

MISC. CASE 14 OF 2021
CNR no.- WBHW080002782021

Order dated 22.09.2022

Today is fixed for order.

Both sides are present by filing hazira.

Heard Ld. Advocate & perused & considered the materials on record.

Record is now taken up for passing order.

The brief fact of the petitioner's case is that the petitioner got married to the respondent, namely, Asadul Mallick on 24.12.2007 as per Muslim customs and at the time of marriage cash, gold ornaments and other articles were given to the O.P by the petitioner's father. After it is alleged that the respondents began to demand more money as dowry from her and began to torture her physically as well as mentally and also did not give her food for daily sustenance and when she informed her father he somehow arranged to give some money. Subsequently a son was born to her but even after his birth the & he neglected the petitioner & her son & did not give her food for sustenance & used to overwork her. She alleges that the O.P. was involved in illicit relationship with other women & that her father-in-law used to give her indecent proposals and when she revealed the same to other family members she was abused and assaulted. In April 2020 when the petitioner caught the O.P. cheating on her they tried to kill her & the O.P. left for Rajasthan and never asked about her. The in-laws of the petitioner drove her out on 20.12.2020 in the absence of the O.P. & has not looked after her ever since. The petitioner in such circumstances is compelled to take shelter at her parent's house and the O.P. never enquired about her and he neglects to maintain her despite being a man of sufficient means.

The petitioner further stated that the respondent no. 1 is able bodied man and has a stationary shop and agricultural properties. From all these sources he allegedly earns above Rs. 20000/- per month. The petitioner has no independent source of income.

In such circumstances, Petitioner has prayed for Rs. 10000/- per month for herself & her minor child i.e. @ Rs.5000/- each as interim maintenance and other relief as per her application u/s 125 CrPC.

In his W.O. dated 28.02.2020 the O.P. has denied, disputed and contested the petitioner's claims. He has admitted the marriage with the petitioner & the birth of son but stated that they never took any dowry and that there was no incident of domestic violence. He stated that he was not the owner of any stationary shop but a Zari-worker & that the petitioner had insisted after marriage that they should live separate from his parents, upon the instigation of her family members & she stopped having conjugal relation & threatened to file police case against him. He stated that despite his best attempts the petitioner has been doing the same and that she left home voluntarily and when he went to bring her back he was assaulted by her family members & that he had borne all the expenses of the birth of his son & there was no neglect from his end. He stated that he had tried to bring her back & to get her to stay with him but the petitioner left voluntarily after fighting with him & that she was an earning person while he was a day labour earning only Rs. 200/-@day & that she was not entitled to any maintenance.

Now, Section 125(3) CrP.C. states as follows:

125. Order for maintenance of wives, children and parents.—(1) *If any person having sufficient means neglects or refuses to maintain—*

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

*a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate 1[***], as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:*

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

2[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.—For the purposes of this Chapter,—

(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

3[(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's 4[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an 4[allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

Therefore, the ingredients that need to be proved in an application under Section 125 CrPC are that: the respondent should be a man of sufficient means, he should neglect or refuse to maintain his parents who are unable to maintain herself, his wife, & legitimate or illegitimate minor child, whether married or not, unable to maintain itself, etc.

Now, except the petitioner's contention there is nothing on record to support his case that the O.P. neglects to maintain him despite sufficient income. There is no document from which any presumption can be made regarding the present income of the O.P. however, the marriage and the birth of their son is admitted by the O.P. the Ld. Advocate for the petitioner stated that this was sufficient for her to claim maintenance whereas the Ld. Advocate for the O.P. stated that the petitioner was not entitled as she left voluntarily but their son was entitled.

Both sides have filed the affidavit of assets and liabilities.

It is quite clear that the marriage & the birth of their son have been clearly admitted by the O.P. Considering the above facts and circumstances as discussed, it appears that there is a prima facie case as made out by the petitioner by her petition under section 125 CrPC. One thing is to be kept in mind that in traditional Indian society it is highly unnatural for a wife to leave her husband's home unless compelled by circumstances and this itself, in the opinion of the Court, is sufficient ground to grant interim maintenance to the petitioner as she can be said to have out a prima facie case for getting relief. The provisions as well as a plethora of judgments of higher courts have amply made it very clear that an able bodied person, who has his wife to support, has to maintain her in any condition. Here also, the respondent is under a social, moral and legal obligation to look after his legally married wife, with a minor child. The respondent has contended that petitioner has her own source of income and she is able to maintain herself, but none of the parties have filed any cogent documents in support of their contentions regarding each other's income.

It was held by Hon'ble Supreme Court in *Jasbir Kaur Segal vs District Judge, Dehradun & others, (1997) 7 SCC 7*, wherein it has been observed that *no set formula can be laid for fixing the amount of maintenance. It has to depend on the facts and circumstances of each case. The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay keeping in mind his reasonable expenses for his own*

maintenance and those he is obliged under law to maintain, and statutory but involuntary payment or deductions. The amount of maintenance fixed for his wife such as she can live in reasonable comfort, considering her status and mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.

Considering all the above materials and submissions and considering the very initial stage of proceeding, and keeping in mind the present position of law, this court is of the view that the petitioner/wife is entitled to get interim maintenance from the OP / husband to the tune of Rs. 2500/- per month, i.e. Rs. 500/- for the petitioner & Rs. 2000/- for their minor child, till disposal of the case.

The Court feels that such amounts shall be sufficient for the petitioner to sustain herself for the time being.

Hence, it is

ORDERED

That the present application for interim maintenance allowance is hereby allowed in part in favour of the Petitioner but without any order as to costs.

Opposite Party is hereby directed to make payment of a total sum of Rs. 2500/- per month to the petitioner towards the interim maintenance allowance of herself and her their minor child @ Rs.500/- & Rs. 2000/- respectively towards each, from this date till disposal of this case.

The payment must be made within 10th day of each succeeding English Calendar month failing which, the petitioner is at liberty to realize the same through court.

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

Fix 03.11.2022 for payment and

12.1.2023 for evidence.

D/C by me;

JM,AMTA

J.O Code-WB01278

JM,AMTA

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