

M Case 05.2021
Smt. Manisha Santra nee Dey vs. Shri Biswanath Santra

Order dated 07.03.2024

Today is fixed for passing order.

Both the parties files hazira.

Record is taken up for passing order with regard to the interim maintenance petition filed by the petitioner.

The case of the petitioner in the nutshell is that the marriage of the petitioner with the OP was solemnized on 23.11.2006. After marriage the petitioner went to her matrimonial house and the marriage was duly consummated. On the day of 'Bhowbhat' the mother of the OP expressed her dissatisfaction towards the gift given at the time of marriage by the parents of the petitioner. Out of the said wedlock one female child namely, Neha Santra was born on 30.06.2008 who is in the custody of the petitioner. At the time of marriage the parents of the petitioner tried their best to fulfill the demand of the OP and his family members. It is submitted that the since the day of reception the petitioner was subjected to inhuman physical and mental torture. The petitioner was not given proper meal and she was treated as maid servant. The petitioner was not allowed to talk to anyone including her parents. The parents of the petitioner bore the entire expenses during the pregnancy of the petitioner till the child birth. The OP and his family members did not even went to see the child after birth despite of the repeated request by the petitioner and her parents. Subsequently, the petitioner could return back to her matrimonial home after the demand of the OP was fulfilled. The OP had illicit relation with one Molly Ghosh and when the petitioner objected to the same she was tortured physically and mentally. The OP had a habit of drinking and gambling as such he sold off the car and the bike given to him by the parents of the petitioner as per his demands. Later the OP started to reside with the petitioner at her residential house in 2016 and stayed there till December, 2016. In the month of January, 2017 the petitioner and her daughter and the OP went back to the matrimonial house of the petitioner and again after few days the petitioner returned back to he parental house. In the month of May, 2019 the petitioner went to her matrimonial house. On 25th August the petitioner was brutally assaulted by the OP for raising objection the illicit relationship of OP. The petitioner was rescued by the neighbors and the parents of the petitioner came and took her. Since August, 2019 the OP came to the parental house of the petitioner and twice took money from the parents of the petitioner. On 11.12.2020 the OP came and took the petitioner and her child to the matrimonial home with an undertaking to lead a peaceful marital life but on 13.12.2020 the OP in connivance with his family members drove the petitioner out of the matrimonial house along with her minor daughter in a single apparel. Thereafter the petitioner went to Ghola P.S but they refused to take any step as such the petitioner informed about the matter to the Barrackpore Police Commissionerate on 14.12.2020. Since 13.12.2020 the OP did not contact the petitioner and he has refused and neglected to maintain the petitioner and her child. The petitioner has no source of income and she is living in the charity of her aged parents. The OP has various businesses wherefrom he earns Rs. 50,000/- to Rs.1,00,000/- per month. Therefore, the petitioner has prayed for Rs.15,000/- per month for herself as maintenance allowance and a litigation cost of Rs.10,000/- from the OP.

OP denied all the allegation made by the petitioner except marriage with the petitioner and he and the paternity of the child. It is submitted that the OP provided all sorts of medical assistance to the petitioner during her pregnancy and even after birth of the child the OP provided all the necessities to the petitioner and her child. On 13.12.2020 the petitioner willfully and voluntarily left her matrimonial home without informing the OP and his family members. The petitioner has filed this case to harass the OP. Thus, OP prays for rejection of the interim maintenance petition

Petitioner has mentioned in her affidavit of asset and liabilities dt.12.04.2022 that she has no source of income. On the other hand, the OP filled his affidavit of assets and liabilities where he stated that he earns Rs.8000/- to Rs.9000/- per month as driver and he works on the basis of no work no pay. Petitioner has filed the copy of her bank passbook. OP has filed the copy of the medical documents of his mother.

Having heard the submission of the Ld. Advocate for both the parties and after going through the materials on the record, it is found from the written objection as well as the interim

maintenance petition that it is an admitted fact that the petitioner being his wife is living separately makes a prima facie case for grant of interim maintenance at this stage. The petitioner has claimed maintenance allowance for herself. No documents have been filed as to the income of the OP. The allegations and counter allegations of the parties towards each other can not be decided at this stage without taking evidence.

It is a solitary principle of law that every husband is bound to maintain his wife and child. When a person entered into a bonding of marriage then it is presumed that he has willfully accepted the liability of maintaining of his wife. The object of section 125 of Cr.P.C. is to prevent vagrancy and destitution.

It is pertinent to mention the observation of Hon'ble Supreme Court of India, in **Rajnish Vs. Neha (2021) 2 SCC 324** where the Hon'ble Court was pleased to observed in its page 39 that

“VI. The directions in view of the Foregoing discussion as contained in Part B I to V of this Judgement we deemed it appropriate to pass the following directions in exercise of our powers under Article 142 of Constitution of India:

(d) Date from which maintenance to be awarded We make it clear that maintenance in all cases will be awarded from the date of filing application for maintenance.

Keeping in mind all the aforesaid discussion and the observation of the Hon'ble Supreme Court and in order to ensure the social justice keeping in mind the status and income of the OP his liability, I am of the view that an interim maintenance of Rs.3500/- per month to be paid for the maintenance of the petitioner. **The order is effective from the date of filing.**

Hence, it is,

ORDERED

that the petition filed by the petitioner praying for interim maintenance is thus allowed on contest.

The OP is hereby directed to pay interim maintenance of **Rs.3500 /- per month to be paid for the maintenance of the petitioner** within the 10th day of every month as interim maintenance allowance, failing which the petitioner will be at liberty to put the order in execution. This order is effective from the date filing. The arrear amount is to be paid by the OP within a period of **24 months in equal installments.**

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

To **22.08.2024** for evidence

Typed, Printed & Corrected by me,

(Pratigya Pradhan)
J.M, 3rd Court, Barrackpore.

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