

M Case 1138 of 2022
Smt. Piyali Kundu vs. Sri Sanjay Kundu

Order dated 07.03.2025

Today is fixed for passing order.

Both the parties files hazira.

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

The case of the petitioner in the nutshell is that the marriage of the petitioner with the OP was solemnized on 08.03.2003 as per the Hindu rites and customs. After marriage the petitioner went to her matrimonial house. The marriage between the parties was duly consummated and out of the said wedlock one male child namely Dibyojoti Kundu now aged 17 years was born on 29.09.2005 and he is residing with the petitioner. At the time of marriage the parents of the petitioner gifted Rs.70,000/- in cash along with gold ornaments and furniture. On the day of 'boubhat' the mother in law of the petitioner expressed her dissatisfaction over the gifts gifted by the parents of the petitioner. Since the day the petitioner and her family members refused to marry her elder brother to the unmarried sister the petitioner was subjected to inhuman mental and physical torture. The petitioner suffered from jaundice within one year of marriage but she was not provided any treatment by the OP and his family members. The father of the petitioner took her to her parental house for the treatment as a result he OP and his family members ceased all contacts with her. When the petitioner remained bedridden for a period of four months due to her illness at her parental house the OP and his family members did not keep any contact with her. During her pregnancy the petitioner was not provided proper food and medicines. At the time of birth of the child the OP did not take any responsibilities. On 27.04.2007, the petitioner gave birth to a female child namely Deep Sikha Kundu now aged 15 years. The quantum of torture increased after the birth of the female child. The OP did not even went to see his new born child. The mother in law of the petitioner assaulted the petitioner and abused her with filthy languages after the birth of the female child. The OP also pressurized the petitioner to bring money for his business from her parents. He also mortgaged the stridhan articles of the petitioner without her consent and knowledge. The petitioner even attempted suicide due to such torture. Finding no other alternative the petitioner took her children and went to her parental house. Since then the petitioner has been residing at her parental house. The OP is very reluctant and least interested to lead conjugal life with the petitioner. The petitioner is a destitute lady and she has no source of income and she is living in the charity of her aged and ailing parents. The OP on the other hand is a businessman wherefrom he earns Rs.50,000/- to Rs.60,000/- per month. The petitioner has to incur regular expenses for her children. The OP has willfully neglected and refused to maintain the petitioner and her children. Therefore, the petitioner has prayed for Rs.20,000/- per month for herself and her children as maintenance allowance from the OP.

OP in his written objection denied all the allegation made by the petitioner except marriage with the petitioner and the paternity of the children. It is submitted that the petitioner has no regards for her husband and her in-laws. The son namely Dibyojoti Kundu has now attained the age of majority and he is no longer a minor. The petitioner took all her stridhan articles at the time when she willfully left her matrimonial home. She also made a written declaration to that effect on 12.01.2020. It was the OP who gave Rs.20,000/- in the hands of the elder brother of the petitioner for the proper treatment of the petitioner. The petitioner was in the habit of leaving her matrimonial home frequently with her father and sometimes with one person named Raju Ghosh. It was the OP who time and again brought her back to the matrimonial home. The petitioner left with her father when she was suffering from jaundice and the OP personally went to the parental house of the petitioner and handed over the sum of Rs.20,000/- to the brother of the petitioner. The OP and his family members never ceased any contact with the petitioner at any point of time. The OP himself gave Ts.10,000/- in cash in the hands of his father in law at the time of birth of the female child at B.N Lahiri Nursing Home. The OP was always in touch with the petitioner since the birth of the female child and even prior to that stage. He also provided all the basic needs to the petitioner and her new born child as per his capacity. The OP has no business of his own and he is presently engaged in AB Management and Services at Tollygunje where he works in a no work no pay basis. He works to verify the address and insurance of private employees with the incentive of Rs.150/- per verification and he can hardly manage to verify one or two verifications. The father of the petitioner once gave Rs.44000/- to the father of the OP for making room and the same has been repaid during the time of willful desertion by the petitioner. The OP also had to take loan from Mannapuram Finance Ltd on 19.10.2020 by keeping the gold ornaments of his mother to run his conjugal life.

The petitioner always threatened to leave the OP. The petitioner always pressurized the OP to leave separate from his old aged parents and when he refused to do so the father of the petitioner took her to her parental house on 12.01.2020 with all her stridhan articles. The petitioner was a habitual drinker and she forced the OP to drink and when he refused the OP was subjected to torture. The OP took her to several trips but nothing satisfied the petitioner. The petitioner had an extra marital affair with one Raju Ghosh and the petitioner has given him Rs.50,000/- for purchasing a car. The petitioner is an employee of a garments showroom situated at Kachrapara and she earns Rs.12,000/- per month. The mother of the petitioner is a pension holder. Thus, OP prays for rejection of the interim maintenance petition.

Petitioner has mentioned in her affidavit of asset and liabilities dt.31.12.2000 that she has no source of income. On the other hand, the OP filled his affidavit of assets and liabilities stated that he earns Rs.8000/- per month as filed executive. OP has filed the copy of the birth certificate of his son, copy of the special coupon for food grain distribution, ration cards, copy of agreement, employee id, bank statement and statement of account of Mannapuram Finance Ltd.

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 with her children makes a prima facie case for grant of interim maintenance at this stage. It is found that the son of the petitioner has already attained majority and the same is not denied by the petitioner. The OP has claimed that the petitioner is a earning lady but no such proof of income has been filed. No evidence as to the income of the petitioner has come before the court. The allegations and counter allegations of the parties towards each other can not be decided at this stage without taking evidence.

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 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 form 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.1500/- per month to the petitioner and Rs.1000/- per month to her minor daughter is to be paid by the OP.

Hence, it is,

ORDERED

that the petition filed by the petitioner praying for interim maintenance is thus allowed on contest in part.

The prayer for maintenance allowance for the son of the petitioner is rejected as he has already attained the age of majority.

The OP is hereby directed to pay interim maintenance of **Rs.1500 /- per month to the petitioner and Rs.1000/- to her daughter** 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 12.09.2025 for evidence

Typed, Printed & Corrected by me,

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

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