

M 833 of 2017

27.03.2019

Record is fixed today for order.

Both parties file hazira.

I have heard the Ld Advocates for both sides. Perused. Considered.

This is an application for interim maintenance u/sec. 125 of the Cr. P. C.

The marriage of the parties of this case was solemnized on 31.01.1994. One female child was born out of the wedlock in the year 1995. After the marriage, the marital life of the petitioner became full of miseries. The O.P and his family members have been abusing the Petitioner. The opposite party has neglected to maintain the petitioner and the child. After the birth of the child, the torture increased. He has an illicit relation with one Tumpa Sarkar. The Petitioner was compelled to leave her matrimonial home and started residing at her parental home since 15.3.2016. His monthly income is Rupees 45,000/- per month from his employment as Security Guard.

In order to survive, the petitioner has prayed for an interim maintenance of Rupees 8,000/- for herself and Rs. 8,000/- for the unmarried daughter per month.

The opposite party has filed the written objection and denied the case of the petitioner except the fact of marriage and the birth of the child out of the wedlock. It is alleged that the Petitioner used to ill behave with the O.P and his family members. She did not perform her matrimonial duties. She drove her husband out of the matrimonial home. She has extra marital affair. The O.P is working at west Benga Police and earns Rs. 21,000/- per month. His daughter is an air hostess and earns Rs. 40,000/- per month. The opposite party thus prays for the rejection of interim maintenance petition.

I have gone through the petition and the written objection. I have also thumbed through the allegations and counter allegation of the parties of this case.

The provision of interim maintenance is a measure made by the parliament for the needy wife so that she could sustain her life to see the finality of the case she has initiated U/sec. 125 of the Cr.P.C.

In Shail Kumari Devi v Bishnu Bhagwan Pathak, AIR 2008 SC 3006 the Hon'ble Supreme Court has made the following observation;

"Moreover, duration of litigation is not within the power or in the hands of the applicant and entitlement to maintenance should not be left to the uncertain date of disposal of the case. Keeping in view this hard reality, this Court in Savitri held that in absence of prohibition to grant interim maintenance such power could be read in the salutary provision of Section 125 of the Code ensuring maintenance to unable wife to maintain herself during the pendency of proceedings. Even

Parliament took into account the reality and by the Amendment Act, 2001 express provision has been made for the purpose.

At this stage the court is required to keep in mind the fact that before deciding the factual discord, some financial support is required to be given to the petitioner so that the petitioner could see the finale of the application filed by her under section 125 of the Cr P C. The court is to see as to whether the petitioner is unable to maintain herself or not.

In Romita Prasad v Avishek Prasad, 2010 (1) All India Criminal Law Reporter, 271, Cal, the Hon'ble Calcutta High Court has very clearly spelled out the approach of the court dealing with interim maintenance under section 125 of the Cr P C. The Hon'ble Court has observed that while disposing the petition for interim maintenance, the court has to only see whether the petitioner is unable to maintain herself or not and what would be the quantum of the maintenance she is entitled pending the recording of the evidence.

The allegation and counter allegation by and between the parties are matter of trial. This Court cannot sit on a mini trial at this stage. However, there is no further pleading by the Petitioner on the point raised by the O.P that the daughter earns Rs. 40,000/- per month. The admitted position is that the daughter is unmarried and that she resides with the Petitioner. The daughter is major. Thus, *prima facie* the Petitioner is not unable to maintain herself or homeless or distressed.

Hence, no order in interim form is passed in favour of the Petitioner without perusing the evidence to be adduced by the Parties. Thus, the prayer of the Petitioner for interim maintenance stands refused at this stage.

Fix 21.8.2019 for evidence