

M Case- 808 of 2023
Order dated: 08.07.2024

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.25,000/- PM for herself.

The petitioner's case in a nut shell is that after marriage the OP with the instigation of his family members started to demand an amount of Rs. 5,00,000/- from the family of the petitioner which they did not provide and as a result the petitioner was subjected to mental and physical torture by the OP and other in laws. The petitioner found that a Matrimonial suit being no. 313 of 2018 is pending before the Ld. 2nd ADJ, Barrackpore in that suit the OP applied for Divorce from Priya Das. The petitioner has been cheated by the OP and other in always for their wrongful gain. On 24.04.2023 the petitioner was assaulted mercilessly by the OP and other in laws and they also wanted to burn the petitioner alive and driven her out from her matrimonial house retaining all of her stridhan articles. Petitioner has no source of income. OP is an employee of Todi Packaging Pvt. Ltd. and earns Rs. 40,000/- PM and OP has his own business and and earns Rs. 20,000/- per month and hence prays for monthly interim maintenance of Rs 25,000/-PM for herself.

The OP by filing written objection denies all the allegation made in the record and admitting the fact of marriage and prays for dismissal of the petition. The OP has stated that since the petitioner knew that one divorce proceeding is pending between the OP and his wife Priya Das before the Ld. 2nd ADJ, Barrackpore. As such he denies the petitioner to be his wife as his previous marriage has not yet been dissolved. OP stated his income in his affidavit of assets and liabilities, he stated he is a salesman in garment shop and earns Rs.6000/- to 7000/- PM. Both parties have admitted that they are living separately.

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 which makes a prima facie case for grant of interim maintenance at this stage, so that her upbringing may not hamper.

It is a solitary principle of law that every husband is bound to maintain his wife. 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.

Relief in other suits and legal proceedings.-

1. Any relief available under Sections 18,19, 21 and 22 may also be sought in any legal proceedings, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.
2. Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal Court.

3. In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

On perusal of the pleadings of both the parties it primarily appears that the petitioner has been cheated and that the respondent has again re-married during this subsistence of his previous marriage without informing the petitioner about the same. It also appears that the respondent has an intention of further cheating the petitioner by denying to give her the status of the wife in order to absolve his responsibility of paying maintenance to the other side. Section 2a of the PWDV Act defines the term aggrieved person to mean any women who is, or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondents. Referring to the said provision of law it very well transpires that the petitioner is an aggrieved women and has been subjected to domestic violence by the respondent. As such the Court finds no impediment in allowing the prayer of the petitioner.

It is pertinent to mention the observation of Hon'ble Supreme Court of India, in Rajesh 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 of **Rs.2,000/- per month** to be paid to the wife as maintenance. 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 of **Rs 2,000/- for the petitioner** 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 19.12.2024 for evidence

J.M 4th Court, Barrackpore.