

M Case- 1046 of 2022

Order dated: 14.12.2023

Today is fixed for interim hearing .

Both the parties file hazira.

Heard both sides.

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 of Rs. 10,000/- per month for herself and Rs.6,000/- per month for her minor son.

The petitioner's case in a nut shell is that she was married to the OP on 09.12.2016 according to Hindu Rites and Customs. One male child namely Roddur Mukherjee was born out of the wedlock. After few days of marriage petitioner was subjected to mental and physical torture by OP. On 02.12.2022 the petitioner tortured by her husband alongwith her in laws and again brutally beaten by them and the OP forced to petitioner to go to her parental house, but when she denied the same the OP alongwith in laws mercilessly assaulted the petitioner and drove out her from the matrimonial home with single cloth. Claiming herself to be an unemployed lady and the OP is employed at Himalaya Optical Shyambazar, of 226/A, Acharya Prafulla Chandra Road, Fariapukur, Kolkata and earns Rs.30,000/-PM and hence prays for monthly interim maintenance of Rs.10,000/- for herself and Rs.6,000/- per month for her minor son.

The opposite party by filing written objection denies all the allegation made in the record. The OP prays for dismissal of the petition. OP has mentioned in his affidavit of assets and liabilities that his income is Rs.35,000/-PM as an employee of Optical shop. Both parties have admitted that they are living separately.

The mere statement of the petitioner that she is unable to maintain herself 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. 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 (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.2,500/- per month to be paid to the wife for herself and Rs. 3,500/- per month for the minor son. **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 maintenances of Rs 2,500/- for herself and Rs.3,500/- per month for the minor son 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 **12 months in equal installments.**

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

To 25.06.2024 for evidence.

D/C by me,