

Misc Case- 115 of 2015
CNR No- WBHW04-002005-2015
JO Code-WB01187

Order Dated : 25.01.2024

Record is fixed today for interim maintenance order.

Both parties filed hazira.

I have heard both sides. Perused. Considered.

The record is taken up for passing order.

This is an application for interim maintenance u/sec. 125 of the Cr. P. C. The Petitioner namely Noor Begum is the legally married wife of the Opposite Party namely Jahangir Sk.. The marriage between the Petitioner and the O.P was solemnized on 18/04/2004 according to Muslim Rites and Customs. At the time of marriage, her father gave gold ornaments and cash of Rs. 20,000/- to the OP as nuptial gift. After marriage, she went to her matrimonial home and started to live as husband and wife. By the said wedlock, the petitioner gave birth to a male child namely Erfhan Sk. (9 years of age) and a female child namely Ishika Parvin (2 years of age). After few days of the marriage, the OP demanded more dowry from the petitioner but as the petitioner failed to meet such demand of the opposite party, she was subjected to physical and mental torture. Finally on 21/04/2014 the petitioner was driven out of her matrimonial home along with her two minor children after being tortured. The petitioner, finding no other alternative, took shelter in her paternal home and since then she has been residing at her paternal home along with her two children. The OP neither took any information nor gave any maintenance allowance to the petitioner and the minor children.

The petitioner further stated in her application that OP runs a jori business and earns Rs.30,000/- per month. On the other hand, the petitioner has no source of income.

The petitioner is unable to maintain herself and her minor children and she is in need of immediate relief.

In order to survive, the petitioner has prayed for an interim maintenance of Rs.5000/- per month for herself and Rs.2500/- each for her two minor children i.e. in total Rs.10,000/- per month.

The opposite party has filed the written objection and he denied each and every material allegation put forth in the petition by the petitioner except the fact of his marriage with the petitioner and stated that the petitioner left her matrimonial home on her own will. He even denied the paternity of the minor children. The O.P. stated that there was no consummation of their marriage and as such the birth of the son and daughter does not arise and further stated that they are illegitimate son and daughter of the petitioner. However, in the Affidavit of Assets and Liabilities filed by the O.P. on 30.03.2023, it is stated that there is one legitimate son namely, Erfan Sk. aged about 17 years from the existing marriage and one illegitimate daughter of the petitioner, namely Ishika Parvin aged about 10 years.

Contd...p/2

....2....

Misc Case- 115 of 2015

Order Dated : 25.01.2024....contd....

The O.P. further stated in his written objection that he works in Bauria North Jute Mill as a helper of weaving section and gets Rs. 2.269/- in a fort night and besides this he has no earning. On the other hand the petitioner does jori work at her locality and earns Rs. 4,000/- per month. And in the Affidavit of Assets and Liabilities filed by the O.P. on 30.03.2023 it is stated that the O.P. is unemployed and the petitioner is presently employed in Baltikuri E.S.I. Hospital and earns Rs. 8000/- per month. The opposite party thus prays for rejection of interim maintenance petition.

I have gone through the petition and the written objection. I have also thumbed through the allegations and counter allegation of the parties of this case.

The provision of interim maintenance is a measure made by the parliament for the needy wife so that she could sustain her life to see the finality of the case she has initiated U/sec. 125 of the Cr.P.C.

It is to be noted that both the parties to this instant case has filed the affidavit of income, assets and expenditures as mandated by the Hon'ble Supreme Court of India in the case of **Rajnish v. Neha , criminal appeal no. 730 of 2020 on 04.11.2020 regarding filing of affidavit**. The OP in his affidavit stated that he is un employed and the petitioner in her affidavit shows that she **has no income of her own.**

In the Hon'ble Supreme *Shail Kumari Devi v Bishnu Bhagwan Pathak, AIR 2008 SC 3006* e Court has made the following observation;

"Moreover, duration of litigation is not within the power or in the hands of the applicant and entitlement to maintenance should not be left to the uncertain date of disposal of the case. Keeping in view this hard reality, this Court in *Savitri* held that in absence of prohibition to grant interim maintenance such power could be read in the salutary provision of Section 125 of the Code ensuring maintenance to unable wife to maintain herself during the pendency of proceedings. Even Parliament took into account the reality and by the Amendment Act, 2001 express provision has been made for the purpose.

At this stage, the court is required to keep in mind the fact that before deciding the factual discord, some financial support is required to be given to the petitioner so that the petitioner could see the finale of the application filed by her under section 125 of the Cr P C. The court is to see as to whether the petitioner is unable to maintain herself or not. In the written objectin, the OP has stated that the petitioner does jori work at her locality and earns Rs. 4,000/- per month and in the Affidavit of Assets and Liabilities filed by the O.P. on 30.03.2023 it is stated that the petitioner is presently employed in Baltikuri E.S.I. Hospital and earns Rs. 8000/- per month but has not produced any document in support of his averments. On the other hand, the pitoner also failed to produce any document showing that the OP earns Rs.30,000/- per month.

Contd...p/3

Misc Case- 115 of 2015

Order Dated : 25.01.2024....contd....

In *Romita Prasad v Avishek Prasad*, 2010 (1) All India Criminal Law Reporter, 271, Cal, the Hon'ble Calcutta High Court has very clearly spelled out the approach of the court dealing with interim maintenance under section 125 of the Cr P C. The Hon'ble Court has observed that while disposing the petition for interim maintenance, the court has to only see whether the petitioner is unable to maintain herself or not and what would be the quantum of the maintenance she is entitled pending the recording of the evidence.

The word sufficient means occurring in section 125 of Cr.P.C does not signify any visible means such as, real property or definite employment. If a man is healthy and able bodied, he must be held to possess the means to support his legally married wife and he cannot be relieved off merely on the ground that he is unemployed or has a very little income. In the instant case, there is no contention regarding the physical disability of the Opposite Party. Photocopies of documents filed by both sides cannot be relied on by this Court at this stage. They are to be proved during trial. This Court cannot sit in a mini trial at this stage. Moreover, as per section 125 of Cr.P.C. the O.P. is liable to maintain both the legitimate and the illegitimate child. In the present case by filing the Affidavit of Assets and Liabilities on 30.03.2023 the O.P. stated that there is one legitimate son namely, Erfan Sk. aged about 17 years from the existing marriage and one illegitimate daughter of the petitioner, namely Ishika Parvin aged about 10 years. However, at this stage without taking evidence this Court cannot decide that whether the minor daughter is the illegitimate daughter of the petitioner or the O.P. and as such this court prima facie relies on the statement of the petitioner stated by her on Affidavit.

At the interim stage this would suffice to make a prima facie case so as to consider Petitioner's right to interim maintenance in the affirmative.

Accordingly the prayer of the petitioner is allowed in part. She is entitled to get Rs. 1000/- only (Rupees one thousand only) for herself per month and Rs. 1,000/- only for each of the minor child till their attainment of majority i.e. in total Rs. 3,000/- (three thousand only) as interim maintenance from the opposite party from the date of filing of this case i.e. 20.02.2015 till disposal of this case. The opposite party is directed to pay the aforesaid amount to the petitioner by the 15th day of every month. Payment for the present month shall be made by the O.P. within a fortnight.

The petitioner would be at her liberty to execute the order through the court if the opposite party does not comply the same. Let a copy of this order be given to the petitioner free of cost. Interim maintenance petition is disposed of.

Fix 06/06/2024 for evidence.

D/C by me.

Sarmistha Bose

J.M. 3rd Court, Howrah

Judicial Magistrate 3rd Court, Howrah