

M . Case No. 18 of 2018

Order dated : 23.11.2021

Today is fixed for passing order.

Both sides are present.

The case record is taken up for passing order in respect of the interim maintenance petition dated 10.09.2018 filed on behalf of the petitioner wife on the ground that she has no source of income to maintain herself. The crux of this case is that petitioner got registered marriage with the opposite party on 08.12.2017. Thereafter petitioner wife went to her matrimonial house. But during her stay at matrimonial house ,petitioner was subjected to torture by the opposite party husband and his family members for the sake of more dowry. Finally on 21.02.2018, OP and his family members driven this petitioner out from her matrimonial house .Since then petitioner has been residing at her father's house. Petitioner states that she and her mother tried to reconcile their relation. But Op did not allow her to enter into his house. OP husband did not take any information about the petitioner wife, neither he has made any arrangement for her maintenance. Petitioner has been residing at her mother's shelter. Hence this application for maintenance.

In order to substantiate the claim for maintenance it is stated in the said petition that the opposite party is an able bodied person ,employed as a security guard and monthly income of OP is Rs.15,000/- pm. On the other hand, petitioner having no source of income or ability to maintain herself through this petition , the petitioner has prayed for Rs. 6,000/- per month for herself as interim maintenance.

On the other hand, OP raised strong objection against the prayer for interim maintenance by filing W/O on 07.01.2020 challenging the interim maintenance petition, inter alia on the ground that petitioner left her matrimonial house out of her own accord. OP categorically denied all the material allegations labeled against him. Although, said marriage with the petitioner has been admitted by the opposite party but opposite party denied that all material contention of the petitioner as

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alleged in the application for interim maintenance. In his W/O, OP vehemently denied the allegation of torture. It is urged in the said W.O. that petitioner wife is an arrogant lady who never bothered to give minimum respect to her husband. OP husband firmly claimed that petitioner left her matrimonial house on her own accord. OP further claims that petitioner wife is working at a Railway Constructing Firm and draws salary of Rs.11,000/- per month.

On the other hand OP husband is working in security agency and earns Rs. 4500/- per month.

Heard the learned advocate for the petitioner who strongly submitted that marriage is admitted.

Admitting the said married, on the other hand, learned advocate for the OP husband filing the copy of salary certificate dated 02.08.2019 submits that monthly income of the OP husband is Rs.4,500/- per month.

I have taken the opportunity of hearing of the Ld. Counsel for the both sides. Ld. Counsel on behalf of the OP contended that O/P had a very little earning and the petitioner used to neglect her husband.

In a maintenance proceeding u/s 125 Cr.P.C Court has to take *prima facie* view of the matter and the provision of Chapter IX of Code of Criminal Procedure which is summary in nature contains the speedy remedy against starvation of a deprived wife and minor children. If the Court in a maintenance proceeding searches for meticulous proof and discharge of onus in the candle light of the rigorous trapping of evidence then the wax will be melt away and the candle be blown off.

Having regard to the discussion made above and taking into account the argument advanced by the Ld. Counsel I am of the humble view that the marriage between the petitioner and the OP is admitted fact.

It is *prima facie* noticed that the deed of OP speaks itself that the petitioner has been staying at her father's house and no maintenance is provided by the OP. As per the allegation of cruelty is concerned, both parties splashed out against each other. It is difficult to make any conclusion at this early stage of the proceeding without having any evidence on record. At this stage it is also difficult to determine

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that whether the petitioner refused to stay with the OP husband or she was driven out.

From the above discussion as well as the submission of the Learned Counsels for the respective parties I do not have any hesitation to hold that in spite of being a lawful wife no maintenance is provided for the petitioner by the opposite party. It is already stated above that marriage is admitted. Being the marriage is undisputed, therefore, under the aforesaid premises I do not have any hesitation to hold that being a married wife who is unable to maintain herself and in absence of anything to the contrary, petitioner has prima facie succeeded to establish her claim that she is entitled to have interim maintenance for herself. Now the question is what would be the quantum of interim maintenance ?

The petitioner has contended that the O.P. 15,000/- earns .Petitioner has prayed for Rs. 6,000/- per month for herself as interim maintenance. On the other hand, the OP has contended that his monthly income was Rs.4,500/- as on 02.08.2019. At this juncture I am of the view that time has not come to make any conclusion regarding the income of the OP but from the above discussion my fair mind is constraint to say that the OP is an able bodied working person .And no such reliable material has been produced where from the actual income of present Op could be ascertained .It is also pertinent to mention here that true spirit of this beneficial legislation of maintenance u/s 125 Cr.P.C. implies that even a beggar has the responsibility to maintain his wife.

Hence, I am of the view that the Petitioner wife deserves to be maintained by the OP at this stage also.

As per as the fixation of allowance is concerned. The basic needs of the petitioner to lead a moderate living with human dignity and earning of the OP are of immense value. The provision of Sec. 125 Cr.PC is to close up the vagrancy and to vanquish the destitution faced by a deserted 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 the status of the family of the father of the deserted wife and also her qualification, age of the petitioner etc. will be taken into account. But in no way the

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amount will be luxurious nor penurious but to help to lead a live with human dignity.

So, considering all this social and economic background of the parties appearing from their respective deeds, having regard to the object of the legislation, the little information about the status of the parties as could be obtained from the pleadings, affidavits , the inflationary trend of market, I am of the proposition that it would be just and proper if an amount of Rs. 2,500/- (Two thousand and five hundred only) per month for the petitioner be ordered as interim maintenance allowance.

Hence, it is

ORDERED

that the interim maintenance petition filed by the petitioner/ wife against the O.P/ husband allowed on contest, but without costs.

The petitioner do get an interim maintenance allowance @ Rs.2,500/- per month for the maintenance of herself from the date of this order until final disposal of this case .

The O.P./ father is directed to pay the whole allowance of Rs.2,500/- pm to the petitioner according to English calendar by the 10th of each succeeding month.

The petitioner will be liberty to realise the amount by the process of execution in accordance with law.

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

Fix 14.01.2022 for evidence.

D &C by me;

Judicial Magistrate
Bidhannagar