

M 264 of 2023
CIS No. Mr Maintenance 264 of 2023

03/07/2026
JO Code: WB01270

Today is fixed for Ex Parte Order.
Petitioner is represented by her Advocate on road
Record taken up for passing order.

FACT OF THE CASE

The instant case is filed by Petitioner Shilpa Samanta Maity u/s 125 of CrPC against her husband Swarup Kumar Maity. She has alleged neglect and prayed for monthly maintenance of Rs. 10000/- for herself and Rs. 8000/- for her minor daughter.

The OP contested the case till 04/02/2025. He filed detailed WO and Affidavit of Asset and Liabilities. On 02/07/2024, Interim Maintenance order was passed in favor of the Petitioner and her daughter on contest.

After passing of Interim Maintenance Order the record was fixed for evidence. Since 04/02/2025, the OP remained absent without steps. Even after getting numerous opportunities, the OP failed to appear. Then finally on 09/04/2026, this court passed an order to proceed Ex parte against the OP.

The Petitioner is examined as PW1 (Ex Parte).

DECISION WITH REASONS

It is settled principle of law that a person being a father and a husband has a legal and moral duty to provide maintenance to his wife and children. He is allowed not to do so only in consonance with the law of the land.

As highlighted the OP filed detailed WO, Affidavit of disclosures and even contested the Interim Maintenance claim of Petitioner.

The scrutiny of the materials on record shows that there is no dispute regarding marriage between the Petitioner and OP. It is also not in dispute that the marriage is still subsisting. There is also no dispute regarding paternity of minor daughter.

The Petitioner examined as PW1 (Exparte) corroborated the claims made in her petition. The testimony remains unrebutted and unchallenged. The OP had the opportunity to contest the case, but he refrained from doing so.

The object behind enactment of section 125 of CrPC is to prevent vagrancy and aid the neglected class of persons to fulfill their basic needs.

The unrebutted testimony of the Petitioner read with Affidavit filed by both parties clearly shows that the OP failed to discharge his duties as a husband and father. The OP being a husband and father cannot run away from his responsibility. The Petitioner and her minor daughter are entitled to get maintenance from the OP.

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 OP owns a house, landed property and also runs a transport business. The OP also allegedly works as a manager of a brick kiln. The OP allegedly earns Rs. 50000/- per month.

Even though the testimony of the Petitioner remains unchallenged, not even a single piece of document was placed to show the exact income of OP. But it does not imply that OP is absolved from his legal and moral obligation.

The Hon'ble Apex court has time and again reiterated that, if the OP is physically and mentally fit, he is considered to be capable enough to work, earn and look after his family. The instant proceeding is not an exception.

In the instant case there is no whisper of OP being physically and mentally unfit. No such claim was made during hearing of Interim Maintenance Petition.

The OP is found to be having sufficient means to work, earn and provide maintenance to his legally married wife and daughter.

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

Hon'ble Apex court in Rajesh Vs. Neha 2018 SCC Online SC 3641 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.

The Petitioner has prayed for monthly maintenance allowance of Rs. 10000/- for herself and Rs. 8000/- for her minor daughter. The detailed expenses of minor daughter is not provided. But the fact remains that minor daughter is in custody of the Petitioner.

After the detailed deliberation made above this court is of opinion that a minimum reasonable amount to fulfill basic needs will be apt and proper in this case. The date of effect shall be from the date of filing of the case as mandated by Hon'ble Apex Court in Rajnesh Vs. Neha.

Hence it is,

ORDERED

1. That the Petition filed by the petitioner u/s 125 of Cr.P.C is allowed Ex parte but without any costs,
2. The interim maintenance order passed on 02/07/2024 shall cease to be in force from today,
3. The OP is directed to make payment of Rs. 6000/- (Six thousand Only) per month as maintenance allowance to the Petitioner from the date of filing of the case, (Rs. 3500/- for Petitioner and Rs. 2500/- for minor daughter),
4. The OP is directed to clear the arrears within 3 (three) months from today.
5. Any payment made on account of the interim maintenance order shall be set off against the outstanding arrears.,
6. The Payment shall be made within 10th day of each succeeding month of English calendar Year.
7. The Petitioner is at liberty to put this order for execution if the OP fails to comply the same.
8. Let the copy of the Order be given free of cost to the Petitioner,
9. The case is disposed of.

ACJM, Kakdwip

South 24-Parganas