

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

**Present: Bedashruti Mallik, WBS**

**MR Case No. 84 of 2020**

**INTERIM ORDER**

Order Dated:16.03.2023

Today is fixed for interim hearing.

Both parties files respective Hazira.

The Ld. Advocate for the OP has already filed his SC.

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 **Asma Tara Bibi** U/S 125 of CrPC for interim maintenance. The petitioner by filing this interim maintenance petition has claimed maintenance for herself and her minor son.

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 contracted a few years prior to the filing of the instant case according to Muslim Shariyat Law. Thereafter the petitioner went to her matrimonial house with the OP and started living their conjugal life. Out of their wedlock a son was born, aged 3 years at the time of filing of the case. 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. When the petitioner expressed the incapability of her father to fulfill such demands, the torture upon the petitioner further intensified. On 31.08.2019 the OP and his family members brutally assaulted the petitioner following which she filed a case against them before Murutia PS u/. 498(A)/325/307/34 vide case No. 179/2019 dated 08.09.2019. Since then, the OP and his family members started to threaten her with dire consequences. Finally on 28.09.2020 in the evening the OP and his family members tried to drag the petitioner and strangulate her. The petitioner somehow escaped and thereafter took refuge at her paternal house along with her minor son. The OP never took their information or paid any maintenance towards them. On the contrary the O.P. is an able-bodied person has 15 bighas of landed properties, owns 15 cows, and has also worked in Saudi Arab, and presently working as a mason. He is earning Rs. 40,000-45,000/- per mensem in total. Thus, the petitioner has prayed for interim maintenance of Rs.10,000/- per mensem for herself and Rs. 5,000/- for her child, i.e. a total of Rs. 15,000/- per mensem 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. It is stated by the opposite party that after the marriage the petitioner had no intention to lead her conjugal life with the opposite party. She always used to misbehave with her in laws and never took care of them. The petitioner also went to her paternal house as per her own whims, and never used to do any household chores. The father of the petitioner also used to assault the OP and threatened him to transfer the house of the father of the OP in the name of the petitioner, else she would leave the OP. When the OP refused to such a demand, the petitioner started to quarrel with him. The petitioner also left her matrimonial house along with her minor son on her own accord. Later the OP filed a case u/s. 97, CrPC before the SDM Court, Tehatta, for restoring his conjugal life, but in vain. Later, the OP obtained Talaq from the petitioner and remarried one Jahannara Bibi. They also have a child born out of the said wedlock.

The opposite party also states that he is working as a day labour and earns Rs. 200/- per day. Apart from that, he has several dependents on him. On the other hand, the petitioner earns Rs. 1500-2000/- per month by *bidi* binding. Therefore, in the above circumstances the opposite party prays for rejecting the prayer of interim maintenance allowance by the petitioner.

In the present case, the opposite party has stated that he has obtained Talaq from the petitioner

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and then remarried another lady, but has not filed any copies of Talaqnama. In the given premises, the Court presumes that the marriage between the parties is still subsisting. As a husband, the opposite party is duty-bound to maintain his wife and the child. 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. 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 and her minor son are 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. 40-45,000/- per month. On the other hand the O.P denied the same and has stated that he is a day labour and earns Rs. 200 per day. Apart from that, there are several dependents on him. The OP has filed affidavit of assets and liabilities in support of his contention.

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 and her minor son is entitled to get 2000/- per month 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. and her minor child is entitled to get 2,000/- per month from the O.P. Thus, the O.P. is directed to pay **4,000/- (Four Thousand) per month** in total for the interim maintenance of the petitioner and for her minor daughter. The O.P. is directed to pay Rs.4,000/- per month to the petitioner within 15<sup>th</sup> 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. 20.09.2020.

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

Sd/- B. Mallik

Judicial Magistrate,

Tehatta, Nadia