

Misc. case 343 of 2022

Order dated: 22.03.2023.

Today is fixed for order.

So the record is taken up for passing order.

Peruse the petition, W.O., Affidavit of Assets and liabilities and other connected documents on record.

1. The factual matrix of the Petitioner's case is to the effect that she got married with the Opposite Party/Husband on 18/11/2010 and the said marriage was solemnized under Hindu Marriage Act and the said marriage was negotiated one. At the time of marriage as per demands of the Opposite Party, several dowry articles, jewellery and other household articles were presented to him. After few days of marriage the OP started creating mental pressure upon the Petitioner for bringing more dowry in terms of money. It is the further case of the Petitioner that OP/Husband is a habitual drunker and used to perpetrate inhuman torture upon the Petitioner even she was not provided proper food during her pregnancy. Subsequently, on 04/03/2013 the Petitioner gave birth of a female child. Thereafter, the petitioner came to know that the OP/Husband has developed an illicit relationship with another woman and whenever the petitioner tried to protest, OP assaulted her both mentally and physically and abused her with filthy languages and eventually on 14/04/2022 the petitioner was driven out from her matrimonial house by the OP and now she is staying in her paternal home along with her minor daughter. It is the specific case of the Petitioner that OP is an employee under Diyashi Enterprise at Balitikuri and draw salary of Rs.18,000/- per month whereas the Petitioner has no personal source of income and despite having sufficient means the OP has deliberately did not give a single penny to the petitioner and her minor daughter for their livelihood.

2. The OP/Husband appeared in the case and has been contesting the case by filing written objections and thereby the OP has specifically denied all the material allegations of the Petitioner brought against him and inter alia stated that the Petitioner left her matrimonial home out of her free will and he earns Rs.8000/- per month and he tried to bring her back to his society.

3. In this case OP admitted the petitioner as his legally married wife and he is biological father of minor daughter so these points require no further discussion.

4. At the very outset, Ld. Advocate for the petitioner submits before this Court that the OP subjected the petitioner with physical and mental cruelty and subsequently she was driven out from her matrimonial home and at present she is living on the mercy of her mother and the OP did not pay a single penny since she has been driven out and it is also submitted that OP earns Rs.18,000/- per month . On the other hand, Ld. Advocate for the OP vehemently raised objection and submits before this Court that the Petitioner left her matrimonial home out of her free will and the OP attempted to bring the petitioner to his society but she declined his proposal and at this juncture it is pertinent to mention that both the issues are matter of evidence and so it cannot be decided at this stage. It is also argued that the OP earns Rs.8000/- per month being an employee of a private firm but the OP during the course of hearing did not place his salary certificate issued by his employer and until and unless such salary certificate is produced the court would not believe that the OP earns Rs.8000/- per month. It also transpires from the affidavit of the Assets and liabilities filed by the OP I find that he stated therein that he has no Bank account but it is highly improbable that a salaried person does not have any bank account in his name and the OP perhaps wilfully suppressed his bank account statement to conceal his actual income. It is also argued by the Ld. Advocate for the OP that the petitioner working as a tailor and so she has independent source of income sufficient to maintain herself and her minor daughter and so she is not entitled to get any maintenance. At this juncture, it would not be out of place to mention that though admittedly the petitioner is working as a tailor but whether the earning of the petitioner is sufficient or not can only be decided after taking evidence and so I am of the view that the petitioner is entitled to get relief as prayed for

5) In view of the discussion made herein above I am inclined to allow the present petition filed by the petitioner.

6) Hence, I proceed to pass the following Order:

Ordered

that the prayer of the petitioner for interim maintenance under Section 125 of Criminal Procedure Code be and the same considered and allowed on contest.

The opposite party is hereby directed to pay interim maintenance to the tune of Rs. 3,000/- per month for the petitioner herself and Rs.2000/- per month for her minor daughter from the date of filing of this case and he

is further directed to pay the monthly monetary allowance by 10th day of each succeeding English calendar month.

It is however, made clear that nothing of the observations made in this order shall have any effect on the trial and the trial shall be held independently.

That the petition is hereby disposed of.

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

To 22.06.2023 for evidence.

D/C

Judicial Magistrate,

2nd Court, Howrah.