

## M – 233/2022

Order dated :-  
25.09.2023

Today is fixed for order.

Both the sides are present by filing hajira.

Heard the Ld. Advocates for both sides in full.

Now, the record is taken up for passing of the order.

The contention of the aggrieved party is that she is the legally married wife of respondent and she has filed a petition u/s 125 Cr.P.C claiming maintenance for herself and her two children on the ground that they are staying on the mercy of her parents and the respondent no.1 is not paying any maintenance towards herself and her children. The specific contention is that their marriage was held on 21.04.2005 as per Hindu rites and customs. At the time of marriage Rs. 1,50,000/- cash, cot, bed, bedding, five bhories gold ornaments were given. After marriage, the aggrieved party along with her all stridhan articles went to her matrimonial home and started residing in a joint family. During leading conjugal life she gave birth two female children namely Srija Saha (14 years) and Shrestha Saha (9 years). But within few days of their marriage, the respondent used come back home in drunken condition and verbally abused her with filthy languages and demanded further money Rs. 1,00,000/- and due to not providing the same he along with his inmates started inflicting inhuman torture both physically and mentally upon her. In hope of better future she continued her conjugal life. The respondent no.1 sometimes took some unknown ladies to home and stated to marry them and when she raised protest against such act, the respondents tortured her physically and mentally. The torture upon the aggrieved party became increased day after day. When the parents of the aggrieved party asked about torture upon the aggrieved party, respondents promised not to inflict torture upon the aggrieved party in future but again they demanded money and also tortured again. Thereafter, respondent no.1 started residing at Latipur after constructing house there for which money was provided by her father. When her elder daughter raised protest the illegal act of the respondent no. 1 he threatened to drive them out. Even the respondents often used to take alcohol with his friends in the house and asked the aggrieved party to join with them. He also forced her to make physical relation with unknown males. He also assaulted her on 15.04.2022 and was treated at Uluberia Hospital on 16.04.2022. Since then she along with her children have been compelled to residing at her paternal house. Since then the respondent no. 1 did not inquire about them. Lastly, she lodged the complaint and on the basis of which Uluberia Women PS case 65/22 u/s 498A/323/307/406/506/34 of IPC was initiated. Both the children of the aggrieved party have been studying in school. She has no source of income. On the other hand the respondent is a Police officer and earns Rs. 50,000/- per month. On the ground the aggrieved party needs at least Rs.8,000/- per month for herself and Rs.5,000/- each for her children per month for maintenance to meet the day to day expenses in the days of high market price.

By submitting W/O, the respondents have stated that this case is not maintainable either in law or fact. The aggrieved party has no cause of action. The allegation has been made falsely and frivolously against the respondents with an intention to harass the respondents. The aggrieved party left her matrimonial house on her own accord despite several requests by the respondents not to leave his house. It is contended by the respondent that the aggrieved party got married with him after knowing his economic status. The respondent no. 1 is a constable and earns Rs. 40,000/- per month and he has some liabilities of loans and monthly premium. He also purchased 2 kathas of land by taking loan from his friend in the name the aggrieved party no. 3 and the present valuation of the said land is Rs. 1,50,000/-. Further, the aggrieved party no. 3 working at Uluberia SD hospital as Supervisor of computer section on contractual basis and she earns Rs. 15,000/- per month. The aggrieved party no. 3 has sufficient means to maintain herself and her minor daughters. He is ready to get back the aggrieved party no. 3 and their siblings and for that he filed a case for Restitution of Conjugal Rights. She left her own accord on 27.06.2022 with her father after assaulting him and using filthy languages.

Heard, considered, perused the material relied upon both sides including the documents.

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Order dated :-  
25.09.2023(contd.)

Though the respondent has denied all the allegations of the aggrieved party no. 3 but the marriage and the paternity of the children are admitted. It is also not disputed at this stage that the aggrieved party has been residing with her parents.

But, there is no single documents regarding income of respondent except the affidavit of assets and liability.

Considering the submission of both sides and materials available on record, it appears to me that certainly there is a reason for this rift between the parties.

Whether the aggrieved party was subjected to cruelty on demand of dowry, neglected or has left the matrimonial house voluntarily cannot be decided at this stage in the absence of evidence. There are other allegations and counter allegations as well which at this stage in the absence of any evidence cannot be taken into for discussion and consideration. The respondent has not denied the marriage, so the first and foremost criteria for awarding maintenance is fulfilled.

The aggrieved party submitted that she does not even have any income and is dependent upon her parents whereas the respondent is an able bodied person having monthly income of Rs. Rs.50,000/- from his profession. As such, she has claimed interim maintenance of Rs.8,000/- per month for herself and Rs.5,000/- each for her children per month. The respondent has denied the earnings as mentioned by aggrieved party and he has stated that he earns Rs. 40000/- per month having other liabilities and loan payment and the aggrieved party no. 3 earns Rs. 15000/- per month from her contractual job.

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 minor daughters and to fulfill their 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 the respondent no.1 except the submissions made by both the parties. Regarding the accommodation and other claims of the complainant, I am not inclined to allow the prayer without going through the evidence. Again, whether any domestic violence has been caused upon the aggrieved party no. 3 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 party no. 3 and her minor babies.

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 parties are entitled to get interim maintenance 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 parties for allowing maintenance for the for their livelihood. Regarding the prayer of litigation cost by the aggrieved parties in my view it shall be considered at the time of trial.

Hence, it is

**ORDERED**

that the interim application is allowed in part on contest without any order as to costs. The respondent no. 1 is directed to pay Rs.5,000/- each per month to the aggrieved party and her minor children from the date of filing of this case as interim maintenance payable within 10<sup>th</sup> day of each succeeding month for which it falls due till the disposal of this case.

In default, the aggrieved party no. 3 is as liberty to put the order in execution to realize the amount as per law.

Thus, the interim application is hereby disposed off.

Let a copy of this order be supplied to the aggrieved party no. 3 free of cost.

Fix 21.03.2024 for evidence.

D/C by me

J.M. 2<sup>nd</sup> Court Uluberia

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