

M Case- 570/2022
Order dated: 12.08.2024
Rekha Pandey v. Santosh Pandey

Today is fixed for interim hearing as per the direction of the Hon'ble High Court at Calcutta in c/w **CRR 3232/2023** dated 06.05.2024 in which the Hon'ble Court was pleased to be direct that “*The Id JM, 2nd Court, Barrackpore is directed to come to its own finding whether the amount should be granted by way of interim maintenance and, in case, it grants the interim maintenance, it would compare with the amount granted under the provisions of the PWDV Act and, thereafter, decide in which proceeding the adjustment is to be made. The findings or the order thereby rejecting the prayer for interim maintenance is set aside. The Id Magistrate will afresh consider the same within a period of 60 days from the date of communication of this order.*”

Both parties files hajira.

The order was communicated with this court on 26.06.2024. thereafter the record was fixed for hearing on 06.07.2024, 25.07.2024, 07.08.2024 and finally on 12.08.2024.

Heard both sides in full.

Now, 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 07.05.2024 showing that the OP has monthly Gross salary of rs. 1,92,696/- 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.

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 today her Salary slip for the month January, 2024 stated his monthly Gross income is Rs.1,91,665/- and net income Rs. 92,854/-. 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 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 along with their children 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 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 **Rajesh 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 petitioner is entitled for interim maintenance.

Now the question before this court is the quantum of the maintenance. It is admitted fact 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 already been awarded to the petitioner.

Petitioner has mentioned in her affidavit of asset and Liability that her monthly expenditure is Rs. 1,60,000/-. she has further stated that she incurred Rs. 40,000/- monthly expenditure towards her children's school and college fees. But has not filled a single documents or bills in support of that. Petitioner has further stated that she pays Rs. 20,000/- per month towards the Pocket money of her children. Petitioner further stated that she pays monthly Rs.20,000/- towards her monthly rent. But neither any rent agreement nor a single rent receipt has been filed by the petitioner in support of her claim. Petitioner has also incurred expenditure of Rs. 10,000/- per month towards domestic helpers.

*It is pertinent to mention her of the observation of the Honb'le Supreme Court in **Saygo Bai vs. Chueeru Bajrangji** reported in 2011 AIR (SCW 336), in which the Honb'le Supreme Court pleased to hold that while determining the quantum of maintenance husband working as police constable and getting monthly salary of Rs.10,000/- husband also having income from agricultural land. Maintenance of Rs.1500/- per month is granted in favour of the wife.*

Thus the amount granted by the Honb'le Supreme Court in aforesaid matter is less than 1/5 of the husband income.

The objective of granting interim maintenance is to ensure that the dependent spouse is not reduce to destitution or vagrancy on account of the failure of marriage, and not as a punishment to the other spouse. There is no straight jacket formula for fixing the quantum of maintenance of avoided. The factors to be determined to the court is the status of the parties, the **reasonable need of the wife**. On the other hand the reasonable expenses of the husband of his own maintenance and the maintenance of his dependent family members is also to be considered.

The earlier order was passed by this court on 04.08.2023 when the net pay of the OP was admittedly Rs.81,987/-. But today the net pay of the OP is Rs.92,854/- which is higher than his earlier income. 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.3000/- per month to be paid wife. **The order is effective from the date of order** as the petitioner is already getting maintenance in Misc case. 156/2022 **and this amount is allowed considering the present increase of the income of the OP.**

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.3000/- per month to be paid to the wife the wife for herself 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 order.**

The amount will be considered as further amount, in addition to the amount passed in c/w Misc Case 156/2022.

The prayer for maintenance of her minor 17 years (at the time of filing of the case) old child, who is presently adult is considered and rejected at this stage. The same will be considered after trial.

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

To 10.12.2024 for evidence.

D/C by me,

J.M 2nd Court, Barrackpore.

J.M 2nd Court, Barrackpore.