

**M. 276/2023 (Reg. No. 276/2023)**

**Order dt. 15-05-2024.**

Both sides file respective hazira. Today is fixed for order in respect of interim maintenance. The record is taken up for passing order.

The petitioner has filed the instant case u/s. 125 of Cr.P.C and by the petition for interim maintenance she has prayed for interim maintenance from the O.P. to the tune of Rs. 15000/- a month in total, inclusive of Rs. 8000/- for herself and Rs. 7000/- for her minor son stating inter alia that the petitioner was married to the O.P. according to Hindu rites and ceremonies ten years ago and after the marriage she led conjugal life with the O.P. at her matrimonial home. During her conjugal life the O.P. and his relatives used to inflict physical and mental torture upon the petitioner on demand of more dowry. One son namely, Ankit Jana was born to her, aged about seven years at the time of filing the application. On account of physical torture upon her by the O.P. the petitioner was compelled to bring cash from her paternal home on various occasions. On 02-04-2023 the petitioner along with her minor son was driven out of her matrimonial home. After amicable settlement she returned to her matrimonial home. But ultimately on 07-06-2023 at around 3-00 p.m. the petitioner along with her minor son was driven out of her matrimonial home. At present the petitioner along with her minor son is staying at her paternal home. A specific case u/s. 498 A/406/34 of I.P.C. has been started against the O.P. and his relatives by Pathar Pratima P.S. The O.P. has neither looked after the petitioner and her minor son nor provided any financial assistance for their maintenance. The petitioner has no independent source of income. The O.P. is financially stable. He has own dwelling house and landed property. He runs a grocery shop. He earns around Rs. 20000/- to 25000/- a month.

The O.P. has filed written objection against the application u/s. 125 of Cr.P.C. and his objection against the interim maintenance is also based upon the same. The O.P. has denied all the material contentions of the petitioner save and except that of marriage between the parties and paternity of the minor child. The specific objection of the O.P. is that after the marriage between the parties the petitioner used to misbehave with the O.P. and his relatives. She used to demand huge sum of money to lead luxurious life. Since due to his poor financial status the O.P. could not fulfill the demand of the petitioner, the petitioner used to pick up quarrels and go away from her matrimonial home. On 02-04-2023 the petitioner went to her paternal home on the pretext of visiting her ailing father. The O.P. also accompanied him. On the next day the O.P. returned to his house alone as the parents of the petitioner disclosed that the petitioner would return to her matrimonial home after two or three days. But the petitioner did not return to her matrimonial home. All the attempts on the part of the O.P. to bring back the petitioner to his house went in vain. Having been compelled, the O.P. served a legal notice upon the petitioner. Then the petitioner lodged a complaint on false allegations with Pathar Pratima P.S. The O.P. filed a suit for restitution of conjugal rights being Mat Suit No. 232/23 which is pending before the Ld. 2<sup>nd</sup> A.D.J. Court. The O.P. has no property of his own. He is a day labourer by profession having job card in his name. He earns only Rs. 2500/- to 3000/- a month. His father has a grocery shop which does not yield sufficient earning. The O.P. has to maintain his parents. On 13-07-2023 the O.P. became injured in road traffic accident and till now he has been under treatment. As a result he has no sufficient earning at present. On the other hand, the petitioner has a grocery shop and she earns Rs. 30000/- a month. She also gets grant under Govt. project namely, 'Laxmi Bhandar.' The father of the petitioner has dwelling house and landed property. The O.P. is willing to reside together with the petitioner.

Both sides have filed respective affidavit of assets and liabilities in consonance with their respective pleading.

At this stage the real dispute relevant to the present proceeding cannot be decided. The disputed matters involved in the case relevant to the present proceeding are to be decided during trial upon evidence adduced by the parties. This is a proceeding u/s. 125 of Cr.P.C. and in the present proceeding the intricacies of marital discord and its reason need

