

M. Case No.-255 of 2023

J.O -WB01372

Order dated. 29.02.2024

Today is fixed for interim hearing.

Both sides filed hazira files hazira.

WO and deceleration of assets on affidavit is filed on behalf of the OP. Let it be kept with the record.

Now the record is taken up for interim hearing.

Learned Counsel appearing on behalf of the petitioner submitted that the petitioner is the legally married wife of the OP and her marriage was solemnized on 15.12.2021. At the time of marriage, golden ornaments, Rs 50,000/- and other gift items were given by the petitioner's father to O.P with much difficulty. Out of the wedlock she gave birth to one female child. The petitioner was tortured by her in laws for the purpose of bringing more dowry. She was not provided sufficient means of livelihood. On 23.05.2023 the petitioner was forcefully driven out of their matrimonial house. The petitioner has no income of her own. The O.P being an able bodied man earns Rs 50,000 per month from various sources. Now she is residing in her paternal house in great hardship. As she has no source of income, she is praying for interim maintenance for herself comprising of Rs 10,000/- per month and Rs. 10,000/- for her minor daughter.

In reply, Learned Defence Counsel submitted that O.P did not claimed any dowry at the time of marriage. Never the petitioner was subjected to torture by the O.P. Petitioner willfully left her matrimonial house. On several occasion, he contacted the petitioner for returning back home. Whereas, O.P earns Rs 10,000/- to Rs. 12,000/- per month by working as the labor. Whereas he has to take care of his ill mother.

Heard.

Considered.

The intention of the legislature in regard to interim maintenance was that it was to be allowed in a case of extreme urgency and where prima facie it is observed that the petitioner is under hardship. In the instant scenario it is clear that:

- 1) marriage of the petitioner with O.P is not denied;
- 2) O.P is an able bodied man;
- 3) the petitioner is living separately ;
- 4) the O.P has not paid any money as maintenance to the petitioner.

The words "unable to maintain herself" in Section 125 (1) (a) of the Code of Criminal Procedure, 1973 include neither penurious nor luxurious expenses but would include expenses for daily necessities and for keeping away from starvation. : **G. Mariah vs. Vijyalakshmi : 1979 Cri LJ 1226.**

The phrase "unable to maintain herself" would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. Section 125 Cri. P. Code is a measure of social justice and is

especially enacted to protect women and children and as noted by Hon"ble Apex Court in Captain **Ramesh Chander Kaushal vs. Mrs. Veena Kaushal and others : AIR 1978 SC 1807** falls within constitutional sweep of Article 15 (3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in **Savitaben Somabhai Bhatiya vs. State of Gujarat and others : AIR 2005 SC 1809 : 2005 AIR SCW1601**.

In an illustrative case where wife was surviving by begging, would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 Cri. P. Code. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In **Bhagawan vs. Kamala Devi AIR 1975 SC 83**, it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression "unable to maintain herself" does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cri. P. Code. : Chaturbhuj vs. Sita Bai : AIR 2008 SC 530 : 2007 AIR SCW 7416 : 2008 Cri LJ 727.

A plain reading of the expression keeping in view the meaning assigned to every word that appears in the said expression cannot lead any one to read such expression as to mean "capable of earning." In other words, the expression puts the emphasis on the wife being unable to maintain herself and the emphasis is not on the capacity of wife to earn for herself. As such, the potential earning of the wife is not in contemplation in the expression that is found in Section 125 (1) (a) of the Code of Cri. Procedure. If the expression "unable to maintain herself" is to be interpreted as to mean "capable of earning" then the very purpose of introducing Section 125 of the Code will be rendered redundant. This is because it is always possible to say in a given case where the wife seeks maintenance, that she has the potential to earn something or that she is capable of earning for herself and if that interpretation is accepted, then it may be possible to reject almost every petition that is filed under Section 125 of the Code and this is not the intention of the legislation.: **Smt. Tejaswini vs. Aravinda Tejas Chandra : AIR 2010 (NOC) 228 : 2009 (6) AIR Kar R 448 : 2010 Cri LJ 616**

Foundation of an order under Section 125 of the Code of Criminal Procedure, 1973 is the neglect or refusal of the opposite party to maintain his wife, child or parents. "Refuge" means a failure to maintain or denial of

the obligation to maintain after demand. "Neglect" on the other hand, means a default or omission to maintain, in the absence of a demand. Neglect or refusal may be implied from the conduct of a party and need not be a formal refusal. Refusal or neglect on the part of husband may be proved not only by express words, but also by his conduct. **Mitanjali Mohanty vs. Fanendra Mohanty and another : 1992 Cri LJ 4046 (Ori).**

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].**

On hearing the submission of both sides and perusing the materials on record, this Court is of the opinion that prima facie petitioner is able to satisfy the Court that the petitioner is in urgent need of maintenance for herself and her minor daughter as she has no source of income. The next question which arises is that what will be the quantum of maintenance that shall be granted by this Court which shall be sufficient to maintain the petitioner and her daughter as they are passing their days in great hardship. Keeping in view the needs of petitioner in the opinion of this Court Rs 2,000 per month for the petitioner and Rs. 1000/- to her minor daughter will be sufficient to continue their livelihood.

Hence it is

ORDERED

that the O.P is hereby directed to pay a sum of Rs. 2,000/- per month to the petitioner and Rs. 1000/- to her minor daughter as interim maintenance from the date of this order and to be paid within the 15th day of each succeeding month until further orders.

To 24.05.2024 for evidence.

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

D/C

J.M, Kakdwip.