

Misc Case No. 29 of 2024
CIS Registration No. 31 of 2024

Order dated: 24.01.2025

The aggrieved person in order to mark her presence before this court has filed hazira.

The respondents are also present by filing hazira through their learned lawyer.

As stipulated by the previous order today is fixed for passing of order.

Hence the record is taken up for passing of order. Already heard parties on earlier occasion

The hub of the dispute trimmed off all its ramification; is whether the aggrieved person is entitled to get the interim order in her favour or not. Before engaging myself into slaying this controversy it is absolutely necessary that the chronicles of this case is epitomized. The genesis of this case is the petition filed by the aggrieved person praying for reliefs under the Protection of Women from Domestic Violence Act 2005 and in this proceeding the aggrieved person has prayed for interim relief which emanates from section 23 of the Protection of Women from Domestic Violence Act 2005. Subsequently in order to exhaust the canons of natural justice, notices were served upon the respondents through the Protection Officer as per requirement of section 13 of the Protection of Women from Domestic Violence Act 2005. After the notice was served, as a progressing action the respondents have appeared in this case and have contested the claim of the aggrieved person by filing written objection. Be it mentioned here that attempt of reconciliation has yielded no result at all.

From the facts exposted in the petition, and the affidavit which have been filed in this case, it is limpid that the aggrieved person is the wife of the respondent no. 01. However it has been alleged by the aggrieved person that at the time of marriage the respondents forced the father of the aggrieved person to give Rs. 5,00,000/-, 12 bhori gold ornaments, furniture, utensils and other house hold articles as dowry. Out of the said wedlock a child born on 28.11.2012 and she is currently 11 years old and staying with her mother. In her petition the aggrieved person has made specific allegations of wanton domestic violence being inflicted by the respondents upon her on persistent of further demand of dowry and for giving birth to a female child and the acts of deliberate and culpable torture has prompted the petitioner to file this case against the respondents. It has been further alleged in the petition that due to the torture inflicted on the aggrieved person the aggrieved person has suffered bodily pain and injury. It is the specific case of the aggrieved person that she has been denied entry in her matrimonial house by the respondents and the respondents have demanded money from the aggrieved person and her father. The aggrieved person has also pleaded that the respondent no. 01 is an able bodied person and he is S.E. Railway employee and he earns Rs. 85,000/- per month. In resonance to the facts pleaded in her petition the aggrieved party/petitioner has prayed for interim maintenance to the tune of Rs. 12,000/- per month for herself and 10,000/- for her minor daughter.

After appearing in this case the respondents have contested the claim of aggrieved person by filing a joint written objection. The case of the respondent is of total denial of the aggrieved person's case and pinning reliance on such denials advertised in the written objection the respondents have prayed for dismissal of the petition filed by the aggrieved person. However in their turn the respondents have also made counter allegations against the aggrieved person. The fulcrum of the respondents defence is poised on the fact that the aggrieved person has intentionally and whimsically deserted the company of the respondents. In the written objection the respondents have manifested that the aggrieved person out her own free will is staying away from the respondents. In the written objection the respondent No. 01 has mentioned that the aggrieved person is highly qualified and earns Rs 25,000/- per month from her private tution.

After filing of the written objection the case was posted for hearing and at the time of hearing learned lawyers for both sides argued at length in support of their respective cases. At the time of arguments the ld lawyer for the aggrieved person submitted that at this stage there is no evidence on record, and from the affidavits it would be evident that the aggrieved party has been able to establish a prima facie case and in that event she being a destitute bereft lady must get the interim relief as prayed for.

Refuting the version of his counter part, the Id lawyer for the respondents submitted that it is fact that there exists a domestic relationship between the respondent number 01 and the aggrieved person for few hours only but that does not ipso facto entitles the aggrieved person to get the order in her favour. In elaboration, the learned counsel for the respondents contended that the aggrieved person has intentionally renounced the company of her husband and that being the case she is not entitled to get any maintenance from the respondent no. 01. The Id lawyers were at loggerheads on the point of income of the respondent No. 01 and extensive arguments were advanced by the Id lawyers for both sides on the point of income.

