

IN THE COURT OF Ld. JUDICIAL MAGISTRATE, TEHATTA, NADIA

Present: Bedashruti Mallik, WBJs

MR Case No. 72 of 2022

INTERIM ORDER

Order Dated: 12.07.2023

Today is fixed for interim hearing.

The Ld. Advocate for the OP files photocopies of some documents.

Ld. Advocate on behalf of the petitioner files hazira. Interim hearing is done.

At this stage the case record is taken up for passing interim order for maintenance in respect of petition filed by the petitioner namely **Rinki Biswas** U/S 125 of CrPC for interim maintenance. The petitioner by filing this interim maintenance petition has claimed maintenance for herself.

The case of the petitioner in brief is that petitioner is a legally married wife of the O.P. The marriage between petitioner and the O.P. was solemnized 12.03.2019 according to Hindu Rites and Customs. At the time of marriage, the father of the petitioner paid cash of Rs. 5,00,000/-, various gold ornaments, furniture and other valuable articles, as per the demand of the OP and his family members. Thereafter the petitioner went to her matrimonial house with the OP and started living their conjugal life.

The further case of the petitioner is that immediately after the marriage, in the matrimonial home the O.P. and other in laws started to inflict torture both physically and mentally upon the petitioner for more dowry demands of Rs. 2,00,000/-. When the petitioner expressed the incapability of her father to fulfill such demands, the torture upon the petitioner further intensified. On 07.04.2022 the OP and his family members brutally assaulted the petitioner and drove her out of the said house in a single apparel after confiscating all her *Stridhan* articles. The petitioner was compelled to take shelter at her paternal house. Thereafter, a criminal case was also lodged by the petitioner against the OP and his family members before Krishnanagar PS vide case No. 103/2022 dated 07.04.2022. The petitioner since then has been residing at her paternal house with great hardships. The further case is that the petitioner has got no source of income and is living fully on the mercy of her father. The OP never took their information or paid any maintenance towards her. On the contrary the O.P. is an able-bodied person, owns a pucca house over 4 kathas of land, 5-7 bighas of landed properties. He works as a BSF personnel and draws a monthly salary of Rs. 80,000/- per month. He earns a total of Rs. 1,00,000/- per mensem. Thus, the petitioner has prayed for interim maintenance of Rs.30,000/- per mensem for herself from the OP.

The opposite party appears before this court and filed written objection against the application for interim maintenance allowance and denied and disputed each and every fact stated therein apart from the fact of their marriage. The OP contends that from the very inception of their marriage, the petitioner was unable to cope up at her matrimonial house and pressurized the OP for providing her a separate mess. When the OP refused to leave his aged and ailing parents and his sister who is a student, being the sole bread winner of his family, the petitioner misbehaved with him and threatened to lodge a false case against him. The petitioner also had an illicit affair with one Babn Halder, S/O Bablu Halder of Bajitpur, PS: Karimpur. When confronted, the petitioner refused to stay with the OP. Finally on 03.04.2022, the petitioner left her matrimonial house on her own accord, for her paternal house. The OP tried fetching her several times but in vain.

The OP also states that he is a BSF personnel and draws a monthly salary of Rs. 42,317/-. Further he has several dependents on him like his aged and ailing parents and his sister who is a nursing student. The OP also contends that as his house was in a dilapidated condition, he had to take a bank loan to the tune of Rs. 16,875/- per month. In total, the OP only manages to keep Rs. 6,942/- per month from his salary from which he also bears his own expenses. The OP is also willing to reside with

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the petitioner. Therefore, in the above circumstances the opposite party prays for rejecting the prayer of interim maintenance allowance by the petitioner.

I have heard both the parties and perused all the documents and affidavit of assets and liabilities filed by them. In the present case, the opposite party has admitted the marriage in between the parties and it also appears to this court that till date the marriage is subsisting between the parties, meaning thereby they are, at present husband and wife. As a husband, the opposite party is duty-bound to maintain his wife and the child (if any). It is also admitted fact that the parties are not residing together presently. Whatever may be the reason, the fact remains that they are residing separately and there is no record to show that opposite party has actually ever provided maintenance to the petitioner at any point of time. Further, on perusal of the documents as filed by the OP, it is revealed that all the documents dates back to the year 2022 and prior to that. Even the copy of the salary statement as filed by the OP dates back to August 2021, which does not reflects the current pay that he is drawing from his service. The position being such, it can be prima-facie said that opposite party has refused and neglected to maintain the petitioner.

It is only at the time of evidence it is to be adjudicated whether the petitioner out her own volition left her matrimonial home. At this interim stage it is very difficult to come to a conclusion about the volition of the petitioners to leave her matrimonial home. It requires the thorough evidence of both parties to prove the same. As the petitioner is the legally married wife of the O.P. and so she is entitled to get maintenance from the O.P. From the case of the petitioner it transpires that the opposite party is an able bodied person and is earning a total of Rs. 1,00,000/- per month. On the other hand the O.P denied the same.

After hearing both the sides I have carefully gone through the instant petition, the documents filed by the parties, and other materials on record. This is the interim stage and this Court is not in a position to determine the merit of the case without having any cogent and substantive evidence. As no substantive evidence has come out yet this Court is only to rely on the materials on record as it is S.125 of Cr.P.C is outcome of socio-economic legislation. The merits and demerits of the case will be looked into at the time of evidence.

Considering the present hike of essential commodities and considering the avocation of life of the O.P, I am of the opinion that the petitioner is entitled to get Rs.2000/- per month for herself as interim maintenance.

Hence it is

ORDERED

That the petition filed by the petitioner U/S 125 of Cr.P.C. for interim maintenance is allowed in part on contest against the O.P. Petitioner is entitled to get interim maintenance of 2,000/- per month from the O.P. Thus, the O.P. is directed to pay **2,000/- (Two Thousand) per month** for the interim maintenance of the petitioner. The O.P. is directed to pay Rs.2,000/- per month to the petitioner within 15th day of each succeeding month for which it becomes payable and dues, failing which the petitioner is at liberty to file for execution against the OP. The order is effected from the date of filing of the instant petition, i.e. 20.04.2022.

As written objection in respect of the main petition is already filed by the O.P,

Fix for evidence.

D/C by me,

Sd/- B. Mallik
Judicial Magistrate,
Tehatta, Nadia

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Judicial Magistrate,
Tehatta, Nadia