

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

Present: Bedashruti Mallik, WBSJ

Misc Crl Case No. 25 of 2024

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

Order Dated: 16.07.2024

Today is fixed for interim order.

The parties file hazira.

The respondent another time petition to file his SC. Considered and allowed.

Now the record is taken up for passing interim order in respect of the application for interim maintenance dated 06.03.2024 filed by the petitioner, namely, **Nila Das**, u/s 23 of the Protection of Women from Domestic Violence Act of 2005. The petitioner by filing this interim maintenance petition has claimed maintenance for herself and her two minor children.

The case of the petitioner in brief is that the petitioner is a legally married wife of the respondent no.1, namely, Bibhas Das. The marriage between petitioner and the respondent no.1. was solemnised 13 years ago prior to the filing of the instant case as per Hindu rites and customs. At the time of marriage, the parents of the petitioner paid cash, gold ornaments several furniture and other valuable articles as per the demands of the respondents. Thereafter, the petitioner went to her matrimonial house and started living her conjugal life. Later a son and a daughter were born out of the said wedlock namely Karna Das (10 years) and Diya Das (06 years). Soon after the marriage of the petitioner, the respondents started inflicting both mental and physical torture upon her for more dowry demands. The respondents did not provide the petitioner with adequate food, clothing and medicines. On 22.03.2022 at about 08:00 PM the respondents brutally assaulted the petitioner and later drove her out of her matrimonial house along with her two children in a single apparel, and confiscated all her *Stridhan* articles. She was compelled to take shelter at her paternal house. On 07.04.2022, the respondents went to her paternal house and fled away with one smartphone and a cash of Rs. 25,000/- therefrom. Later, the petitioner filed one criminal case the respondents before Hogalberia PS. Since then, the respondent no. 1 did not take her information and paid any maintenance towards her or her children. The petitioner has no independent source of income.

The petitioner also contends that the respondent no. 1 is an able bodied person, has his own pucca house, 5 bighas of landed properties, and also works as a mason and a labour contractor. In total, he earns a total of Rs. 40-45,000 per month. In the above premises, the petitioner prays for interim maintenance for herself and her two children.

The respondents made their appearance and objected to the contentions of the verbally and have denied and disputed all the allegations levelled against him. The respondents contend that the petitioner never used to listen to the respondents and used to lead a reckless life as per her own whims. She refused to perform any household chores, and frequented her paternal house along with her children without any intimation. The petitioner also pressurised the respondent no. 1 to stay as a ghar-jamai. Later she was also involved in an illicit affair. When confronted, she threatened to leave him. Later, the brother in law of respondent no. 1 admitted to having an illicit affair with the petitioner. The petitioner voluntarily left the house of the respondent no. 1 and started residing with the said brother-in-law after driving out the sister of the respondent no. 1. Respondent no. 1 tried to fetch the petitioner along with her two children several times, but in vain after being humiliated by the petitioner each time. She has ruined her own family and the family of the elder sister of respondent no. 1. The respondent no. 1 claim that presently he is working as a day labour and earns Rs. 200-250/- per day, and sometimes nothing at all. Further he has his aged and ailing mother solely dependent upon him. In the above premises, the respondents prayed for dismissal of the matter.

It appears from the record that the report of the protection officer has already come.

I have gone through the petitions of both the parties and all the documents filed by them along with the affidavit of assets and liabilities. The respondent no.1 has is yet to file his SC. 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 submitted copies of

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some documents, but the imputations raised by the respective parties can only be determined after having substantive and corroborative evidence in hand.

The mere statement of the petitioner that she is unable to maintain herself is sufficient for getting a maintenance order under section 125 Cr.P.C, which is in consonance with the PWDV Act and it would be for the husband to prove otherwise. But, in the instant case, the husband has not brought anything on record to prove that he was not negligent in providing maintenance towards his wife and child since after his voluntary retirement . It is a solitary principle of law that every husband is bound to maintain his wife and children. When a person entered into a bonding of marriage then it is presumed that he willingly accepted the liability of maintaining of his wife and children (if any).

This is an interim stage and it is needless to say that at this moment this Court has no other alternative but to rely upon contentions of both the parties as it comes now in the hands of this Court. So, considering the above stated facts and circumstances, I am inclined to hold that this is a fit case for allowing monthly maintenance towards the petitioner and her daughter for monetary relief in form of interim maintenance only.

Therefore, the applicant/petitioner is entitled to get a monthly maintenance of Rs. 1,000/- per month each for herself and her two minor children. This court is also inclined to hold that this amount is sufficient for her maintenance as per her status, situation and social condition. It is also pertinent to mentioned here whether any application u/s 125 CrPC is pending or not has not been mentioned in the pleadings of this case.

The other prayers of the petitioner do not seem to be of urgent nature and hence they are refused at this stage.

Hence, it is

ORDERED

that the instant interim petition is allowed on contest in part.

Henceforth the petitioner does get an interim order U/S 23 towards monthly maintenance allowance to the tune of **Rs.3000/-(Three thousand) per month** for herself and her two minor children from the O.P./respondent, from the date of filing of this case, i.e. 06.03.2024 towards her maintenance allowance within the every 15th day of every succeeding English calendar month, failing which the petitioner would be at liberty to put this order so passed into execution.

Let the copy of this order be handed over to the petitioner free of cost.

Fix for evidence.

D/C by me,

Sd/- B. Mallik

Judicial Magistrate,

Tehatta, Nadia

Sd/- B. Mallik

Judicial Magistrate,

Tehatta, Nadia