

M. 329/2022 (Reg. No. 329/2022)

Order dt. 27-12-2023.

Both sides file respective hazira. Today is fixed for order in respect of interim maintenance. The record is taken up for passing order.

The petitioner has filed the instant case u/s. 125 of Cr.P.C and by the petition for interim maintenance she has prayed for interim maintenance to the tune of Rs. 15000/- a month for herself and cost of Rs. 1000/- for the proceeding from the O.P. stating inter alia that the petitioner was married to the O.P. according to Hindu rites and ceremonies on 05-03-21 followed by registration on 08-03-21 and after the marriage she led conjugal life with the O.P. at her matrimonial home. During her conjugal life she was subjected to physical and mental torture by the O.P. and his relatives on demand of more dowry. Ultimately on 20-09-22 she was driven out of her matrimonial home. The matter was reported to Kakdwip P.S. and the petitioner took shelter to her paternal home. She has been passing her days in hand to mouth condition as she no independent source of income. The O.P. has not looked after her since then. He has also not provided any financial assistance for her maintenance. The O.P. is a distributor of Dollar company and he earns Rs. 40000/- a month.

The O.P. has filed written objection against the application u/s. 125 of Cr.P.C. and his objection against the interim maintenance is also based upon the same. The O.P. has denied all the material contentions of the petitioner save and except that of marriage between the parties. The specific objection of the O.P. is that during conjugal life of the parties the petitioner used to create tension in family life. She was in the habit of going away to her paternal home without informing anyone. She used to lead whimsical lifestyle and did not perform her household duties at all. Ultimately on 20-09-22 the petitioner went away to her paternal home voluntarily. The O.P. made futile attempts to bring her back as the petitioner disclosed her reluctance to continue conjugal life with the O.P. The O.P. is a day labour by profession. He earns only Rs. 4000/- a month. He has all along been willing to reside together with the petitioner.

Both sides have filed respective affidavit of assets and liabilities in consonance with their respective pleading.

At this stage the real dispute relevant to the present proceeding cannot be decided. The disputed matters involved in the case relevant to the present proceeding are to be decided during trial upon evidence adduced by the parties. This is a proceeding u/s. 125 of Cr.P.C. and in the present proceeding the intricacies of marital discord and its reason need not be gone into to decide which spouse was at fault. **Hon'ble Supreme Court** in its decision in the case of ***Sunita Kuchwaha vs. Anil Kuchwaha*** as reported in **(2014) 16 SCC 715** has been pleased to observe that *the proceeding under section 125 Cr.P.C. is summary in nature. In a proceeding under section 125 Cr.P.C., it is not necessary for the Court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into.* Nowhere in his written objection the O.P. has claimed that he is not an able bodied person. Moreover, from the very contents of the same it appears that the O.P. is an able bodied person. An able bodied person has liability to earn sufficient means to maintain his wife. **Hon'ble Orissa High Court** in its decision in the case of ***Basanta Kumari Mohanty vs. Sarat Kumar Mohanty*** as reported in **1982 CrLJ 485** has been pleased to observe that *no doubt an order under section 125 can be passed only if a person having sufficient means neglects or refuses to maintain his wife, child, parents etc. It is, however, well settled that the expression 'means' occurring in Section 125 does not signify only visible means, such as, real property or definite employment and if a man is healthy and able-bodied, he must be held to be possessed of means to support his wife, child etc.* The views expressed in ***Basant Kumari Mohanty's*** case was duly approved by the **Hon'ble High Court at Calcutta** in the case of ***Ali Hossain vs. Baby Farida Khatoon*** as reported in **1998 CrLJ 2762**. The underlying principles of section 125 of Cr.P.C. mandate for prevention of vagrancy and the same is a beneficial legislation. **Hon'ble Supreme Court** in the case of ***Captain Ramesh Chander Kaushal vs. Mrs. Veena Kaushal & Others*** as reported in **(1978) 4 SCC 70** has been pleased to hold that *this provision is a measure of social justice and specially enacted to*

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contd.

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protect women and children and falls with the constitutional sweep of Article 15 (3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must infer interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause – the cause of the derelicts. Marriage between the parties is admitted in this case. The petitioner has filed the instant case praying for maintenance for herself from the O.P. The application for interim maintenance is also supported by affidavit. Considering all aspects, at this stage I do not find any sufficient reason to refuse the prayer for interim maintenance allowance. In view of the decision of the **Hon'ble Supreme Court** in the case of **Rajnesh vs. Neha** as reported in **(2021) 2 SCC 324**, law mandates that the maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meager that it drives the wife to penury. The sufficiency of the quantum must be adjudged so that the wife is able to maintain herself with reasonable comfort. In view of the decisions of the **Honble Courts** as referred above the O.P., being an able bodied person, has liability to earn sufficient amount to maintain his wife. Considering the status of the parties as transpired from the materials on record and the cost of living now a days and also the decisions of the **Hon'ble Courts** as referred above, I am of the view that it would be just and proper to direct the O.P. to pay monthly allowance of Rs. 3000/- as interim maintenance for the petitioner. In light of the ratio laid down by the **Apex Court** in the case of **Rajnesh vs, Neha**, I am also of considered view that the order for interim maintenance should be effective from 13-10-2022 i.e. the date of filing of the present application. I am also inclined to hold that the petitioner should get Rs. 500/- as one time cost for the present proceeding. In the result the application for interim maintenance succeeds in part.

Hence, the prayer for interim maintenance is allowed in part on contest with cost.

The O.P. is hereby directed to pay Rs. 3000/- a month as interim maintenance allowance with effect from 13-10-2022 within 10th day of each successive English calendar months and also Rs. 500/- as one time cost for the present proceeding to the petitioner. The O.P. is also directed to pay the entire amount of interim maintenance allowance and the amount of cost within fifteen days from the date of this order, failing which the petitioner will be at liberty to realize the entire amount of arrear along with the current amount of the interim maintenance allowance and also the amount of cost by putting this order into execution.

To 11-07-2024 for evidence of P.W.s.

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

Typed and printed by me.

Sd/-

A.C.J.M., Kakdwip.

Sd/-

A.C.J.M., Kakdwip.