

MC – 359/2022
CNR NO. : WBHW120041612022
J.O. Code : WBJ01491

Order dated : 24.02.2025

Today is fixed for show cause by petitioner for taking no step after court has ordered her to appear before him for giving some clarification regarding her interim application as the petitioner is the conducting advocate in the present case and without her clarification, this court was unable to pass any order, otherwise, the petitioner would have sustained irreparable loss.

But it is surprising to see that, after giving several chances to the petitioner, she is unable to appear personally before this court for giving further clarification as the petitioner in the instant case she is the conducting advocate on behalf of petitioner and thus for eradicating some doubts regarding her interim application, this court on 08.11.2024, 24.01.2025 and 29.01.2025 directed her to appear before this court to clarify some doubt before passing the interim order against her application, but, the petitioner did not bother to appear before this court and due to non obedience of judicial order, this court on 29.01.2025 issue show cause upon her to further appear before this court and help out this court to clarify the doubts in order to pass the interim order.

Today the petitioner has filed a show cause before this court and appeared. This court sought clarification from the petitioner as she is the standing counsel on behalf of petitioner in the present case and thus after seeking clarification, this court today will pass the n/o in respect of interim application. The OP also files hazira. That, petitioner takes no step.

The show cause is given by petitioner is not satisfactory as in her show cause, she never mentioned that why on last date, on 29.01.2025, she has not appeared in the court personally for giving further clarification, but, following the principle of natural justice, this court kept the unsatisfactory show cause with the record and today pass the interim order as sought clarification today from the advocate petitioner.

Ld. advocate for the petitioner stated that she legally married with OP on 06.05.2019 at Bauria, Howrah and on 17.05.2019, their court marriage was solemnized and at the time of marriage, 6 bhoori of gold ornaments including necklace, earring, ladies ring, churi, bangles, sankha pola, groom chain and finger ring along with almirah, bed, bedding, brass articles and a cash of Rs. 2,00,000/- along with cash of Rs. 25,500/- were given to the OP family and the petitioner went to her matrimonial house to stay with her husband, but, on dated 08.05.2019, after reception ceremony, the said OP member started mental and physical torture upon petitioner and also did not allow her to feed. That, at the night of reception day, on 08.05.2019, the said OP forcibly took nude picture of her in drunken condition and started blackmailing upon the petitioner for demand of further Rs. 3,00,000/- cash from her parents and threatened her with dire consequences. The OP further kept himself sexually safe so that, the petitioner might not get pregnant. That, the OP alleged that the father of the OP used to enter in her house at midnight to use their private toilet. Though, they had separate bathroom. The OP's family often used to slap and assaulted physically the petitioner and tortured him in various ways. That, during stay at her matrimonial house, the petitioner came to know that the OP has an illicit relationship with other ladies. The petitioner informed the matter to his family but the family of OP did not take any step but, further assaulted her physically and tortured her also and threatened her with dire consequences and they also tried to lock in a room. On 31.05.2019, the OP with his family forcefully driven out the petitioner from her matrimonial house and also demanded Rs.

3,00,000/- from the petitioner and snatched her marriage articles and kept it with them. That, the OP always used to abuse the petitioner physically and mentally. The petitioner tried to reconcile with the OP but there is no resolve between the both parties. That, on 18.08.2019, the petitioner lodged a GD Entry being no 700, dated 18.08.2019 at Bauria PS and lodged a written complaint being PS no 37/2020, dated 12.03.2020, U/s 498A/406/34 IPC and ¾ DP Act. That, in the circumstances, the petitioner has prayed before this court to pass **50,000/- rupees as interim maintenance** from the OP as the petitioner claimed the OP is a able bodied person and a sufficient income to pay the amount of maintenance.

The OP further filing written objection denied all the allegations made by the petitioner in his interim application and stated that the interim petition filed in order to harass him and hence it is liable to be rejected. The OP stated that she got married with the petitioner as per social marriage. That, the OP has no demand but the OP asked for marriage hall to be AC and the family of the petitioner agreed to such proposal and on 06.05.2019, the marriage date was settled and it was held in presence of both family members at Mangalik Hall, Bauria. That, on the day of marriage, after reaching in the place of marriage, the OP and his family members found that the said marriage hall was not AC accommodated as it proposed. But apart from such issue of AC of such marriage hall, there is no further dispute between the both parties and the marriage was held as per Hindu rites and customs with presence of family of both parties and it was registered officially on 17.05.2019. That, after completion of reception, when the OP reached to their house from the marriage hall, the petitioner started crying and said that her father along with her whole family felt very much insulted by the OP. That, the OP stated that the petitioner in trivial reason regarding the reception of her guest in the reception party gave several allegations upon the OP. That, few days when OP visited the house of the petitioner, then the petitioner again raised false allegation of insult of her. They further raised issue regarding misbehavior of the maternal uncle of the OP. That, the OP claimed that he has performed all the marital duties in favour of the petitioner. The OP alleged that the petitioner has no interest to stay with him and the petitioner at her own whims refused to come back in her matrimonial house and one day without being ask, she left her matrimonial house. That, OP claimed that he does not have any immovable properties in his name and he has income of rupees 78,308/- and her parents are dependent upon him.

