

Misc case 153 of 2021
CNR No.WBHW04-000156-2021

Order dated 02.08.2022

Today is fixed for order in respect of the interim maintenance petition under section 125 of the Code of Criminal Procedure (hereinafter called 'Cr P C') and filing documents.

Petitioner, Manashi Seth is present before the Court by filing hazira.

Hazira is filed on behalf of the OP Arindam Seth and supplementary affidavit and the documents by way of firisti.

The petition was already heard in full in presence of both the Ld. Advocates and parties.

Now the record is taken up for passing order.

The petitioner by filing the petition as well as submitted through Ld. Advocate during hearing that she got married with the OP on 11/05/2015 and the said marriage was registered on 11/10/2015. After marriage she went to her matrimonial home along with all her stridhan articles and a female child namely Ayushi Seth was born on 07/03/2016. After few days of her marriage, the petitioner demanded money as dowry from the petitioner but the OP started to physical torture, abuse, threat, assault her. After birth of female child, the OP and his in laws stated to torture upon her both physically and mentally. The petitioner unable to bear such torture filed a GDE Entry being no. 866 dated 12/09/2021 at Girish Park PS and ultimately on 22/11/2010 she was driven out from her matrimonial house in a single cloth. Finding no other alternative, the petitioner lodged a complaint at Chatterjeehat PS being no. 160/2020 under section 498A/406/34 of IPC and 3 / 4 of D.P. Act. At present the petitioner is residing at her father's house since 22/11/2020. The OP has also refused to pay any maintenance for her and her child's subsistence. She further stated that the OP earns Rs.90,000/- per month from his service. The petitioner further contended that she has no income of her own and prayed for passing interim monthly maintenance of Rs.15,000/- per month for herself and Rs.15,000/- per month for her child and litigation cost of Rs.10,000/-.

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The OP appeared and contested in this case by filing WO and wherein he denied the entire allegations of the petitioner but admitted the marriage and paternity of the child. The OP further stated that she was habitual to have expensive life style. The petitioner was reluctant in doing any sort of domestic duties at her matrimonial home. She used to humiliate the OP and his parents in rough languages. The petitioner and her parents started to pressurize the OP to separate from his parents and to stay at her father's place. On 18/05/2019 she left her matrimonial home but with the effort of the OP and his parents she had to return and resume the conjugal life. She left the matrimonial house at her own volition. He further contended that he earns Rs.2,00,000/- per annum from his part time job of metal testing in laboratory and his parents are dependent upon him and have various ailments for which he has to incur expenses for their treatment. He further submitted that the petitioner is worked at the front office of the diagnostic center named as 'Generic' and earns Rs.10,000/- per month. In such a backdrops, the opposite party prays for dismissal of the petition.

Considering the rival submissions of both sides, it is well settled principle of law that at the stage of hearing an application for interim maintenance which is generally disposed off on the basis of affidavit filed by or on behalf of the applicant stating the grounds in support of the claim for such maintenance, this Court is to satisfy itself regarding existence of a *prima facie* case for making such order and there must be extreme emergency to enable the petitioner to get an order from the court in her favour. Where such a *prima facie* case has been made out, interim maintenance cannot be denied unless it is barred by any other provision.

I have gone through the entire records. I have also thumbed through the Affidavit and the documents filed by both the parties in this case. An interim maintenance petition is generally disposed off by considering affidavit vs. affidavit filed by the parties. The parties to this case was admittedly married. The paternity of the child is also admitted and the said

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female child now resides with her mother. The petitioner and the OP are living apart at present. At present the O.P has not paid any money as maintenance to the petitioner. The reasons for the same are stated by both of them in their own ways. They blamed each other. The contentious issues are the questions which cannot be decided without going through the evidence of the parties to this case are proposed to lead to prove or disprove their claims and counter-claims.

Admittedly, a criminal case is pending between the parties which prima facie shows that the petitioner has been tortured in her matrimonial home. Further, there is nothing to show herein that the petitioner has any sufficient income of her own to maintain herself and her child. On the other hand, the petitioner has claimed that the OP earns Rs.90,000/- per month but have not filed any document to show such income. The OP herein has claimed that he earns Rs.2,00,000/- per annum from service but has not filed any scrap of paper to prove the same, rather filed a supplementary affidavit of assets and liability wherein he has declared that he has no receipt or voucher against his income. At this stage, the Court cannot decide the income of the OP without having evidence but certainly it is apparent that the OP is an able bodied person. It is further contended that some interest are accumulated from the fixed deposits in the name of his parents. As the petitioner has no income, OP has sufficient income as well as the fact of non-providing any amount of maintenance by the OP to the petitioner for their sustenance, the Court is of the opinion that there is urgency and prima facie case of the petitioner and she is thus entitled to get an interim maintenance from the O.P.

In our day to day life, having regards to the cost of living and standard of living of the petitioner as well as the expenses of the child, if Rs.4000/- per month for the petitioner and Rs.5000/- per month for her minor female child are awarded as interim maintenance, I think that there would be no prejudice

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to the opposite party pending disposal of the case as the opposite party is an able bodied man.

Hence, it is

ORDERED

the petition for interim maintenance filed by the petitioner is hereby considered and **allowed** on contest.

The O.P is hereby directed to pay a sum of Rs.4000/- per month for the petitioner and Rs.5000/- per month for her minor child as interim maintenance from the date of filing of this case and to be paid within the 10th day of each succeeding month until further orders. 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 free copy of the order be given to the petitioner of this case.

To 24/11/2021 for evidence of PW.

D/C by me

Judicial Magistrate, 1st Class,
3rd Court, Howrah

Yesmin Ara Khatun, (JO Code WB01335)
Judicial Magistrate, 1st Class
3rd Court, Howrah