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not be gone into to decide which spouse was at fault. **Hon'ble Supreme Court** in its decision in the case of ***Sunita Kuchwaha vs. Anil Kuchwaha*** as reported in **(2014) 16 SCC 715** has been pleased to observe that *the proceeding under section 125 Cr.P.C. is summary in nature. In a proceeding under section 125 Cr.P.C., it is not necessary for the Court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into.* Though the O.P. has contended that on account of meeting with an road traffic accident he has become incapable of earning, the copies of documents filed on his behalf do not suggest that he is such incapable to earn sufficient money. From the copies of documents filed on behalf of the petitioner it appears that the O.P. along with his father has a grocery shop. Nothing in the copies of documents filed on behalf of the O.P. suggests that the O.P. is so incapable to run a shop. Moreover, in his written objection the O.P. has admitted that his father has a grocery shop. **Hon'ble Orissa High Court** in its decision in the case of ***Basanta Kumari Mohanty vs. Sarat Kumar Mohanty*** as reported in **1982 CrLJ 485** has been pleased to observe that *no doubt an order under section 125 can be passed only if a person having sufficient means neglects or refuses to maintain his wife, child, parents etc. It is, however, well settled that the expression 'means' occurring in Section 125 does not signify only visible means, such as, real property or definite employment and if a man is healthy and able-bodied, he must be held to be possessed of means to support his wife, child etc.* The views expressed in ***Basant Kumari Mohanty's*** case was duly approved by the **Hon'ble High Court at Calcutta** in the case of ***Ali Hossain vs. Baby Farida Khatoon*** as reported in **1998 CrLJ 2762**. The underlying principles of section 125 of Cr.P.C. mandate for prevention of vagrancy and the same is a beneficial legislation. **Hon'ble Supreme Court** in the case of ***Captain Ramesh Chander Kaushal vs. Mrs. Veena Kaushal & Others*** as reported in **(1978) 4 SCC 70** has been pleased to hold that *this provision is a measure of social justice and specially enacted to protect women and children and falls with the constitutional sweep of Article 15 (3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must infer interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause – the cause of the derelicts.* Marriage between the parties and paternity of the child are admitted in this case. The petitioner has filed the instant case praying for maintenance for herself and her minor child from the O.P. The application for interim maintenance is also supported by affidavit. The minor child is obviously dependent upon their parents for maintenance. From copies of documents filed by the petitioner it appears that the petitioner has no independent source of income. Whatever means the father of the petitioner does have, the same cannot be considered to be independent source of income of the petitioner. Considering all aspects, at this stage I do not find any sufficient reason to refuse the prayer for interim maintenance allowance. In view of the decision of the **Hon'ble Supreme Court** in the case of ***Rajnesh vs. Neha*** as reported in **(2021) 2 SCC 324**, law mandates 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 meager that it drives the wife to penury. The sufficiency of the quantum must be adjudged so that the wife is able to maintain herself with reasonable comfort. Though the O.P. has contended to be a day labour having job card, no scrap of paper has been filed by him. It is admitted by the O.P. in his written objection that his father has a grocery shop and from copies of documents filed on behalf of the petitioner it appears that the grocery shop is in the name of the father of the O.P. as well as his sons. Moreover, from the contentions of the O.P. it appears that a grocery shop can yield Rs. 30000/- a month. In view of the decisions of the **Hon'ble Courts** as referred above the O.P., being an able bodied person, has liability to

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earn sufficient amount to maintain his wife and minor child. Considering the status of the parties as transpired from the materials on record and the cost of living now a days and also the decisions of the **Hon'ble Courts** as referred above, I am of the view that it would be just and proper to direct the O.P. to pay monthly allowance of Rs. 7500/- in total as interim maintenance for the petitioner and her minor son to the petitioner. Such monthly allowance would be inclusive of Rs. 5000/- for the petitioner and Rs. 2500/- for the minor son of the petitioner. In light of the ratio laid down by the **Apex Court** in the case of **Rajnish vs. Neha**, I am also of considered view that the order for interim maintenance should be effective from 31-08-2023 i.e. the date of filing of the present application. In the result the application for interim maintenance succeeds in part.

Hence, the prayer for interim maintenance is allowed in part on contest.

The O.P. is hereby directed to pay Rs. 7500/- a month in total as interim maintenance allowance (Rs. 5000/- for the petitioner and Rs. 2500/- for the minor son of the petitioner) for the petitioner and her minor son with effect from 31-08-2023 within 10<sup>th</sup> day of each successive English calendar months to the petitioner. The O.P. is also directed to pay the entire amount of interim maintenance allowance within fifteen days from the date of this order, failing which the petitioner will be at liberty to realize the entire amount of arrear along with the current amount of the interim maintenance allowance by putting this order into execution.

To 07-10-2024 for evidence of P.W.s.

Let a free copy of this order be provided to the petitioner.

Typed and printed by me.

Sd/-

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A.C.J.M., Kakdwip.

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A.C.J.M., Kakdwip.