

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

Present: Bedashruti Mallik, WBJs

Misc Crl Case No. 49 of 2023

Interim Matter u/s 23 of the PWDV Act, 2005

Order Dated:07.12.2024

Today is fixed for filing showcause by the OP as special last chance i/d ex parte hearing.

The petitioner files hazira. The OP files his show cause.

Interim hearing is done.

Now the record is taken up for passing interim order in respect of the application for interim maintenance dated 28.04.2023 filed by the petitioner, namely, **Chaina Biswas** u/s 23 of the Protection of Women from Domestic Violence Act of 2005. The petitioner by filing this interim maintenance petition has claimed interim relief for herself .

The case of the petitioner in brief is that she is the legally married wife of the respondent, namely, Prabir Biswas. The marriage between petitioner and the respondent no.1 was solemnised on 16.04.1993 according to Hindu rites and customs. At the time of marriage the father of the petitioner gave cash of Rs. 50,000/-, gold ornaments, and other valuable articles, following which the petitioner went to her matrimonial house to live her conjugal life. One son was also born out of the said wedlock namely Proloy Biswas aged 24 years at the time of filing. At her matrimonial house the respondents inflicted both mental and physical torture upon the petitioner for dowry demands. She was also intigated to commit suicide by the respondent. The petitioner also came to know that respondent has one illicit affair with one Chumki Biswas D/O Gobinda Biswas of Karimpur. When confronted respondent no. 1 threatened to marry the said woman. Finally on 15.08.2009 the respondent assaulted the petitioner and drove her out of her matrimonial house along with her son.

Since then, petitioner has been staying at her mother's house. Further on 24.04.2022 the respondent came to the petitioner's mothers house and demanded her for dowry. When she expressed her inability to fulfil such demands, the respondent assaulted the petitioner. She was rescued by the local people. Since then, the respondent has not taken any information nor paid any maintenance towards the petitioner. The petitioner also came to know that the respondent has married for a second time. The petitioner has no independent source of income .

On the contrary, the respondent is an able bodied person, owns two autos, one pucca house, 10 bighas of landed properties. In total he earns a monthly income of Rs. 50,000/-. Petitioner has prayed for interim maintenance for herself to the tune of Rs.20,000/- from the respondent.

The respondent made his appearance and objected to the contentions of the petitioner by filing his show cause, wherein, the respondent, inter alia, denied and disputed all the allegations raised by the petitioner against him. The respondent contend that since her marriage the petitioner lived at the paternal house of the respondent at Shisha village. The parents of the respondent had registered 37.78 decimals of land in the name of the petitioner. Respondent has no other properties in his name. His son works under C.I.S.F. and draws a monthly salary of Rs. 60,000/-. For such purpose, the respondent sold

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off all his inherited properties and gave cash of Rs. 2,50,000/- to his son and also purchased another 2 bighas of property in the name of the petitioner. However, the son of the respondent later evicted the respondent from his own house, and since then the latter has been staying at a rented accommodation at Karimpur. The respondent is suffering from paralysis, and somehow leading his life by driving auto and earning Rs. 4,000/- per month. On the other hand the son of the respondent is an able bodied person and refuses to maintain his father. The respondent has also filed one maintenance case against his son vide MR case No. 03 of 2023. In order to evade from the said case, his son has influenced his mother to file the instant case against the respondent. In the above premises, the respondents prayed for dismissal of the matter.

The Domestic Incident Report has not been received from the Protection Officer.

I have heard the contentions of both the parties and perused their petitions as well as the affidavits. I have also perused the documents filed by both the parties. It is pertinent to mention here that the respondents claim that the petitioner has filed the instant case in collusion with her son. Further, the petitioner although has claimed that she after being driven out of her matrimonial house she is living her life with hardships at her mother's house. It is not clear before this Court if the present address of the petitioner's mother's house is same as that of the respondent, as the petitioner's address in the application of interim maintenance is same to that of the respondent. Further, it is not clear before this Court what prevented the petitioner to seek any legal resort against the respondent after she was driven out of her matrimonial house in 2009? What made her wait for 14 long years to file the instant case against her husband? This raises some doubts in the mind of this Court. However, this is an interim stage and while adjudicating interim matters it is the general prudence that the Court has to strike a balance between the contentions of the contesting parties as no such cogent evidence remains in the hands of the Court. Although it is fact that both the sides, in this case, have made certain averments, but the imputations raised by the respective parties can only be determined after having substantive and corroborative evidence in hand. But, even in such cases, contentions of both the parties must be backed by trustworthy reasons. It appears that the petitioner has failed to disclose a lot of materials, and does not seem to satisfy the Court on the basis of her averment alone. It is a fact that PWDV Act was enacted in order to provide relief to the women who are victims of domestic violence at their shared household, I think that weapon should be used very cautiously.

In the light of the facts and circumstances of the instant matter, I do not think the petitioner is entitled to any interim maintenance, and within the periphery of the instant matter, the matter in dispute can only be decided after having substantive, reliable, cogent and corroborative evidence come in the hands of this Court.

Hence, it is

ORDERED

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that the petition u/s 23 of Protection of Women from Domestic Violence Act, 2005 as filed by the petitioner Chameli Folia, dated 28.04.2023, praying for interim maintenance is hereby considered and rejected on contest without any cost.

Fix for DIR/Evidence. Petitioner to file requisites.

D/C by me,

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

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Tehatta, Nadia