

Order dated :-
07.03.2024

Today is fixed for interim order and evidence.

The aggrieved person is present by filing hajira.

Respondent No. 1 is present.

Ld. Advocates for the both sides are present.

The application u/s 23 D.V. Act is taken up for consideration and passing order.

Heard the Ld. Advocates for both sides in full including the documents relied upon and the affidavit of assets and liabilities.

The contention of the aggrieved person is that she is the legally wedded wife of respondent no.1 and their marriage was solemnized on 04.03.2022 as per Hindu Rites & Customs on negotiation. The marriage was also registered under Special Marriage Act, 1954, before the marriage officer on 24.05.2022. At the time of marriage, cash of Rs. 50,000/-, gold ornaments about 40 grams, box khat, dressing table, Almirah and various other articles were given. During living with the respondents in a shared household, she suffered physical and mental torture, abuse etc. The respondents were not happy with the jewelry and household articles provided by the petitioner's family. So, the respondents used to taunt and insult her constantly. The respondents also demanded money of Rs. 1 lakh from the petitioner and the petitioner arranged that money and paid them on 28.03.2022. But the respondents further demanded more money and on denied by the petitioner, the respondents tortured her physically. Soon after marriage the respondent no. 2 forced the petitioner to do all the household work without any support from anyone. Even she was forced to do work at the time of her illness. The petitioner continued to tolerate this, thinking that the respondents will change in future but in vain. Even the respondents did not provide proper food to the petitioner. The respondent no. 1 was a habitual drunker and used to come back home at late night and thereafter, used to abuse the petitioner. On 11.02.2023 at about 6:30 PM the respondent no. 1 returned home in drunken condition and violently assaulted the petitioner, kicked on her belly and all the respondents taken all her stridhan property forcefully and had driven out from her matrimonial home. She has been staying at her paternal house. Since her separate staying the respondent no. 1 has not taken any news of her and nor provided any maintenance to her. On the other hand, the respondent no. 1 is an able bodied person and he is a well established jewelry businessman and has well furnished and well decorated jewelry shop in the name and style 'Dhara Jewellers' at Bagnan from where he earns Rs. 40,000/- per month and he also has money lending business, from this he earns Rs. 20,000/- per month. He also earns Rs. 10,000/- per month from interest of various banks per month. He also has pucca dwelling house, land, garden etc. So, he totally earns Rs. 80,000/- per month.

The aggrieved person is unable to maintain herself and she has no independent source of income. She is spending her livelihood on the charity of her parents. On contrary, the respondent no.1 has sufficient means but he refused to maintain the aggrieved person. She has prayed for the relief of interim maintenance from Respondent No.1 as per the prayer portion of the petition.

On the other hand, the respondent No.1 appeared and file W/O with affidavit of assets and liabilities denying and disputing all the material allegations except the marriage as stated in the complaint. The application under D.V. Act is not maintainable at all as there is no cause action whether any domestic violence has been caused or not. The allegations as raised by the aggrieved person are baseless. They labeled some allegations against the aggrieved person. Respondent no.1 has denied the income as stated by the aggrieved person. He has a shop inherited from his father and he does repairing work of ornaments in the said shop and earns Rs. 5000/- to 6000/- per month. From that income, he has to spend Rs. 1500/- for his mother's treatment. On the other hand, the aggrieved person is living at her father house according to her own will. She works as a Senior Nurse at sunflower Hospital (Nursing Home) at Bagnan and she has illicit relation with a doctor of that nursing home. The aggrieved person gets salary of Rs. 25,000/- per month from the said nursing home and also earns Rs. 15,000/- to Rs. 20,000/- from the said doctor. Hence, he has prayed for refusal of the prayer.

I have given my attention to the submissions of both the Counsels and materials on record.

Having considered the submissions and on careful scrutiny of the record, it appears that the marriage in between the parties is not disputed. Presently, the aggrieved person is residing with her parents. It is no doubt prima facie that the parties are residing separately.

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It also appears that after marriage, the aggrieved person and the respondent no.1 started to lead their conjugal life at her matrimonial home in a common mess with other respondents as admitted by both sides. The respondent no.1 has denied the quantum of income and domestic incidents as stated by the aggrieved person.

At this stage, without delving deep into the allegations and counter allegations, I am of the opinion that it is the incumbent upon the respondent no.1 to maintain his wife and to fulfill her basic needs as per his status. The respondent 1 once admits the marriage, he cannot escape his liability, save and except as provided in the provision which is yet to be proved. There is nothing on record to help me ascertain the source of income of both sides as submitted. Regarding the accommodation and other claims of the aggrieved person, I am not inclined to allow the prayer without going through the evidence. Again, whether any domestic violence has been caused upon the aggrieved person or not is a matter of trial. But, the purpose of giving interim maintenance during pendency of the proceeding is to save the life of the aggrieved person.

Considering the material available on record and need of the hour and present status of the parties, I am of the opinion that the aggrieved person is entitled to get interim monetary relief till the finality of this case. Thus, considering the status, position and present market price, I am inclined to pass an order in favour of the aggrieved person for allowing interim monetary relief for her livelihood. Regarding the prayer of litigation cost by the aggrieved person in my view it shall be considered at the time of trial.

Hence, it is

ORDERED

that the petition u/S 23 of D.V. Act is hereby allowed on contest and the same is accordingly disposed of without any order as to costs.

The respondent no.1 is hereby directed to provide maintenance of Rs.,5,000/- per month to the aggrieved person inclusively within 10th day of each calendar month from the date of filing of this case, i/d the aggrieved person is at liberty to put the order in execution. The arrear amount will be cleared within two months from this day.

Let a copy of this order be given aggrieved person free of costs.

Fix 21.08.2024 for evidence.

D/C by me

JM 2nd Court Uluberia

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