

M.R. Case No. 262 of 2024

**In the Court of Judicial Magistrate, Additional Court, Lalbagh,
Murshidabad**

**Present :- Shrinivas Prasad Shah
(J.O. Code :- WB01299)**

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Order Dated:- 18-11-2024:-

1. As stipulated by previous order today is fixed for W/O and interim hearing.
2. Both the parties are present by filing their respective hazira.
3. O.P. files W/O. Copy served. Let it to be kept with record.
4. Now the record is taken for passing hearing of interim maintenance petitioner.
5. The story of the petitioner namely Afroja Khatun is in brief is that she married to the O.P. husband namely Safikul Islam 5 years ago from the filing of instant case, as per Muslim Rights and customs. At the time of marriage the petitioner's father spent in cash and in kind and besides the jewellerys and other personal effects have also been handed over to satisfy the demands of the O.P. and his parents and after marriage petitioner went to her matrimonial house to lead conjugal life. Out of the said wedlock two male child namely Saleman Islam and Momin Sk were born.
6. The petitioner described the O.P. as a wealthy man having pucca and landed property and he used to work as Rajmisti. The version of the petitioner is that the O.P. a handsome income more than Rs. 60,000/- per month.
7. There are vivid description of matrimonial cruelty at the husband's place at her matrimonial house. There are stories of manhandling by the O.P. and serious negligence about the welfare of the petitioner at the matrimonial place. On 20-01-2024, O.P. drove petitioner and her child on demand of dowry. Later Salish took place but the same has been failed.
8. There is description of negligence upon the minor child about his well-being by the O.P. and it is attempted by the petitioner to persuade this court to fathom her agony by the ill treatment given by her husband in spite of knowing the fact that the father of the petitioner being an aged person and poor person would be unable to look after his daughter and grand son.
9. Discontent and bemused unhappiness cropped up regularly but doused with the hope of settlement which never lasted permanently and finally they got separated by way of divorce. At present the petitioner is at the mercy of her parental home.
10. The petitioner prays for interim maintenance of Rs. 10,000/- for herself and Rs. 5,000/- for her each minor sons.
11. The O.P. husband appeared and filed written objection and categorically denied all these stories of manhandling and torture alleged to be initiated by him but admitted the marriage and paternity of children.
12. The O.P. explained that the petitioner was disrespectful to his parents and under the influence of her father forced the O.P. to leave his parents to stay at a separate place. It is further stated by the O.P. that the petitioner left him voluntarily.
13. Although the O.P. has explained and exclaimed that he was careful about the welfare and well-being of his daughter and son and registered

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his objection before this court on the premises of extraordinary planning and ploy on the part of his wife but there is no document to substantiate his argument that he was careful and duty-bound at least upon his son. O.P. tried to take back her and son. O.P. further contended that petitioner is married with another person and residing with him. O.P. further contended that he is daily labour and he used to earn Rs. 350/- to per day and he used to get work for 10 to 12 days. And has monthly income of Rs. 3,000/- to Rs. 4,000/-

14. On such hearing perusal and consideration following facts become clear to this court as broad daylight:
15. Petitioner in this case Afroja Khatun is admittedly the legally married wife of the sole opposite party Safikul Islam.
16. Sole opposite party in this case Safikul Islam is admittedly the father of the minor issues of petitioner namely, Saleman Islam and Momin Sk.
17. There is no challenge as to marriage in this case. There is no challenge as to paternity as well.
18. It is not the case of lone opposite party Safikul Islam that he is a man with physical disability that prevents him from earning his livelihood. In fact, on the contrary, it is in admission in this case that the lone opposite party has a definite source of income. Accordingly, it is in admission in the case that the lone opposite party has capacity of earning his living.
19. Although O.P. has contended that petitioner is married with other person and but no documentary evidence has been filed. However, the same is matter of trial.
20. It is not the case of the lone opposite party that they are living separately by mutual consent.
21. It is not the case of the lone opposite party that he does not bear any responsibility to maintain the petitioners. It is not the case of the lone opposite party that he has in any manner tried to maintain the petitioner since they have been maintaining separate societies.
22. I am of the humble view that there is prima-facie material to observe that there is negligence of maintenance of both the petitioner and her minor son. I am not invested in this case to inquire about the torture or manhandling exercise upon the petitioner at her matrimonial place but if there is presence and occurrence of such torture then that may be considered the missing link with the fact of the petitioner's present place of stay. In course of final hearing of this maintenance case the OP husband will have full opportunity and liberty to her with credible evidence on the point of his defence which is categorically denial of manhandling, willful abstinence of the wife from the matrimonial responsibility and his alleged point of income.
23. Petitioner had brought some allegations against respondent and there are counter allegations by the O.P. but such allegations are matter of evidence and no conclusion can be drawn from the same at this stage. But the allegations as made by the petitioner, if true, constitute a just ground for her to live separately from her husband. So she is entitled to claim maintenance under the second proviso of Sec 125 (3) of Criminal Procedure Code notwithstanding the fact that she is residing separately from the opposite party. However, at this stage I am of the view that the petitioner is have a very good right and entitlement to be maintained by

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her husband and so the minor Son. There is no document in regard to the income of the husband.

24. All the above facts being well established what remained was application of the settled provision of law that every “ablebodied person” was bound to maintain his wife and minor son notwithstanding that all other facts were at loggerheads with each other and were subject to proof at trial upon recording of evidence. Instant case was found to be a perfect example where the aforesaid principle found its application.
25. Hence, it is

ORDERED

- i. that the application dated 28-02-2024, filed by the petitioner praying for interim maintenance is allowed in part on contest without any costs.
- ii. The petitioner does get an interim maintenance allowance of Rs. 3,000/- (Rupees three Thousands Only) per month for herself and Rs. 2,000/- per months for her each minor sons, total of Rs. 7,000/- (Rupees Seven thousands Only) as interim maintenance allowance from the date of filing of interim application, i.e. 28-02-2024.
- iii. This order of interim maintenance shall take effect from the date of interim application i.e. 28-02-2024.
- iv. The opposite party is directed to pay the arrears interim maintenance of each month along with with current month's maintenance.
- v. The opposite party is directed to pay arrears interim maintenance of one month along with current month's maintenance within the 10th day of the succeeding month as per English Calendar, failing which the petitioner will be at liberty to put this order in execution.
- vi. Let a copy of this order be supplied to the petitioner free of costs at once.
- vii. Fix **06.06.2025** for evidence.

Typed by me

Judicial Magistrate,
Additional Court,
Lalbagh, Murshidabad

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