

**MR Maintenance 79/2024**

12/12/2024

JO Code: WB01270

Today is fixed for Order.

Both parties file hajira.

Record taken up for passing order.

The instant case was filed by Petitioner Sanjukta Manna against her husband .i.e. OP Mithuram Manna u/s 125 Cr.P.C. She has prayed for monthly interim maintenance of Rs 8000/-for herself and Rs. 5000/-each for her two minor daughters till the disposal of the case.

The OP filed detailed WO against the relief sought. Both parties have filed a detailed Affidavit of asset and liabilities.

Careful perusal of the pleadings, Affidavit and submissions made by the Ld. Counsel for the parties makes it clear that there is unanimity between the parties regarding certain points and the same does not need require detailed discussion. The points are as follows: -

1. That the marriage between the Petitioner and OP is not in dispute,
2. The marriage is still subsisting,
3. The Paternity of two minor daughters is not disputed,
4. The minor daughters live with the Petitioner,
5. The Petitioner and the OP are living separately.
6. There is no maintenance order passed in favor of petitioner under any other statute

The bone of contention between the parties are the reasons which led to the breakdown in the relationship and the parties living separately. The claims made by the parties can be summed up as follows: -

Petitioner's case in short is that after marriage she went to her matrimonial house and started her conjugal life. Initially the relation was good and the parties were blessed with two daughter. It is alleged that the OP used to regularly beat up the petitioner. Once the Petitioner was admitted to hospital due to brutal assault. Then again she was taken back. But there was no change in the behavior of OP and assault upon petitioner continued. Then finally on 24.05.2023, the Petitioner was allegedly assaulted and forced out of her matrimonial house. The Petitioner has claimed that the OP has not provided any monetary assistance to her or her children since the day of her ouster.

On the other hand, the OP has denied all the allegations made by the Petitioner. He alleged that the Petitioner never settled properly at his house. The Petitioner allegedly quarreled with the OP and his family members without any cogent reason. The OP was allegedly told by petitioner to live as Ghar Jamai. The refusal by OP led to constant quarreling and disputes. The OP claims that on 24/05/2023, the Petitioner left the matrimonial house as per her own freewill

along with her children. Attempts by OP to reconcile was not fruitful. The OP has prayed for rejection of Interim Maintenance Petition.

### **DECISION WITH REASONS**

The veracity of claims and counter claims can only be ascertained after the parties have put forth their evidence. It needs to be highlighted that the recording of evidence is yet to commence in the instant case. In this circumstance, the court has to rely on the Affidavit of asset and liabilities filed by the parties.

The point that needs to be decided whether an interim monthly maintenance allowance needs to be given as prayed for to the Petitioner or not.

It is a settled principle of law that a husband and a father has a legal and moral duty to look after his legally married wife and children until proven otherwise. The instant case is not an exception. The object of granting maintenance is to prevent vagrancy and to ensure that the neglected wife and child is not left beggared to even fulfill their basic needs. The Petitioners' include wife and two minor daughters.

Perusal of Affidavit and W/O filed by OP does not reflect any instance wherein he has provided any monetary assistance to his wife and child. In the Affidavit of asset and liabilities the OP in the point no 37 which speaks of voluntary payment of maintenance to children or his willingness to make payment at present column the OP has noted his response as not applicable. This court can understand the hesitation of OP to provide maintenance to his wife. But I find no justification to deny maintenance to minor children. The statement further implies that Petitioner is looking after the children without any assistance from the OP.

After considering the limited materials in hand, this court is of opinion that the prayer of Interim Maintenance should be allowed.

Now the question arises as to whether the OP has sufficient means to provide maintenance and how much the petitioner is entitled to?

The Petitioner has claimed that the OP owns a garment shop and also works in a ration shop. In addition the OP allegedly owns his own house, pond and vastu. In total the OP allegedly earns Rs. 40,000/- per month. The Petitioner claims to have no source of income.

On the other hand, the OP has denied having an income as claimed by Petitioner. He denies having any properties. He claims to be a day labour having an income of Rs. 4000/- per month. Further the OP claims that Petitioner earns Rs. 15,000/- per month.

At this stage, the exact income of the OP cannot be ascertained. But it is clear from pleadings and Affidavits that the OP is physically and mentally fit person.

The Hon'ble Apex Court and our parent High Court has time and again reiterated that if the person is physically and mentally fit, then he is deemed to be having sufficient means to work, earn and provide maintenance.

The OP being a husband and a father cannot run away from his responsibility at this stage. It needs to be noted that Petitioner is not alone. The minor daughters of Parties live with the Petitioner.

After considering materials in hand, I have no hesitation to hold that OP has sufficient means.

Now the question is how much interim maintenance the petitioners are entitled to?

In Rajnesh v. Neha and Anr. it was held that the maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e., maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

As already highlighted the OP has not provided any maintenance to his wife and daughters. In addition the OP has not even offered to make any payment to his daughters. The minor daughters live with the Petitioner.

After considering materials in hand, this court is of opinion that Rs. 4500/- as Interim Maintenance will be apt and proper. The date of effect shall be from the date of filing of the case as mandated by Hon'ble Supreme Court in Rajnesh Vs. Neha.

Hence it is,

ORDERED

1. That the Interim Maintenance filed by the petitioner is allowed on contest, but in part.
2. The OP is directed to make payment of Rs.4500/- (Four Thousand five hundred only ) per month to the Petitioner from date of filing of the case until further order. (Rs. 1500/- each for the Petitioner and her two minor daughters.
3. The Payment shall be made within 10<sup>th</sup> day of each succeeding month of English calender Year. The OP is directed to clear the arrears within 3 months from today.
4. The Interim maintenance paid shall be adjusted in accordance with the Final order of the case.
5. The petitioner shall have a right to put this order for execution if the OP fails to comply the same.

Record shows that WO in respect of the main petition is already filed

To 08/05/2025

for Evidence. Sd/-

ACJM, Kakdwip