

Order dt. 30.01.2025

Today is fixed for hearing.

Both sides have taken steps. The petitioner has filed photocopy of order passed by Id. District & Session Judge, 1<sup>st</sup> Track, 4<sup>th</sup> Court at Barasat in CrI. Apple no.66/2023. The petitioner files print out of referred cited judgments in connection with her written objection for the non-maintainability petition.

The record is taken up for hearing of the non-maintainability of the petition filed by the OP husband on 17.09.2024.

The submission of the Id. Advocate for the OP husband is that the present petitioner of this case has filed this case u/s. 125 of CrPC and she also filed another case under PWDV Act. That in the case under PWDV Act interim maintenance order was passed and as such, there is no purpose to proceed with this case u/s.125 of CrPC as the purpose of this section is to give maintenance.

The Id. Advocate for the petitioner submits that there is no bar for proceeding simultaneously in two cases u/s.125 of CrPC and under provision of PWDV Act. It is should not be the ground for finding this instant case is not maintainable as the petitioner got maintenance from the respondent husband in the case under PWDV Act by the order of this Court. In this connection Id. Advocate for the petitioner referred the following citations :

- 1) Rajnish v. Neha (2021) 2 SCC 324.
- 2) P.k.Karan v. K.K. Murthy (2013) 12 SCC 658.
- 3) Chand Dhawan v. Jahawar Lal Dhawan (1997) 5 SCC 220.
- 4) Mala Kumar v. State of Haryana (2018) 7 SCC 500.
- 5) Narmada v. Jitendra (2011) 4 SCC 50.
- 6) D. Venkatesh v. D. Shashikala (2016)..... .

After hearing submissions of both sides and perusal of document and referred case laws, it has been found that there is no embargo to proceed with this instant case u/s. 125 of CrPC against the respondent / husband. This is not the valid ground to find this case non-maintainable on the point that the petitioner got order of maintenance in PWDV Act. That order is in interim form. Whether the son of the petitioner is entitled to get maintenance will be decided at the time of hearing on the point of interim order or at the time of passing final order after evidence, whenever specific order for entitlement of the petitioner's son for maintenance will be required to be passed.

Contd..

Contd. Or. dt.30.01.2025

Hence, it is,

ORDERED

that the petition of the respondent/ husband on the point of non-maintainability of this case dated 17.09.2024 is hereby **rejected** on contest without any order as to cost.

The respondent husband is directed to file his affidavit for declaration of his assets and liabilities in prescribed format within next date.

Fix 20.03.2025 for filling assets and liabilities by the respondent and hearing of interim relief petition.

Dictated & Corrected by me.

J.M., Bidhannagar

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JO code-WB01296