I have traversed the pleadings, the affidavits and documents on record to the extent necessary and have also carefully analyzed the competing arguments advanced. From such introspection it is axiomatic that the petitioner/aggrieved person and the respondent no. 01 are the legally married husband and wife and they lived together in a domestic household. Therefore I have no dichotomy in holding that prima facie it is established in this case that the petitioner and the respondent no. 01 were in a domestic relationship and they lived in a shared household. It is also prima facie established that the petitioner is an aggrieved person within the meaning of Section 2 sub-section (a) of the Act. At this stage there are allegations and counter allegations against each other and the sanctity of those allegations and counter allegations can only be settled after detailed appreciation of evidences which will be only available at a later stage in this case. Therefore it would be neither pragmatic nor prudent to start a mini trial at this stage to test the authenticity of those claims and counter claims.

The definition of 'domestic violence' as given in Section 03 of the Protection of Women from Domestic Violence Act 2005 is wide enough and on close introspection of the petition, affidavit and counter affidavit I have no dichotomy in harbouring to the conclusion that a prima facie case of domestic violence has indeed been established. In fairness to Id lawyer for the respondents; an argument of some what superficial plausibility raised on their behalf needs to be addressed. It was argued that the aggrieved person has failed to prove that she was ever tortured by the respondents rather she has intentionally renounced the company of the respondents and that being the case the prayer of the aggrieved person must also be brushed aside. With due respect; I must hasten to articulate that I cannot concur with this proposition. The reason is also simple. This is a proceeding initiated under the provisions of Protection of Women from Domestic Violence Act 2005. It has nothing to do with the modalities of establishing an offence under section 498A of the Indian Penal Code 1860. In a prosecution under section 498A of the Indian Penal Code 1860 the yard sticks are high and ridge for proving cruelty and/or torture but in proceeding under the provisions of the Protection of Women from Domestic Violence Act 2005, especially at this stage the aggrieved person is supposed to advertise a prima facie case of 'domestic violence' and nothing more. The requirements of "negligence" as enshrined under section 125 of the Criminal Procedure Code 1973 is also not required in a case of this nature. The respondent cannot also take the escape route by projecting a case of section 125 (4) of the Criminal Procedure Code 1973. This being a hearing of an interim application, I must keep myself confined to prima facie factors and the act being a species of beneficial legislation for the protection of women, every interpretation must go in favour of the aggrieved person. Thus the defence adhered to by the Id lawyer for the respondents; merits no consideration. Hence from the above discussion it is established that aggrieved person/ petitioner has been able to put forward a good prima facie case to go to trial and intervention of this court by passing an interim order as per Section 23 sub-section (1) is absolutely called for in this case.

Thus following the attributes of the above discussion; I am of the fixed opinion that the aggrieved person is entitled to get the interim monetary relief as prayed for. Now the question that becomes germane for consideration what should be the quantum of such monetary relief. As held in plethora of cases; there can be no precise or settled formula to assess the quantum of interim maintenance. There is no strait jacket mathematical formula to precisely calculate any accurate amount to be given as interim maintenance. One thing however is clear and that is the Respondent no. 1 being an able bodied salaried person and being the husband of the aggrieved person is bound both socially and legally to maintain his wife. Monetary relief as envisaged in Section 20 of the Protection of Women from Domestic Violence Act 2005 must not be interpreted in a narrow sense rather many more things are included in it. Thus quantum of interim maintenance must be assessed keeping in mind this broad perspective.

However I must hasten to articulate that the respondent no. 01 must not be made to beg, borrow or steal in order to maintain the aggrieved person. A balance has to be struck between the necessity and resource.

It appears from the case record that an amount of Rs. 15000/-(thousand) per month has already been awarded to the aggrieved person and his minor daughter, by the Ld ACJM 2nd Court Raghunathpur. Hence considering the quantum of amount as awarded in the previous proceeding I am of the opinion that such an amount is appropriate for the aggrieved party to sustain during the pendency of the suit. Moreover there are plethora of Judgments of Hon'ble Apex court that If maintenance is awarded in a previous proceeding, it is a legal obligation to disclose the same in a subsequent proceedings for maintenance. While deciding the quantum of maintenance in the subsequent proceeding the court shall take into consideration the quantum of maintenance awarded in previous proceeding. The court would grant an adjustment or set off of the said amount and it would be iniquitable and unjustified to direct the husband or a person from whom ,seeking maintenance, to pay maintenance under each of the proceedings.

Hence, it is

Ordered:

That the petitioner/aggrieved person's application for interim relief is allowed and set off by the interim order passed by the Ld ACJM 2nd Court Raghunathpur.

The Protection Officer is directed to submit the DIR by the next date. Let a copy of this order be sent to the Protection Officer, Purulia for his information and compliance.

To 06.02.2025 for evidence and DIR.

Typed by me;

Judicial Magistrate, 01st Court