

**M Case- 570/2022**  
**Order dated: 04.08.2023**

Today is fixed for interim hearing .  
Both parties files hajira.  
Petitioner filed supplementary affidavit.  
Heard both sides.

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.1,00,000/- and Rs.30,000/- for the minor child.

The petitioner's case in a nut shell is that she was married to the OP on 17.01.2001 according to Hindu Rites and Customs. In wedlock one child was born . After few days of marriage petitioner was subjected to mental and physical torture by OP . Claiming herself to be an unemployed lady and the OP is an able bodied man and earning of Rs.250,000/- per Month and hence prays for monthly interim maintenance of Rs.100,000/- and Rs.30,000/- for the minor child.

Petitioner files one reply of RTI dated 19.06.2023 showing that the OP has monthly Gross salary of rs. 1,82,929/- petitioner also stated that she has awarded an order of interim maintenance of **Rs.20,000/-** per month in c/w Mis case being Misc 156 of 2022 under the PWDV Act by this court. Petitioner has not filled her bank statemnet before the court.

The OP by filing show cause denies all the allegation made in the record and admitting the fact of marriage and the child and prays for dismiss of the petition. OP has further stated that the petitioner has made some criminal activities in the house of the OP and criminal case is filled against her. OP has filled affidavit of Assets and Liability, and stated his monthly Gross income is Rs.1,80,456 and net income Rs. 81,987/-. OP further sated that the petitioner is having an extra-marital affair with one Dinesh Bajai. OP further stated that the petitioner is having her own income. Both of their son has already become majors.

Having heard the submission of the L.d. 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 along with their minor child which makes a prima facie case for grant of interim maintenance at this stage. So that her upbringing may not hamper.

The mere statement of the petitioner that she is unable to maintain herself and her minor child 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 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. Both parties filed affidavit of asset liability.

It is pertinent to mention the observation of Hon'ble Supreme Court of India, in **Rajnesh Vs. Neha** reported in **(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:*

*(a) issue of overlapping Jurisdiction To overcome the issue of overlapping Jurisdiction , and avoid Conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Court/ District Courts/ Magistrate Courts throughout the Country. We direct that:*

*(i) Where successive claims for maintenance are made by a party under different status, the Court would consider an adjustment or set-off of the amount awarded in the proceeding/s , while determining whether any further amount is to be awarded in the subsequent proceeding;*

*(ii) It is made mandatory for the applicant to disclose the previous proceedings and orders passed therein, in subsequent proceeding;*

*(iii) if the order passed in the previous proceeding requires any modification and variation it would be required to be done in the same proceeding.*

(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 awarded by the petitioner of **Rs 20,000/- in C/w with Misc case. 156/2022** awarded by this court on 24.11.2022 is sufficient and there is no requirement of any further amount considering the Net pay of the petitioner.

Hence, it is,

**ORDERED**

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

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

**To 02.11.2023 for evidence.**

**D/C by me,**

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

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