The OP files a written objection along with file an affidavit on assets and declaration which is served to the petitioner by his written objection. The OP categorically denied all the allegations made by the petitioner in her application and denied all the allegations as they are groundless, frivolous and has no merits and prayed for dismiss the application.

Having heard both sides at length and after perusal the materials on record, it appears to me that the interim maintenance application is allowable pending disposal of the case for the following reasons:-

1. Both sides admit the petitioner and OP are husband and wife.
2. The petitioner has no income of own as nothing supportive came.
3. The O.P. is not maintaining the petitioner.
4. Both sides allegations against each other are subject to full-fledged trial.
5. 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 the case and any other involved issues. This court has jurisdiction to grant interim maintenance allowance until disposal of the case.
8. O.P. admitted that the petitioner is the wife of her and he has a salaried person. Though his parents are dependent upon him and he has no immovable properties of her own.
9. The interim maintenance petition is duly supported with an affidavit sworn by the petitioner.
10. Both sides filed affidavit as per the direction of Hon'ble Apex Court.
11. As per **section 144(1)(a)** of BNSS states that if a person having sufficient means to neglect or refuses to maintain his wife who unable to maintain himself or herself, then order can be passed in the monthly allowances provided the wife. In the instant case, it is admitted fact that there is a husband wife relationship between the both parties and OP admitted that he is the husband of the petitioner and their marriage was solemnised as per Hindu rites and ceremonies in presence of both parties and their marriage was also registered before the concerned authority. As per the provision the husband does not absolve the responsibility to maintain her wife at any circumstances, when she has no income of her own.
12. Heard the Ld Advocate of both sides on point regarding claiming of maintenance, it is appeared that in the present case in hand both parties have filed their respective affidavit on assets and liabilities and from the said affidavit, it shows prima facie that OP has monthly income of rupees 78,000/- per month and as per declaration is gross income Rs. 95,185/- and he used to pay income tax per month as Rs. 12,000/- per month and towards the PF, he pay Rs. 3,847/- per month and probate tax of Rs. 200/- per month to his calculation his net income is Rs. $(95,185 - 16877) =$ Rs. 78,308/-.
13. As per direction of Hon'ble Apex Court **Kalyan Dey Chowdhury vs Rita Dey Chowdhury**, the wife is entitled 25% of the net salary of the husband as maintenance to live a standard of life she used to enjoy before. The petitioner has submitted a document regarding his resignation letter dated 01.06.2023 indicating to left the job from the TCS, Kolkata. The document and the photograph filed by the respondent prima facie shows that she has been subjected to torture.
14. However, considering the fact regarding the fixation of quantum of interim maintenance, the court further take consideration of amount of maintenance and other factors like status, position, social custom, way of the live, the community which they bringing, educational life, standard of life and the requirements in relation they are too. Another crucial factor with court is to take note of quantum of maintenance is fixed in any way either to luxurious or penurious to the parties.
15. In this case, at hand from the application of interim maintenance and prima facie submission of both parties, it shows that petitioner has alone been shouldering the burden of expenses of herself and passing her days depending upon her father. It is true and undeniable that when he becomes the husband of a lady, has to saddle the responsibility to provide her good innocent life. If that be so, she is entitled to have

the amount to the tune that would enable her to live the life of that standard which her husband would have provided. Had she been living with him in particular, when her husband happens to be a able bodied person therefore if the maintenance order is passing against the petitioner from the date of passing of this order. Thus she is entitled to get maintenance from the date of this order. The petitioner who has passed all her days in penurite she left her days in her matrimonial house by her husband cannot be left high and dry. The petitioner is not supposed to have her bread and butter from her parents when her husband is alive. Considering the fact and circumstances of the case, the prayer is made on the application U/s 125 of the Code from the date of filing of this case.

16. Upon considering the case on record this court at this stage has not found any exact document like salary slip or invoice regarding the current income of the OP apart from the affidavit filed by the petitioner and OP. That, when the petitioner was called up before this court to find out the current salary slip regarding the income of OP but she failed to provide any current salary slip of the OP or she failed to provide other any landed properties or any other properties of the OP. Further it is also bounden duty of the OP to maintain her mother in no matter what but the quantum of maintenance must be considered after observing supported and corroborating documents. From the instant case, the petitioner though claimed by her affidavit and previous that the OP has income of Rs. 78,308/- per month.

Hence it is ordered that the application for interim maintenance by the petitioner is allowed on contest and finally disposed off. The O.P. shall pay @ Rs 17,000/- p.m. to the petitioner as interim maintenance allowance according to the English calender 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 ten (10) months in ten (10) equal installments from this date.

The instant application is disposed off.

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 02.06.2025 for evidence of PW-1.

Both sides to come prepare.

D/C by me

J.M. 1st Court Uluberia

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