

**Misc. Case No. 451 of 2024**  
**CNR No-WBHW04-002968-2024**  
**JO Code- WB01187**

**Order Dated : 27.02.2025**

Record is fixed today for passing order and filing of Bank Statement by the opposite party.

Both parties filed haziras.

I have Hd. 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 is the legally married wife of the Opposite Party. The marriage between the Petitioner and the Opposite Party was solemnized on 31.05.2022 according to Hindu Rites and Customs. After marriage, she went to her matrimonial home. At the time of marriage, parents of the petitioner gave gold ornaments, utensils, household articles and cash of Rs. 1,00,000/- as per their demands and all the stridhan articles are lying in the custody of the opposite party. The opposite party further demanded of Rs. 1,00,000/- from the family of the petitioner but the father of the petitioner did not fulfill his demand due to his financial condition. After few days of her marriage, the opposite party along with his family members forcefully started torture upon her both physically and mentally in various ways and they did not provide any proper fooding and clothing to the petitioner. Opposite party is a regular drunker and after returning home, he started torture upon her by fists and blows and harass her. The petitioner also surprised that the opposite party was involved in other lady and when the petitioner tried to convince the opposite party, the opposite party got furious and started beating the petitioner mercilessly and used slung languages upon her in presence of his father and mother. The opposite party time to time became violent in his attitude and assaulted her by fists and blows. The petitioner was lastly driven out by the opposite party on 14.05.2023 in a single clothing from her matrimonial home. Thereafter, the petitioner is residing at her parental home since then. The petitioner has no any source of income.

The petitioner further stated that the Opposite party is a service man and he earns Rs. 25,000/- per month.

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

In order to survive, the petitioner has prayed for an interim maintenance of Rs. 6,000/- per month for herself and Rs. 4,000/- for as litigation cost.

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 marriage. The opposite party also stated that he never tortured to the petitioner either physically or mentally in his life. The opposite party caught the petitioner talking with her boy friend namely Subhasis Das over her mobile phone and when the opposite party saw the what's up chat and he was surprised and found that the petitioner is still in touch with her old boy friend. The petitioner has done several act like regular assault, torture upon the opposite party and his father along with theft of gold ornaments and the opposite party has filed several complaint against the petitioner before the I/C Bally P.S. Hence, the opposite parties has prayed for rejection of the instant petition.

The opposite party stated that he is a service man and he earns Rs. 14,833/- 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 opposite party stated that he is a service man and he earns Rs. 14,833/- per month. The petitioner in her affidavit stated that she is unemployed.

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 *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, the opposite party has admitted that the petitioner is his legally married wife and further stated in his assets and liabilities that he earns Rs. 14,833/- per month. Though the opposite party has stated in his Affidavit in assets and liabilities that the petitioner has her source of income and earns of Rs.8,000/- per month by imparting private tuition and the petitioner has left her matrimonial home on her own will but at this stage, without taking evidence, this Court cannot come to the conclusion that whether the petitioner has left her matrimonial home on her own will and that she really earns of Rs. 8000/- per month from private tuition. Such allegations of the opposite party are to be proved during trial. This Court cannot sit in a mini trial at this stage. However, this Court opines that it is moral duty of the opposite party/husband to look after his legally married wife.

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.

Considered.

Considering all the above facts as well as the income of the O.P. this court is inclined to allow the prayer of the petitioner in part. She is entitled to get Rs. 3,000/- (three thousands) for herself per mensem as interim maintenance allowance from the opposite party from the date of filing of this case i.e. 19.07.2024 till disposal of this case. The opposite party is directed to pay the aforesaid amount to the petitioner by the 15<sup>th</sup> day of every month. Payment for the present month shall be made by the O.P. within a fortnight.

Let a copy of this order be given to the petitioner free of cost. Interim maintenance petition is disposed of.

Fix 13.05.2025 for evidence.

D/C by me

**Sarmistha Bose (JO Code WB01187)**

**J.M. 3<sup>rd</sup> Court, Howrah**

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