

M Case- 648 OF 2023

CNR No.-WBNP 150038202023

Naupada KalpanaPetitioner

--V/S---

Naupada SantoshOpp. Party

Order dated: 05.01.2026

Today is fixed for hearing of interim maintenance petition filed on behalf of the petitioner. Both the parties are present by filing hazira through their concerned Ld. Advocates.

Ld. Advocate on behalf of the OP had submitted photocopies of decree of divorce between the parties. Petitioner had submitted one affidavit. Let the same be kept with the record.

Heard both sides in full. Perused the materials on record. Considered.

Record is now taken up for passing necessary order in respect of petition for interim maintenance filed by the petitioner/wife namely, Naupada Kalpana

The petitioner's case, in a nutshell, is that she got married with the opposite party on 29.04.2015 in accordance with Hindu Rites and Customs. It is also submitted that subsequent to solemnization of her marriage with the O.P., she went to her matrimonial home after solemnization of marriage, she began to lead conjugal life with the opposite party along with all the gift articles given at the time of her marriage. Out of the said wedlock one female child took birth on 17.11.2016. After that OP and his family members began to inflict torture upon the petitioner and demanded more cash as dowry amount from the petitioner and also threatened her with dire consequence. Then lastly, on 19.10.2022, the OP had ousted the petitioner and her minor daughter after assaulting the petitioner and since then the petitioner and her minor daughter took shelter at her paternal house.

The petitioner has no source of income to maintain herself. On the contrary, the O.P. is an able-bodied person and works in Indian army wherefrom he earns monthly Rs. 80,000/- per month approximately therefrom. The petitioner on the above grounds prays for interim maintenance to the tune of Rs. 20,000/- per month for herself and Rs. 15,000/- per month for her minor daughter from the opposite party.

The opposite party contested this case by filing the Written Objection denying each and every averment as made out in the petition for interim maintenance, however the O.P has admitted the factum of marriage and submitted that the petitioner got divorce from the OP. The Op further stated that the petitioner had left the Op out of her own will and after the divorce the petitioner again married. The OP had tried her level best to maintain the petitioner and her minor daughter but due to certain reason the petitioner had never tried to live happily with the OP.

The OP further contended that he works in Indian army and earns Rs. 51,000/-. The OP is depositing Rs.2,000/- per month for his daughter in Sukanya Samridhi Yojana. The opposite party, on the above grounds, prays for rejection of prayer of petitioner for interim maintenance in the instant case.

To get an order of interim maintenance allowance, petitioner has to prove prima facie that :- 1) she is the legally married wife of the Opposite party and 2) Opposite party has failed and neglected to maintain the Petitioner, in spite of having sufficient means, 3) Petitioner is unable to maintain herself.

Point no 1.

In the instant case, without prejudging any points raised by the respective parties, it appears to this court that till date the marriage is not subsisting between the parties, as the same has been submitted by the O.P. But in this instant case the OP had submitted that divorce had been taken place between the petitioner and the OP, therefore the petitioner is not entitled to get maintenance from her husband.

Now in this case, one judgment of apex Court passed in **Shahnaz Bano D/O Aslam Khan (Smt.) vs Babbu Khan S/O Nanhekhani Pathan ... on 22 August, 1985 (1985 (2) BomCR 765)** can be quoted where it had been held by the Hon'ble Court that the divorced wife is also entitled to get maintenance until she does not remarry. Although in this instant case such factum of remarriage of the petitioner had been whispered by the OP in the W/O, but OP had failed to adduce a single scrap of paper in support of the contention that the petitioner is remarried with some other person at present and is residing with him at present.

On the other hand the petitioner had submitted an affidavit stating that she is not remarried with anyone else.

As a husband, the opposite party is duty-bound to maintain his divorced wife and in the instant case not a single farthing has been paid to show the bona fide gesture.

Point No 2:-

Petitioner got married with the O.P 11 years ago and subsequently she was driven out from her matrimonial home by the Opposite Party and since then the O.P has been neglecting and refusing to maintain the petitioner. Whatever may be the reason, the fact remains that Petitioner has been residing in separate house i.e. her paternal home and this fact has been admitted by the O.P. It is also to be noted in this context that there is no whisper in the four corners of record suggesting that Opposite Party ever provided maintenance to the petitioner. The position being such, it can be prima-facie said that Opposite Party has refused and neglected to maintain the petitioner.

The next question is whether the Opposite Party has sufficient means or not? Petitioner contended that Opposite Party earns Rs. 80,000/- per month, but she failed to produce any documents in support of her contention.

