

Dated – 05/09/18

Today is fixed for passing order as regards the interim maintenance.

This is an application for interim maintenance u/sec. 125 of the Cr. P. C. The marriage of the parties of this case was solemnized 12 years ago as per shariat law. As per the rituals, she went to her matrimonial home and started to lead her conjugal life and out the said wedlock she gave birth to three children namely Rasel Sk aged about 10 yrs , Mijan Sk aged about 7 yrs and one female child sakina Khatun aged 5 yrs .The opposite party and in-laws, started inflicting mental and physical tortures upon the petitioner for want of more dowry. Failure to fulfill the unlawful demand of the OP, the petitioner was driven out of her matrimonial home. The opposite party has neglected to maintain the petitioner. OP works as a mason and engaged in thikadari business wherefrom he earns Rupees 40,000/- per month.

In order to survive, the petitioner has prayed for an interim maintenance of Rupees 10,000/-per mensem for herself and Rs. 5000/- for her minor female child.

The opposite party has filed the written objection and denied the case of the petitioner. The opposite party submits that the petitioner left her matrimonial house on her own will with a intention to remarry with other person. He further alleges that the petitioner was not willing to lead the conjugal life and used to misbehave with his family members. The opposite party further denies the quantum of income alleged to the opposite party's. The opposite party also submits that the petitioner is not entitled to get the maintenance. The opposite party thus prays for the rejection of interim maintenance petition.

I have gone through the petition and the written objection. I have also thumbled through the allegations and counter allegation of the parties of this case.

The provision of interim maintenance is a measure made by the parliament for the needy wife so that she could sustain her life to see the finality of the case she has initiated U/sec. 125 of the Cr.P.C.

At this stage no evidence is forthcoming as to why the petitioner is not living at her matrimonial home, the house of the opposite party, though she has alleged that she was subjected to mental and physical torture and neglected by the opposite party.

At this stage the court is required to keep in mind the fact that before deciding the factual discord, some financial support is required to be given to the petitioner so that the petitioner could see the finale of the application filed by her under section 125 of the Cr P C. The court is to see as to whether the petitioner is unable to maintain herself or not.

Since the object of 125 is to prevent vagrancy and destitution, it has a social purpose to fulfill and in arriving at any finding in relation to an application the court must look at the substance rather than the form and must avoid strict technicalities of pleadings and must make a realistic approach to the material available.

In this case, the opposite party has made a submission that the petitioner has left her matrimonial home on her own whim and therefore her prayer should be rejected. But the point raised is a matter of trial and evidence. It has no bearing on the interim application of the petitioner.

In view of the facts and circumstances of this case, the petitioner is entitled to get the interim maintenance of Rs. 700/- per month for herself and Rs. 700/- for her minor child.

Accordingly the prayer of the petitioner is allowed on contest. She is entitled to get rupees 700/- per mensem for herself and Rs.700/- for her minor female child from the opposite party from the date of the passing of this order till disposal of this case. The opposite party is directed to pay the aforesaid amount to the petitioner within the 10th day of every month. Let a copy of this order be given to the petitioner free of cost. Interim maintenance petition is disposed of.

Fix 22.11.2018 for evidence.

Judicial Magistrate,
Lalbagh, Murshidabad