

C. Case no. 820/2019

Date of Order: 01.10.2021

Today is fixed for passing order in respect of the application for interim relief on contest in the mode of interim maintenance made by the aggrieved lady under section 23 of the Protection of Women from Domestic Violence Act, 2005 (Hereinafter 'the Act').

A petition has been filed by the applicant under section 12 of the Act inter alia for monetary relief to the tune of Rs. 25,000/- to the petitioner for herself and her minor child as monthly maintenance allowance. Prior to deciding the prayer made by the applicant under section 23 of the Act for interim relief in the form of monthly maintenance, it would be appropriate to have a glance towards the background facts so as to come to a just and proper appraisal of the prayer under consideration. The applicant lady happens to be the wife of respondent no 2 whose marriage was solemnized on 24.02.2021 as per Hindu rites and Customs. Thereafter, the petitioner started to reside at her matrimonial home with her husband respondent no. 2. Soon after marriage, petitioner was subjected to torture, both physically and mentally by the respondents for the sake of more dowry. Petitioner alleged that she was subjected to torture both physically and mentally at her matrimonial house. On 16.01.2013 petitioner gave birth of a male child who was born out of the said wedlock with respondent no. 2. Petitioner was forced to leave her matrimonial house due to the objection raised by her over the issue of relationship between respondents nos. 2 and 3. It is further claimed that respondents tried to kill this petitioner and she was admitted in hospital, accordingly one FIR was lodged as Barasat PS, case no. 279/19 u/s 498A/326/307/34 of IPC. Then she was compelled to stay at her parental house along with her minor son.

In her petition petitioner averred that respondent no.2 is able bodied person, who is a driver by profession and involved in secondhand vehicles trading. and earn Rs. 60,000/- per month. On the other hand petitioner wife passing her day at her parental house under emotional and financial distress. But the respondent no. 2 did not provide their maintenance. Therefore through this petition petitioner prays for Rs. 15,000/- per month for herself and Rs. 10000/- for her minor child for her minor child.

In her application petitioner averred that the present situation has become very grave. Respondent no.1 at the instigation of other respondents created a reign of terror for this petitioner and threatened this petitioner that he will ruin her life. Hence this application under section 12 of Protection of Woman from Domestic Violence Act. Now filing this application under section 23(2) of Protection of Women from Domestic Violence aggrieved lady prays for protection order, custody of minor child and direction upon the respondent to pay Rs.25,000/- per month as maintenance for the petitioner.

The allegation of domestic violence gets fortified by the report of the protection order. Respondents appeared to contest this case and filed written objection dtd. 30.01.2021 against the application filed by petitioner lady under section 12 of P.WD.V. Act. Heard the Id, advocate for the respondents who categorically denied all the material allegation against him. Admitting the said marriage and denying the allegation of torture, Id. Advocate for the respondents states that petitioner wife left her matrimonial house out

of her own accord. It is claimed that petitioner lady was not willing to live a peaceful conjugal life and used to quarrel with the respondents. It is further claimed that petitioner wife initiated a false criminal case against the respondents. Ld. Advocate for the respondents stated that petitioner wife made false and fabricated allegations in connivance. Respondent claims that respondent nos.1 is a daily labour on the basis of daily wages and earns Rs. 150/- per day. On the other hand petitioner lady earns Rs. 6000/- per month as Aasha Karmi. Ld. Advocate for the respondent prays to refuse the interim relief as sought for.

Heard both sides. Ld. Advocate for the petitioner drawing my attention to the treatment slip of the petitioner lady submitted that one case was lodged at Barasat PS. Petitioner lady being the wife of the respondent no. 2 is legally entitled to be maintained by her husband.

On the other hand learned advocate for the respondent husband stated that petitioner lady is not entitled to get the relief as sought for as she left her matrimonial house out of her own accord.

Considered.

Perused the available materials on records including the DIR, academic of child, treatment card of aggrieved lady etc.

At this embryonic stage of this case it appears that the dispute raised can not be decided without taking the evidence as it involves complicated factual questions. But the Magistrate has the power to make interim order, if he is satisfied that there is a prima facie case of domestic violence from the materials alleged in the application of the applicant. The magistrate may pass any order in the interim form as contained under sections 18, 19, 20, 21 or 21 against the respondent. On sifting through the materials produced before this court by the petitioner during the contested hearing for interim relief in this case and having gone through the prayer of the petitioner on affidavit and materials produced before me and having regard to the submission advanced by Ld. Lawyer for the both sides and also I am of the view that a prima facie case has been made out against the respondents in this case so far as the monetary relief is concerned at this stage in absence of anything to the contrary.

So far, the prayer of monetary relief is concerned, it appears this stage that the petitioner claims that the respondent no. 1 earns a handsome amount of Rs. 60,000/- per month from his employment. Respondent on the other hand claims himself to be a day-labour who has to bear his aged parents.

So far, the fixation of allowance is concerned, the basic needs of the petitioner to lead a moderate living with human dignity, basic necessity and earning of the OP as well as the aggrieved lady are of immense value. The provision of P.W.D.V. Act is to close up the vagrancy and to vanquish the destitution faced by a destitute wife because of the unfaithful activities on the part of her beloved one. The quantum of maintenance should not only be according to the needs of the petitioner but should also be in consonance with basic necessities, age, minimum cost for living, welfare of the child etc. will be

taken into account. But in no way the amount will be luxurious nor penurious but to help to lead a life with human dignity.

It can be inferred that the petitioner should be given monetary relief. Thus, pending the disposal of the case, having regard to the entire facts and circumstances of this case including the prayer of the petitioner on affidavit the petitioner is entitled to get interim monetary relief from the respondent no.2 for maintenance of petitioner herself and her minor child. Therefore, considering entire aspects, taking into consideration the background and social status of the petitioner, I am of the view that an amount of Rs. 4000/- per month for the aggrieved lady and Rs. 2500/- per month for her minor child would be sufficient to maintain herself and her minor child during the pendency of this case. It also appears that petitioner also needs a protection order in order to restrain the respondents from committing further domestic violence. Section 18 prescribes Protection orders stating that the Magistrate may on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the Dependents, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.

Having regard to the object of Section 18 of the DV Act and considering the material on record as well as having heard the ld advocate for the complainant it appears to me that petitioner has established the prima facie case to get protection order under Protection of women from the Domestic Violence Act as sought by her .

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Hence, it is

ORDERED

That the petition filed under section 23(i) of Protection of Women from Domestic Violence Act on behalf of aggrieved lady for interim relief is allowed on contest.

That the petitioner is entitled to get Rs. 4000/- per month as interim monetary relief from the respondent for herself and Rs. 2500/- per month for her minor child every

(4)

month from the date of order till disposal of this case or further order.

The respondent no. 1 is hereby directed to make payment of Rs. 6,500/- (Six thousand and five hundred only) per month to the petitioner on 10th day of every month till the disposal of the instant case. If the respondent fails to make payment as ordered, the petitioner may take recourse to court.

The Respondents/OP are restrained from dispossessing or disturbing the possession of the complainant in any manner with regard to her present residence situated at LIG housing Estate, BL-B/I, FL-4, 69/1, S.K. Dev Road, Kol-48, or from forcefully entering into the said residential house of the aggrieved lady.

The I.C Lake Town P.S. is directed to give protection to the complainant Soni Das nee Singh and to ascertain that the instant order is properly being implemented. The instant order shall remain in force till further order.

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

Petitioner is to file requisites at once.

Fix 01.11.2021 for hearing.

D/C by me,

J.M., Bidhannagar

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