

M. Case No. 37 of 2022

Interim Matter

Order Dated 21/08/2024

Today is fixed for passing interim order in respect of the application for interim maintenance dated 30/11/2022 filed by the petitioner, namely, Swapna Das, u/s 125 of the CrPC.

The petitioner by filing this interim maintenance petition has claimed maintenance for herself and for her minor daughter from the OP, being her husband. The case of the petitioner in brief is that the petitioner is a legally married wife of the O.P, namely, Debasish Das. The marriage between petitioner and the O.P. took place on 14/08/2011 according to Hindu rites and customs. At the time of marriage the petitioner's father gave valuable articles and cash of Rs.30,000/- as per the demand of O.P. After their marriage the petitioner and the O.P started living their conjugal life at her matrimonial home. She further stated that during her stay at her in-laws' house, she begot one female child from the wedlock on 22/08/2015. Since then the OP started inflicting physical and mental torture upon the petitioner and also deprived her along with minor daughter of general amenities. The petitioner further contended that she had come to know that her husband has grown an illicit relation with one Reshma Parveen at his work place in Malda. Lastly, on 28/10/2022, failure on here part to meet out the illegal demand of the OP for Rs. 1 lakh, she along with her minor daughter were driven out from his house and since then the petitioner was compelled to take refuge of her paternal home under hand to mouth condition. The petitioner stated that the OP has been neglecting her by depriving any sort of maintenance. The petitioner is unemployed, whereas to put her the OP works at Pantaloons, Maldah with a salary of Rs.25,683/-. In addition to that he earns about Rs.70,000/- to 80,000/- from other sources like agricultural land etc. She prayed for interim maintenance to the tune of Rs.20,000/- and 15,000/- per month for herself and for her minor daughter respectively.

In support of her contention the petitioner has submitted the assets and liabilities.

The OP made his appearance and objected to the contentions of the petitioner by filing his written objection. In his W.O, the OP, inter alia, denied and disputed all the allegations raised by the petitioner against him. The OP contended that the petitioner never tried to adjust with his condition and always demanded to lead a luxurious life. He further submitted that the petitioner never remain dutiful to the household duties. However, in his show cause the OP did not mention anything about his monthly income. In his affidavit of assets and liabilities, the OP stated that being employee of Pantaloons he ears Rs,34,336/- per month. The OP further stated that some of his financial liabilities in his affidavit. The OP contended that the petitioner willfully deserted him without any cogent reason. The OP prayed for dismissal of the matter.

On the last occasion both the sides were heard at length.

The mere statement of the petitioner that she is unable to maintain herself is sufficient for getting a maintenance order under section 125 Cr.P.C. In this point the Hon'ble Supreme Court had an occasion to dwell upon this question whether the wife has to give proof that she is unable to maintain herself in ***Rajathi vs. Ganesan, (1999)6 SCC,326 at page 330***. Negating the contention that the wife has to prove her inability to maintain herself, the Hon'ble Court ruled that the statement of the wife that she is unable to maintain herself would be enough and it would be for the husband to prove otherwise. But, in the instant case, the husband has not brought anything to prove otherwise.

It is a solitary principle of law that every husband is bound to maintain his wife and children. When a person entered into a bonding of marriage then it is presumed that he is willfully accepted the liability of maintaining of his wife and children (if any).

Driving out the applicant/petitioner from the house of the O.P./respondent or inflicting severe physical assault and also depriving the wife and children from daily amenities is itself domestic violence upon the petitioner.

Moreover, I further hold that it is incumbent and it is also the social and legal responsibility of the able bodied person to maintain his married wife and minor children. Here in this case the applicant/petitioner was not maintained by the O.P./respondent since parting. This is an interim stage and it is needless to say that at this moment this Court has no other alternative but to rely upon contentions of both the parties as it comes now in the hands of this Court. So, considering the above stated facts and circumstances, I am inclined to hold that this is a fit case for allowing monthly maintenance towards monetary relief in form of interim maintenance. Considering the socio-economic strata of the OP/husband I presume that his income is not below than Rs.20,000 to 22,000/- per month as an employee of a private concern. Regarding the other source of income of the OP no prima facie evidence was adduced by the petitioner.

Therefore, the applicant/petitioner is entitled to get a monthly interim maintenance of ₹5000/- per month for herself and Rs.7000/- per month for her minor daughter. This court is also inclined to hold that this amount is sufficient for their maintenance as per their status, situation and social condition.

Hence, it is

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that the instant interim petition is allowed on contest in part.

The petitioner does get an interim order U/S 125, CrPC towards monthly maintenance allowance to the tune of ₹ 5000/- per month for herself and Rs.7000/- per month for her minor daughter (Rs.12000/- per month in toto) from the O.P./respondent, from the date of filing of the instant application.

The O.P./respondent is directed to make payment of Rs.12000/- per month to the petitioner towards maintenance allowance within the every 10th day of every succeeding English month, failing which the petitioner would be at liberty to execute the order so passed.

This order will take effect for date of filing of the instant application, i.e. 30/11/2022.

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

To for 14/11/2024 evidence of the petitioner.

ACJM/Bidhannagar/North 24 Parganas