

M. Case No 1061 of 2022
Smt. Indrani Das Vs. Sri. Premangshu Das

Order dated : 05.02.2025

Today is fixed for hearing of the interim maintenance petition.

Both the parties files hazira.

Heard the Ld. Advocate for both the parties.

Record is taken up for passing order with regard to the interim maintenance petition filed by the petitioner.

The petitioner's case in a nut shell is that her marriage with the OP was solemnized on 03.08.2011 as per the Hindu rites and customs and it was duly registered on 21.10.2011. The petitioner married the OP after the demise of his previous wife namely, Mitra Das. At the time of marriage the father of the petitioner gifted several articles including cash as per the demand of the OP and his family members. After few days of marriage the OP and his family members started to inflict mental and physical torture upon the petitioner for demand of more dowry. When the petitioner and her father was not able to fulfill their demand the degree to torture increased. The petitioner then lodged one complain being Nimta PS case no.839 of 2020 under Section 498A IPC dated 25.10.2020. That the OP is a habitual drunkard and he used to abuse the petitioner in a drunken condition. ON 25.10.2020 the OP and his family members assaulted the petitioner and drove her out of the matrimonial home in a single apparel. The petitioner took shelter at her parental home and at present she is residing at her parental home. The petitioner has no independent source of income and she is passing her days in distressed condition. On the other hand, OP is working for gain as a head tailor and embroidery business and he also owns a factory where at least 10 workers are engaged. OP earns Rs.50,000/- per month from those sources and he also owns movable and immovable properties and money lending business. OP has willfully neglected and refused to maintain the petitioner. Petitioner has prayed for Rs.20,000/- per month as maintenance allowance for herself and Rs.10,000/- as litigation cost.

OP filed his show cause and written objection and denied all the allegation made by the petitioner except marriage with the petitioner. It is submitted that the OP is not the husband of the OP as such she is not entitled to get maintenance. The petitioner has filed a false case under Section 20 of the PWDV Act and Section 125 of CrPC against the OP. The term 'wife' under Section 125(1) means only legally wedded wife and in the absence of a legal and valid marriage the petitioner claim maintenance as she not the legally married wife of the OP. The parties never resided as husband and wife as such there are no children. In the year 2021, the OP and the petitioner had a small cloth selling business. The OP used to deliver clothes in wholesale price in haat and small shops. He got acquainted with the petitioner but there was never any relation of love and affection between them. The petitioner used to go to the house of the OP in relation with clothing business. The petitioner at various point of time impersonated as the wife of the OP. The marriage registration never took place in the month of December, 2011. In the year 2012 the OP gave Rs.1,20,000/- to the petitioner with which the petitioner purchased one immovable property which the petitioner did not disclose before this court. Thereafter the petitioner vanished from the life of the OP until the year 2020. In the month of November 2020 the petitioner again came to the house of the OP and demanded money and when he refused the petitioner lodged Nimta PS Case no.839 of 2020 u/s 498A IPC. The son of the OP is the absolute of the residence in which the OP is residing. Upon threat the son of the OP allowed the petitioner to stay on temporary basis in the ground floor if the said residence as she was in need of accommodation. The petitioner also undertook to withdraw the case under Section 498A IPC and go away permanently if she was given some money. The son of the OP requested the petitioner to vacate the ground floor room but she did not vacate. The son of the OP has lodged an eviction suit against the petitioner being T.S 216 of 2021 before the Ld. Civil Judge Junior Division, Bidhannagar. After institution of the said case the petitioner put the house under lock and key and she vanished without a trace since April 2021. The petitioner has suppressed her actual address. The OP is unemployed at present and he is under the care of his son. Thus, OP prayed for the rejection of the interim maintenance petition.

Petitioner has mentioned in her affidavit of asset and liabilities dt.12.12.2022 that she has no source of income and she is staying at her parental house. On the other hand, the OP filled his affidavit of assets and liabilities where he stated that he is unemployed at present. Petitioner has filed the copy of the marriage certificate and one surrender slip with respect to Nimta PS Case No.546/22 dated 25.09.2022 u/s 341/323/506 IPC. He has filed one copy of the deed by way of which the petitioner has purchased one property.

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 though the OP has disputed the marriage but on perusal of the copy of the marriage certificate it appears that the parties were married. There is also a dispute as to the present residence of the petitioner. The marriage has been challenged but the same cannot be decided at this stage and it is a matter of trial. However, from the marriage certificate filed by the petitioner it can be seen that the marriage between the parties was registered. It appears that the petitioner being his wife is living separately which makes a prima facie case for grant of interim maintenance at this stage. The allegations and counter allegations of the parties towards each other can not be decided at this stage without taking evidence. OP has claimed that he is unemployed at present.

From the above mentioned points it is clear that there is urgency and the petitioner is thus entitled to get an interim maintenance from the O.P. The matter to be considered is that whether the O.P had sufficient means to maintain. It is observed by the **Hon'ble High Court of Calcutta** that the term '**means**' which not only signifies only visible means such as real property or definite employment. If a man is healthy and able bodied he must be held to be possessed of sufficient means no matter whether he is a professional beggar or a minor or a monk. Once a person has capacity of earn he cannot refuse or neglect to maintain his wife, child or parent. [**Dasarathi vs Anuradha 1988 CrLJ 64(Cal) & Durga vs Prembai 1990 Cr LJ 2065; 1990 Jab LJ 307**].

Thus, it can be presumed at this stage that the O.P being an able bodied man has some income of his own. It is also considered that he is 65 years old at present.

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.

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 observe 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, age and income of the OP his liability, I am of the view that an interim maintenance of Rs.1500/- per month is to be paid for the maintenance of the petitioner.

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.1500/- per month to 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 of 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 03.09.2025 for evidence.

Typed, Printed & Corrected by me,

**(Pratigya Pradhan)
J.M, 3rd Court, Barrackpore.**

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