

**M Case- 446/2019**  
**Order dated: 18.04.2024**

Today is fixed for interim hearing.

Both parties file hajira.

Ld. Advocate for the OP has filed a petition u/s.340 CrPC on the ground stated therein.

Ld. Advocate for the petitioner has filed strong objection on the ground that the OP has filed the instance petition just to delay the interim hearing.

Heard. Considered.

On perusal of the case record it is found that the case is running at its very initial stage where hearing as to interim maintenance has also not been initiated. All the allegations brought by the present petitioner/husband are regarding the facts as stated by one party and denied by the other. The truthfulness and veracity of such statement cannot be ascertained at this stage without taking evidence, since it is merely oath vs oath. Moreover, the OP has not even filed his affidavit of asset liability. It will be too early to decide whether actually any material facts have been suppressed or not or whether any misleading statements have been made. All such points can be ascertained only when both the parties to the case bring sufficient oral and documentary evidence in support of their contentions. Hence at this stage, this court does not find it pertinent to hold the present op/wife to be at fault of suppressing material facts and misleading the court. Hence this court does not find any adequate reasons to initiate proceeding u/s 340 Cr.P.C at this stage.

**Hence the petition under hearing u/s.340 CrPC be kept with the record till the competition of trial.**

Now the record is taken up for hearing of interim petition.

Ld. Advocate for the OP has filed several documents but has not filed affidavit of assets and liabilities.

Heard both sides in full.

It is pertinent to mention here the observation of the Hon'ble Supreme Court of India, in **Rajnish Vs. Neha reported in (2021) 2 SCC 324** where the Hon'ble Court was pleased to observe that (XI) (c) the respondent must submit the reply along with affidavit of disclosure within a maximum period of 4 weeks. (j) the concerned family court / district court / magistrate's court must make an endeavour to decide the I.A. for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the affidavit of disclosure has been filed before the court.

The affidavit of assets and liabilities by the petitioner on 22.03.2022. OP has appeared and filed his WO on 30.03.2024. But in the instant case already more than six months have passed after filing of affidavit of assets and liabilities by the petitioner. Thus the court finds no ground of delaying the present petition under hearing.

Record is taken up for passing order.

The record is taken up for passing order in respect of interim maintenance petition filed by the petitioner against her husband claiming interim maintenance for herself of Rs.40,000/- for herself.

The petitioner's case in a nutshell is that she was married to the OP on 05.02.17 according to Hindu Rites and Customs. Soon after marriage she was subjected to physical and mental torture by the OP on various grounds. Claiming herself to be an unemployed lady and the OP is an able-bodied man and earning of Rs.1,20,000/- and hence prays for monthly interim maintenance of Rs.40,000/- for herself.

The OP by filing shows cause denying all the materials except the marriage. OP has stated in his affidavit of Asset and Liability that his Net pay after deduction is Rs.35,000/- per month. OP has filed his pay slip from which the court finds that OP has monthly gross pay of Rs. 60,280/- whereas his net pay is **Rs. 55080/-**

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 which makes a prima facie case for grant of interim maintenance at this stage.

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. It is a solitary principle of law that every husband is bound to maintain his wife. When a person enters 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.

In this connection it is pertinent to mention the observation of Hon'ble Supreme Court of India, in **Rajnish Vs. Neha reported in (2021) 2 SCC 324** where the Hon'ble Court was pleased to observe 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.*

*It is admitted fact that petitioner has already got an interim order of Maintenance in c/w Misc 143/2019 , order dated 26.08.2022 in which she got an order of Rs.2000/- u/s 19 and Rs. 3000/- u/s 20 total Rs. 5000/- under the PWDV Act.*

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, *I am of the view that an interim maintenance of **Rs.2000/- per month** to be paid to the wife.* The order is effective from the date of filing. This amount will be considered as **additional amount**, considering the order passed by this court in c/w Misc Case 143/2019 .

### **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.2000/- per month to be paid to the wife with in 10 days of every succeeding month. This order is effective from the date of filing , failing which the petitioner will be at liberty to put the order in execution. This amount will be considered as **additional amount**, considering the order passed by this court in c/w Misc Case 143/2019 . The arrear amount is to be paid by the OP within 18 months from the date of this order in equal installment.

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

**To 22.05.2024 for evidence.**

J.M 2<sup>nd</sup> Court, Barrackpore.

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