

Misc Case 418 of 2018
T.R. 40 of 2018

Order No. 07 dated 14.11.2018:-

Both parties are present along with their Ld. Advocates by taking steps.

Today is fixed for hearing of petition praying for interim relief.

The record is taken up for hearing.

Heard the Ld. Advocates for parties in support and against the petition.

Perused the record.

Considered.

The petitioner's case in short is that she married the opposite party out of a negotiation talk as both the families met on a bus tour on 08.03.2015 on payment of dowry and her marriage was consummated when she was taking to the matrimonial house on the next date. Soon after the marriage the petitioner was tortured by opposite party and his relatives on demand of further dowry and in course of time, one female child was born out of the wedlock but that worsen the situation for the petitioner. On 05.07.2018, the petitioner was assaulted by the opposite party and other relatives and thereafter she was driven out and since then she is residing at her father's house under much hardship. The petitioner further contended that the opposite party has neglected to maintain her and the child although he earns Rs.50,000/- per month from her vegetable business. As such, the petitioner has prayed for interim maintenance of Rs.20,000/- for herself and Rs.10,000/- for the minor child.

The opposite party objected to such prayer by filing his W.O but admitted the marriage and parentage of the child and denied all material allegations averted in the petition. He further contended that the marriage was not a negotiated one but culminated out of wedlock. He further contended that the petitioner is a self-centered person and she was not ready to shoulder the responsibility of the family by doing household works. He also contended that a criminal case has been filed against him and his family by the petitioner and he is residing in a rented accommodation as he has been driven from his father's house. He further contended that he earns Rs.200/- per day by working as a helper under the vegetable seller. The opposite party as such, prayed for rejection of the petition.

In this case, the marriage between petitioner and opposite party has been admitted in the W.O. It has also been admitted that they together gave birth to a female child. There is no whisper that the petitioner has sufficient income to maintain herself and the child. In this initial stage, when the evidences are forthcoming, I am of view that the O.P has duty to maintain his wife to uphold the spirit of the provision of Section 125 of the Code. So, there is no room for any doubt that the petitioner and the minor child are entitled to get maintenance from the opposite party.

Since the opposite party is residing in a different place after being driven out by his parents it can be presumed that he has no dependent except the petitioner and the child.

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Since the opposite party has admitted that he is working as a helper under a vegetable seller, it can be considered that he is able-bodied person, capable of earning and he has the duty to maintain the wife and child irrespective of his income in view of celebrated case reported in (2015) 5 SCC 705.

Considering the status of the parties, their respective liabilities, their health condition, requirement of the child including his education and also other factors, I am of view that Rs.3,000/- will be sufficient for the wife and Rs.1500/- will be sufficient for the minor child. In my view, this amount is neither penurious nor luxurious for both the parties.

ORDERED:-

The petitioner is entitled to receive a monthly maintenance of Rs.3,000/- per month for herself and Rs.1,500/- per month for the minor child. The opposite party is directed to make payment of total Rs.4,500/- per month to the petitioner by 10th day of every succeeding English calendar month starting from this day. In default, the petitioner is at liberty to put the order into execution.

To for evidence.

Parties to come ready. A.I.C in advance.

**Judicial Magistrate, 1st Class,
5th Court, Howrah.**