

MC 217/2020
CNR NO. : WBHW120022852020
J.O. Code : WB01208

ORDER Dt. 08.04.2022

Today is the date fixed for passing interim order. Both the parties are present along with their Ld. Advocates and files hazira.

On the last occasion interim petition heard in full. The factum of the case in nutshell is that the present marital knot which is admittedly lawful and valid one as well as the second marriage of either side. The petitioner have one male child (major) and a daughter (minor) i.e. petitioner no.2 from the spouse of her earlier marriage. It is claimed by the petitioner that the O.P. assured her prior marriage that he will take all the liabilities of her children from her first marriage which ultimately not kept at all by the O.P. According to her the O.P. did not care of them rather tortured her and finally drove them out and then after never take any news of them nor paid any maintenance in spite of having enough financial capacity being a businessman of hardware with having earning of Rs.50,000/- per month. On the other hand she has no means of any income. O.P. denied all the allegations including any pre-promise of taking accountability towards the children from the first marriage of the petitioner. It further claimed that the petitioner never played the role of a true wife and is in habit of leading a lavish life which he failed to afford as he does earn Rs.2,000/- per week being a simple fitter of Aluminium windows. According to him, petitioner has own income being a ladies tailor as well as income from the property of her previous husband. Finally, it is stated that he never drove them out rather the petitioner at per own will left her matrimonial home and in spite of several effort of O.P. the petitioner preferred not to come back.

Having heard both sides and after perusal the materials on record, it appears to me that the Interim maintenance application is allowable but whether the same should be allowed for both the petitioner and the minor daughter who admittedly happens to be the stepchild of the present O.P. that to be determined first. This case is under Section 125 Cr.P.c which undoubtedly a beneficial legislation for the benefit of the beneficiaries. So, let this court to list out the beneficiaries as stated in the particular provision of law. Now, it's time to go through the text of the particular provision of law.

Section 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 rate¹* * * 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 of 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 of 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 months 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 ⁵[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 in 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.

STATE AMENDMENTS

West Bengal

In Sub-section (1) of section 125 of the Principal Act, --

(1) for the words "five hundred rupees", the words "one thousand and five hundred rupees" shall be substituted;

(2) after the existing proviso, the following proviso shall be inserted:--

"Provided further that where in any proceeding under this section it appears to the Magistrate that the wife referred to in clause (a) or the minor child referred to in clause (b) or the child (not being a married daughter) referred to in clause (c) or the father or the mother referred to in clause (d) is in need of immediate relief for her or its or his support and the necessary expenses of the proceeding, the Magistrate may, on the application of the wife or the minor child or the child (not being a married daughter) or the father or the mother, as the case may be, order the person against whom the allowance for maintenance is claimed, to pay to the petitioner, pending the conclusion of the proceeding, the expenses of the proceeding, and monthly during the proceeding such allowance as, having regard to the income of such person, it may seem to the Magistrate to be reasonable."

[Vide West Bengal Act, 25 of 1992, s. 4.]

West Bengal

In sub-section (1) of section 125 of the principal Act, as amended by the Code of Criminal Procedure (West Bengal Amendment) Act, 1992, the words "not exceeding one thousand and five hundred rupees" the proviso shall be omitted.

[Vide West Bengal Act 33 of 2001, s. 3.]

Thus, within the four corners of this provision of law the persons who can claim and eligible to get maintenance subject to conditions, are: **1) Wife 2) legitimate or illegitimate child (not being a married daughter) 3) Father & 4) Mother.** It is evident that all the beneficiaries are the persons who are either related by blood or by marital knot. There is no room for stepchild and in **Manjulaben Prakashbhai Sarvaiya Vs. State of Gujarat, 2015 (3) GLH 359** it is held that the step daughter has no right to claim maintenance under section 125 Cr.P.c. from her mother and according to the Honb'le Supreme Court in **Kirtikant D. Vadodaria vs. State of Gujarat and another [(1996) 4 SCC 479]**, a stepmother is a distinct and separate entity and cannot be equated with the natural mother who has given birth to a child though a childless stepmother is entitled to claim maintenance from her stepson **provided she is a widow or her**

husband, if living, is also incapable of maintaining her. So, the position is that a stepmother can claim maintenance from stepson but on fulfilment some conditions otherwise not. It is held in *Chinubhai Bhikhabhai Solanki Vs. State of Gujrat*, *Manjulaben Prakash Bhai Sarvaiya Vs. State of Gujrat*. It is thus, Section 125 contemplates blood relation which gives rise to moral and legal obligation to maintain a person. The very provision of law as texted in section 125 Cr.P.c is simple, unambiguous and clear enough and this court being a subordinate court keeping in mind the very principle "the duty of the judge is to apply the law, not to make it" is not competent at all to step out the area of the law of the land.

Both the parties relied upon the same verdicts as hereinbefore mentioned and discussed.

Neither of the parties denied the factum that on plain reading of the particular provision it is clear and specific that the whole provision dealt with two parties who either related to marital knot or by blood relation. Accordingly, this court would like to draw only in respect of the petitioner and not in respect of the minor girl child who happens to be stepchild, pending disposal of the case for the following reasons including the discussion already made hereinbefore:-

1. The marriage is admitted by both sides (the O/P has admitted in his W/O that in 2012 marriage with the petitioner be taken place as per Muslim rights and customs).
2. Paternity of petitioner no. 2 i.e. the minor girl child as stepfather is also admitted factum by either side.
3. The petitioner has been residing in her parents' house since 15.10.2020 i.e. the day of alleged incident of driven away (O.P. confirmed their separate living though did not mention any particular date of such).
4. The O/P is not maintaining the petitioner.
5. Both sides' allegations against each other are subject to full-fledged trial.
6. The very purpose and scope of the legislative intention U/s 125 Cr.P.C is to provide the maintenance (either interim or permanent) to avoid the restitution and urgency of the petitioner and during pendency, the litigation costs or day to day cost of the case also permissible and comes under the ambit of this Section.
7. Pending disposal of this case and any other involved issues, this court has jurisdiction to grant Interim maintenance allowance till disposal of the case.
8. The petitioner has no income of own as there is no evidence to this end.
9. It can be presumed that the O/P is an able bodied person in absence of any adverse claim and O.P. claimed

regarding profession that he does work as fitter of Aluminium windows and does earn Rs.8, 000/- per month, though according to petitioner, the O.P. does earn Rs.50,000/- per month from his hardware business.

10.Both sides filed affidavit as per the direction of Hon'ble Apex Court.

Hence, it is

Ordered

that the application for interim maintenance by the petitioner is allowed in part only in favour of the petitioner no.1 i.e. Nazima Begum on contest and finally disposed off.

The O/P is directed to pay an amount of Rs. 2,000 (rupees two thousand only) p.m. to the petitioner as an interim maintenance allowance according to the English calendar by the 10th of each succeeding month till the disposal of this case in default of which petitioner would be at liberty to take recourse to law.

This order would have an effect from the date of filing of the petition of interim maintenance.

O/P is also directed to pay the arrear interim maintenance allowances which becomes due to the petitioner by dint of this order, to the petitioner within a span of eight (08) months in eight (08) equal instalments from this date.

Let a copy of the order of interim maintenance be given to the petitioner, free of cost, as per the provision of Section 128 of the code.

Fixing **27-06-2022** for evidence of the Petitioner.

Both side to come prepared.

D/C by me.

Sd/-Manojit Sarkar

J.M. 1st Court Uluberia

Sd/-Manojit Sarkar

J.M. 1st Court Uluberia