magistrate, 2nd Court
Serampore**

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