

M Case- 488 of 2023
Order dated: 20.03.2024

Today is fixed for interim hearing .

Both parties files hazira.

Heard both sides.

The record is taken up for passing order in respect of interim maintenance filed by the petitioner against her husband claiming interim maintenance of Rs.30,000/- for herself and Rs. 30,000/- each for her two daughters and one male child.

The petitioner's case in a nut shell is that she was married to the OP on 27.01.2008 according to Muslim Rites and Customs. After marriage the OP started mental and physical torture towards the petitioner and as a result the petitioner started protest against the ill acts of OP. Out of the wedlock two daughters and one male child was born on 03.10.2009, 18.08.2011 and 25.04.2019. Petitioner further submits that the OP had illicit relationship with different lady. When petitioner caught him red handed then he again assaulted the petitioner brutally in a drunken condition. On 15.06.2023 OP threatened the petitioner to transfer the Medical shop his name. But when the petitioner denied to agree of such illegal proposal, the OP threatened her that he will kill her or burn her face by way of using acid. On 17.06.2023 the petitioner came out from her matrimonial home. On Claiming herself to be an unemployed lady and the OP is the councillor of Ward No. 18, Barrackpore Municipality and also the Chairman in Council of Barrackpore Municipality and earns Rs. 8500/-PM, from Sana Medical Hall OP earns Rs. 75,000/-PM, OP having a constructional cum developing and General Order supply business in the name of M/S Sana Construction from that business he earns Rs. 2,00,000/-PM and also OP having a extra income from other sources is more than Rs. 1 lac, his total income is Rs. 3,75,000/-PM. and hence prays for monthly interim maintenance of Rs.30,000/- for herself and Rs. 30,000/- each for her two daughters and one male child.

The OP by filing written objection denies all the allegation made in the record and admitting the fact of marriage and the child and prays for dismissal of the petition. OP has stated in his affidavit of assets and liabilities that Op use to earn Rs. 8,500/- from Municipality and Rs. 15,000/- from construction business per month. OP stated that petitioner is owner of a medical shop and the business of the OP is also recorded in the name of the petitioner.

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 minor children which makes a prima facie case for grant of interim maintenance at this stage, so that their upbringing may not hamper. Both the parties were directed to file their bank statement and on perusal of the same is transpired that there is a joint bank account in the name of the petitioner and the OP. On perusal of the said bank account, it is not clear whether the petitioner is an unemployed lady. The said fact can be adjudicated only at the stage of trial and as such the Court is not inclined to grant any interim maintenance in favour of the wife.

It is a solitary principle of law that every husband is bound to maintain his 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 children. 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 **Rs 5,000/- each for her three minor children** to be paid to the wife for for the maintenance of the minor children till they attained majority. 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 **Rs 5,000/- each for her three minor children i.e a total amount of Rs. 15,000/- per month** 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 for evidence

J.M 4th Court, Barrackpore.