Opposite Party denied the same and the OP had admitted that he earns Rs.51,000/- per month. From the perusal of the materials available in the record, exact income of either OP or the petitioner cannot be ascertained. From perusal of the asset declaration submitted by the petitioner as well as OP it appears before the Court that OP had admittedly more income than the petitioner.

The words 'sufficient means' occurring in section 125 of Cr.P.C does not signify any visible means such as, real property or definite employment. If a man is healthy and able bodied, he must be held to possess the means to support his legally married wife and he cannot be relieved of merely on the ground that he is unemployed or has a very little income. In the instant case, it is not the plea of the Opposite Party that he is physically handicapped or physically unable to do any work. In the light of the foregoing discussion, this Court is of the view that Opposite Party has sufficient means to maintain the petitioner.

Now it is observed by this Court upon perusal of the record that there is no whisper in the four corners of record suggesting that Opposite Party ever provided maintenance to the petitioner. The position being such, it can be prima-facie said that Opposite Party has refused and neglected to maintain the petitioner. In this context it was observed in the case of **2005 Cri. LJ 3889 (3891)**, that *the question of necessity to grant interim maintenance is essentially a question to be decided on prima facie assessment of position of both the parties before the Court. A detailed inquiry is not contemplated while deciding an application for interim maintenance.* In the instant case, there is nothing on record to show that the petitioner/wife has independent source of income. On the other hand, the OP/husband has not mentioned anything about his means of livelihood despite his admission that he bears all his expenses along with the expense of his parents. Thus, it is a matter of common prudence that a man who can bear all the expense of himself as well as his aged parents, must have atleast some source of income which enables him to maintain his daily livelihood. Thus, it prima facie appears that OP/husband is at a better financial position compare to the petitioner/wife.

Point No 3:-

Petitioner also contended that she has no independent source of income. Nothing is on record that the petitioner has any source of income of her own. Having regards to all these circumstances, this Court finds no reason to disbelieve the assertion made by the Petitioner at this interim stage. So, it is held that petitioner is able to establish prima facie that she has no independent source of income. In other words, it can be said that Petitioner is unable to maintain herself.

The provision of Chapter IX of Cr.P.C is intended to fulfill a social purpose. Their object is to compel a man to perform the moral obligation which he owes to the society in respect of his wife and children. By providing a simple, speedy but limited relief, it was aimed to ensure that the neglected wife is not left at penury and in a destitute condition on the scrap-heap of the society and thereby driven to a life vagrancy, immorality and crying crime for their subsistence.

Thus, keeping in view the benevolent nature of the Act, the provisions under the act should be interpreted broadly. In **Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, (1985) II LLJ 539** the Hon'ble Supreme Court observed:-

"The principles of statutory construction are well-settled. Words occurring in statutes of liberal import, such as social welfare legislations, and 'human rights' legislations, are not to be put in procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations, the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', 'content' and 'context' of such statutes".

In view of the discussion made above and regards being had to the provisions of law and other materials on record in the considered view of this court, Petitioner is entitled to get interim maintenance allowance for herself from the Opposite Party. But the question is what amount should be awarded to the Petitioner which can said to be reasonable. The petitioner though has claimed maintenance to the tune of Rs. 20,000/- per month for herself and Rs.15,000/- per month for her minor daughter from the opposite party. Considering the present market price and status of the parties, this Court is of the view that if, Rs. 5,000/- per month in favour of the Petitioner and Rs. 5,000/- per month in favour of her minor daughter towards their interim maintenance allowance, it would be reasonable to either of the parties at this interim stage.

Hence, it is

ORDERED

that the present application for interim maintenance allowance is hereby allowed on contest in part in favour of the Petitioner considering the circumstances without any cost.

Opposite Party is hereby directed to make payment of a sum of Rs. 5,000/- per month in favour of the Petitioner and Rs. 5,000/- per month in favour of the minor daughter of the petitioner, i.e Rs. 10,000/- per month towards them, as their interim maintenance amount with effect from the date of filing of the original application i.e. 14.08.2023 as per the guidelines provided by the Hon'ble Apex Court in Rajnesh Vs. Neha (Criminal appeal No. 730 of 2020).. The payment must be made within 10th day of each succeeding English Calendar month failing which, the petitioner is at liberty to realize the same through Court.

Such amount is adjustable with the maintenance, if any, paid by the O.P. to the petitioner under any other statute.

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

Fix 17.12.2026 for PW (evidence by petitioner).

Dictated & Corrected by me.

Judicial Magistrate 2nd Court,
Barrackpore, North 24 Parganas

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JO Code- WB01493