

Misc-260/2019
T.R-377/2019

Smt. Putul Ghosh

.....Petitioner

----Vs----

Asim Ghosh

..... O.P/Respondent

Order dated 02-02-24

Today is fixed for passing order of *interim* maintenance application filed by the petitioner along with her petition U/S 12/17/18/19/20/22/23 of PWDV Act.

Both parties have filed their respective hazira & already filing affidavit of assests and liabilities by both sides.

Petitioner has filed an application under Section 12/17/18/19/20/22/23 of PWDV Act praying for an order of interim maintenance of Rs. 10,000/- per month for both i.e the petitioner and her son from respondent.

Perused the case record and made proper analysis of all relevant materials including the application under Section 12/17/18/19/20/22/23 of PWDV Act, and the report of Protection Officer and the affidavits of assets and liabilities file by the parties.

On perusal of such report it appears *prima facie* that domestic violence has been committed against the petitioner/ aggrieved person by respondent.

The case of the petitioner in brief is that on 02-12-2018, the petitioner got married with the respondent according to Hindu rites and customs. At the time of marriage various gift items were given. It is further case of the petitioner is that, she was being tortured physically and mentally for demand of gold ornaments. Lastly on 15-06-2019 drove the petitioner out from their house. Thereafter she has lodged Chakdaha P.S Case No.294/2019 dated 15-06-2019 u/s-498A of IPC against the respondent. Since then she has been residing at her matrimonial house in a distress condition. Petitioner has claimed that respondent neither maintains her nor does he take any account of her.

Accordingly, the petitioner has filed a substantive application under Section 12/17/18/19/20/22/23 of PWDV Act praying for an order of interim maintenance from respondent for their sustenance.

Perused the affidavit filed by the petitioner, I am satisfied that there is *prima facie* case for passing an order for interim maintenance.

It is no more *res integra* that Magistrate has power to award interim maintenance under PWDV Act for subsistence of the petitioner.

In the original application, it has been claimed by the petitioner that respondent is a Central Government Employee and he works in Railway and get salary of Rs.70,000/- per month. I am satisfied that there is *prima facie* case for passing an order for interim maintenance.

The respondent's case, as reflected from the objection, is that the factum of their marriage and son are undisputed, but regarding the income of the respondent, the respondent has stated that respondent gets salary of Rs.50,000/- per month and he has to take care of his parents. On the other hand the petitioner by imparting private tuitions and earns Rs.20,000/- per month.

The object of granting interim maintenance is to ensure that the lady who is unable to maintain herself is not reduced to destitution or vagrancy.

At this initial stage we are concerned about sustenance of the petitioner, so that she is not let beggared and destitute on the scrapheap of the society and thereby driven to a life of vagrancy.

Based on the delineation made above, I am satisfied that there is *prima facie* case for passing an order for interim maintenance.

In **Reema Salkan v. Sumer Singh Salkan (2019) 12 SCC 303** it was held that the factors which would weigh with the Court *inter alia* are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

In **Chaturbhuji v. Sita Bai (2008) 2 SCC 316** it was held that the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

In **Manish Jain v. Akanksha Jain (2017) 15 SCC 801** the Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

In **Rajesh v. Neha and Anr.** it was held that the maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

Section 20(1)(d) of the PWDV Act makes it clear that the maintenance granted under this Act would be in addition to an order of maintenance under Section 125 of the Cr.P.C and any other law for the time being in force.

It was observed by the Supreme Court that the legislative mandate envisages grant of maintenance to wife under various statutes. There is no bar to seek maintenance both under the DV Act and Section 125 of Cr.P.c or the Hindu Marriage Act, 1955 or the Hindu Adoption and Maintenance Act, 1956.

Bestowing on an anxious consideration of the petition and taking wisdom from the authoritative judgments of the Hon'ble Court and settled

position of law, in the lights of minimum needs of the petitioner, price index of essential commodities in the present market in one hand and the income of the respondent on the other hand as per the affidavit filed by him, I am of the opinion that an order of monthly interim maintenance allowance at the rate of Rs. 5,000/- per month for the petitioner will be just and reasonable.

Now this Court has to decide the date from which maintenance is to be awarded. This question is no more *res integra*. In ***Rajnesh v. Neha and Anr.*** it was held that maintenance in all cases will be awarded from the date of filing the application for maintenance.

Hence it is,

ordered

that the petition for interim maintenance is allowed on contest but in part. **The petitioner is awarded with interim monthly maintenance allowance at the rate of Rs. 5,000/- (Five Thousand only) per month for herself from the respondent from date of filing the application for interim maintenance in addition to the maintenance amount passed in a case U/S 125 of Cr.P.C.** The respondent is hereby directed to pay the interim monthly maintenance allowance of Rs. 5,000/- in total to petitioner for the maintenance of petitioner within tenth day of each & every succeeding month of English Calendar Year till disposal of the case. Any amount given as interim maintenance will be adjustable or refundable in accordance with the final order.

Let a copy of this order be given to the petitioner free of cost.

Fix **18-03-2024** for payment and evidence.

Let a copy of this order be sent to the Women Protection Officer, Ranaghat, and I.C. of the concerned PS where both parties reside.

**Judicial Magistrate 2nd Court
Ranaghat, Nadia**