

Order Dated 06/08/2022

As specified in the previous order, today is fixed for passing order regarding interim maintenance petition.

Petitioner is present. OP is also present.

I have already heard the Ld. Advocates of both sides at length.

Case record is taken up for passing order.

Perused the petition praying for interim maintenance allowance .

The case of the petitioner in a nutshell is that she got married with the Opposite Party on 16.02.2007 according to Hindu rites and customs. After marriage she started residing at her matrimonial house and lived with the O.P. as husband and wife. In the year 2011 the maternal uncle of the petitioner who was issue less died and so the petitioner and the OP started residing at the maternal uncle's house. Petitioner states that after her marriage the brother of the petitioner constructed a sweet shop for the OP and the OP started earning from that sweet shop. Petitioner alleges that since last few years the OP has not been keeping contract with the petitioner regularly and he is having illicit relation with one woman named Madhumita Biswas. On being protested the OP assaulted her and went away. Thereafter, the OP again came and on different occasion assaulted her and also demanded Rs. 1 lakh from the petitioner. Petitioner states that her husband is an established businessman and has his own shop and supplies sweets and thereby earns Rs.30,000/- to 40,000/- per month. Thus, the petitioner has prayed for Rs.20,000/- per month towards her maintenance as interim maintenance allowance from the Opposite Party.

Per contra, the O.P. has by filing W/O against the petition denied the allegation of the petitioner. The O.P. however, admitted the factum of marriage with the petitioner. He admitted that he got landed property by virtue of gift deed from the maternal aunt of the petitioner. OP alleges that the petitioner and her elder brother jointly started a new business and they pressurized the OP to sell out his property and handover the money to them so that they can invest more in their joint business. On his refusal to do so, the petitioner threatened him. Regarding his income the O.P further states that he is a day labour of a sweet shop at Mahestala and thereby earns Rs.3500/- per month. Whereas the petitioner earns Rs. 10,000/- per month by running business with her

brother. Accordingly, the O.P. prays for rejection of the petition for interim maintenance.

From the submissions of the Ld advocates of the parties it reveals that the O.P. has not denied the fact of his marriage with the petitioner. Thus the factum of marriage is admitted. It is also evident that while deciding the question of payment of interim maintenance to a wife where relationship is admitted, this court is only expected to form a prima facie opinion as to the legality and validity of the petitioner's claim. If the contention of the opposite party as manifested in the W/O that the petitioner and her elder brother pressurized the OP to sell out his property and handover the money to them so that they can invest more in their joint business and on his refusal to do so, the petitioner threatened him and has willfully deserted the opposite party; has to be accepted then it is only after the entire evidence is led that an order for interim maintenance can be passed. That would defeat the very purpose of providing for payment of interim maintenance in Section 125 and hence the argument is required to be discarded at this stage.

At this stage another piquant question raised by the the opposite party needs to be addressed. The opposite party in his W/O submitted that the opposite party has a very little income and with that income it is practically impossible for him to maintain the petitioner. The law on this score has been clinched by now by the the pronouncement of the Hon'ble High Court in **Saili Halder vs Debaprasad Halder And other reported in 2005 (3) CHN 87** the Hon'ble High Court has observed that:

“ 8. Section 125 prescribes a summary procedure with a view to providing a speedy remedy against vagrancy and starvation of a deserted wife or child or indigent parents, the object being to compel a man to perform the moral obligation which he owes to society in respect of his wife, children and parents so that they are not left beggared and destituted on the scrap-heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence.

9. At the stage of hearing an application for interim maintenance which is generally disposed of on the basis of affidavit filed by or on behalf of the applicant stating the grounds in support of the claim for such maintenance, the Court is to satisfy itself regarding existence of a prima facie

case for making such an order. Where such a prima facie case has been made out, interim maintenance cannot be denied unless it is barred by any other provision.

10. Residing of the wife in a place on her own arrangement at the charity and mercy of others cannot be held to amount to discharge of the moral and legal obligation of the husband to look after his wife. The wife cannot be treated as a chattel. The word "maintenance" is not to be narrowly interpreted. It means the most reasonable requirement for existence of a person to live separate. As regards the above contention of O.P. relating to his receipt of a meager subsistence allowance of Rs. 830/- per month. the certificate produced by him reveals that his total subsistence allowance per month is Rs. 4720/-, out of which a major portion (Rs. 3500/-) is deducted for payment of building loan, GPF loan and co-operative loan and Rs. 340/- towards GIS and GPF contribution. If the above contention of the O.P. is taken into consideration, any person who is obliged to maintain his wife, children etc. by adopting the same recourse can avoid his solemn obligation to maintain and thus frustrate the very raison d'etre of the provision which is not permissible."

Thus projecting the alibi that the opposite party has a very meager income cannot exonerate the opposite party from his responsibility of maintaining his wife. It is axiomatic that the opposite party is an able bodied person and can work and earn his living. At this juncture a judgment of Hon'ble Madras High Court **Kandaswami Moopan v. Angammal AIR 1960 MADRAS 348(V 47 C 121)** demands mentioning here. In that case the Hon'ble Court held " So long as a man is able bodied and can work and earn his livelihood, it is his duty to support his wife. Therefore notwithstanding the fact that a husband may be insolvent or a professional beggar or a minor or is a sadhu or monk, he must support his wife so long as he is able bodied and can eke out his livelihood and support his wife."

Also the allegation and counter allegations of the parties is a matter of evidence which cannot be gone into at this stage because the proceeding is at its threshold. In presence of a strong prima facie

case to go for trial, it can be said that the petitioner being the legally wedded wife is entitled to some interim maintenance for herself.

Now the question germane for consideration is what should be the amount of maintenance. As held in **AIR 1994 Del 234 [Neelam vs. Rajindra]** there can be no precise or settled formula to assess the quantum of interim maintenance. There is no strait jacket mathematical formula to precisely calculate any accurate amount to be given as interim maintenance. One thing however is clear and that is the opposite party being an able bodied person and working and being the husband of the petitioner is bound both socially and legally to maintain his wife.

It is a settled fact that the provisions of maintenance have been embodied in the Code of Criminal Procedure as a measure of social justice to protect the women and children of the society. 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 them in any condition. Here also, the O.P is under a social, moral and legal obligation to look after his legally married wife and maintain her. This has been clinched by catena of judicial pronouncements that there having no fixed and inflexible formula, what should be the quantum of maintenance is based on the discretion of the court but the court while exercising such discretion is duty bound to take a just view of the matter and to see that it does not rehabilitate a party at the cost of the other and leaving the other side destitute. However the soaring price index and the spiraling prices of articles of daily consumption must also be considered while considering the amount of maintenance. In the instant case the OP has contended that the petitioner earns Rs. 10,000/- per month by running business but he could not submit any document to show the same.

In presence of a strong prima facie case to go to trial and considering all the facets of this case, and in view of the present social scenario as well as the status of both the parties and taking into note all other facets of this case, I am of the opinion that the petitioner/wife is entitled to get interim maintenance from the O.P/husband to the tune of Rs.2000/- per month for herself. I think that such amount shall be enough for the petitioner to sustain herself for the time being till final order.

Hence, it is Ordered

That the petitioner's application for interim maintenance succeeds on contest in part. The O.P is hereby directed to pay Rs.2,000/- per month to the petitioner as interim maintenance for herself from the date of passing this order till the final disposal of this case.

Such amount has to be paid within the 10th day of each succeeding months for which it becomes due.

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

To _____ for evidence of Petitioner.

D/C by me;

***Judicial Magistrate, 2nd Court
Uluberia, Howrah***