

M. Case No. 01/2016

Order dated: 08.11.2016.

The petitioner files hazira through her ld lawyer. The opposite party is also present by filling hazira through his ld lawyer. As stipulated by the previous order today is fixed for passing of order. Hence the record is taken up for passing of order.

The petition dated 04.01.2016 which has been filed by the petitioner praying for interim maintenance, is under adjudication in this order. In order to efficiently slay this controversy it is predominantly necessary that the Chronicles of this case is epitomized. From the petition, written objection and the affidavit which have been exposted in this case it is limpid that the petitioner is the legally married wife of the opposite party. It has been alleged in the interim petition that the opposite party has neglected and tortured the petitioner and the act of deliberate torture has prompted the petitioner to file this case. Realistically speaking the petitioner in her main petition as well as in the petition seeking interim maintenance has attributed the allegations of wanton neglect and persistent cruelty against the opposite party in so many words. The petitioner has also averted that being a bereft and destitute lady she is not able to maintain herself and is totally dependent on her father. As far as the income of the opposite party is concerned, the petitioner has averted that the O.P is an able bodied person and is experienced expert electrician as well as electric contractor and gets a monthly salary of Rs. 30,000/-. it has also been averred by the petitioner that the opposite party is having 20 Rickshaw and from that source he earns Rs. 30,000/- per month thus total amount of Rs. 60,000/- and in resonance to the facts advertised in the petition the petitioner has prayed for Rs.10,000/- as interim maintenance from the opposite party.

After filing of this case; in order to exhaust the canons of natural justice, summon was sent to the opposite party and the opposite party has appeared in this case and has contested the claim of the petitioner by filing his written objection. The opposite party in the written objection has admitted the petitioner to be his legally married wife however all the other allegations of the petitioner has been categorically denied by the opposite party in his written objection. In his turn the opposite party has also made counter allegations against the petitioner. As regards the income; the opposite party has stated that he is a rickshaw puller and has no other source of income and as per the version of the opposite party his monthly income is Rs. 4000/-. Based on this contention the opposite party has prayed for refusal of the petitioner's claim of interim maintenance.

On the date fixed for hearing Ld. Lawyers for both sides were heard in full on the legality and validity of the petitioner's claim of interim maintenance. Ld lawyer for the petitioner submitted that the petitioner is physically challenged and she is passing her days in great hardship and if the prayer for interim maintenance is not allowed in that event the very existence of the petitioner will be seriously jeopardized. It was further argued that due to paucity of her income the petitioner is not able to maintain herself and due the dilatory tactics adopted by opposite party the petitioner is fighting for her existence and even conducting this case. It has been further submitted by the ld lawyer for the petitioner that in this case the petitioner has been admitted to be the wife of the opposite party and that being the case the opposite party is duty bound to maintain the petitioner no matter how small his income might be and the petitioner must get the interim maintenance as prayed for. However it was argued by the ld lawyer for the petitioner that the opposite party has a hefty income of Rs. 60,000/- per month by giving rickshaw vans on rent and he being an expert electrician should pay maintenance to the petitioner proportionate to his income.

Refuting the version of his counter part the ld lawyer for the opposite party submitted that the opposite party has no income and the petitioner made false statement and that must entail the dismissal of the petition as submitted by the petitioner. It was also vehemently argued by the ld lawyer for the opposite party that the petitioner is not staying with the opposite party out of whims and caprice and there is no point in allowing the prayer of the petitioner who by herself has renounced the company of her husband. The learned lawyer for the

opposite party lay much emphasis on Section 125 sub-section (4) of the Criminal Procedure Code 1973 and argued that the petitioner is not entitled get any maintenance as the petitioner has deserted his client. Ld lawyer for the opposite party further submitted that the petitioner is exploiting the opposite and her prayer ought to be rejected by this court. It was argued that the opposite party is rickshaw puller and his monthly income is Rs. 4,000/- and he has other liabilities and thus the opposite party does not have adequate means to maintain the petitioner separately.

In this case both parties have made allegations and counter allegations against each other in their respective pleadings, veracity of which can only be establishes after conclusion of trial by appreciating evidences. This being a petition for interim maintenance, the only point which requires determination at this stage is that whether the petitioner is entitled to get interim maintenance for herself, and if so, then what should be the quantum thereof.

In this case the opposite party has filed his written objection and from the contents of the said written objection it is axiomatic that the petitioner is the legally married wife of the petitioner. Now question germane for consideration is; whether the petitioner is entitled to get the interim maintenance as claimed by her or not. Before slaying this controversy it would profitable to mention that following the path pioneered by plethora of judicial pronouncements the legislature in its wisdom inserted second proviso to section 125 Criminal Procedure Code 1973 and passing of interim maintenance was authorized in frame work of the code.

It is quite common that applications made under section 125 of the Code also take several months for being disposed of finally and this court can do very little to obliterate this time span for disposal of the proceeding. In order to enjoy the fruits of the proceedings under section 125 Criminal Procedure Code 1973 the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the court. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed.

Thus being pioneered by the above observation, there is no obscurity on the point that this court is perfectly authorized to grant interim maintenance if the other attending circumstances supports the case of the petitioner and it is the duty of the court to hoist the moto of this beneficial legislation. It is also evident that while deciding the question of payment of interim maintenance to a wife where relationship is admitted, this court is only expected to form a prima facie opinion as to the legality and validity of the petitioner's claim. If the argument of the ld lawyer for the opposite party that the petitioner has willfully deserted the house of the opposite party; has to be accepted then it is only after the entire evidence is led that an order for interim maintenance can be passed. That would defeat the very purpose of providing for payment of interim maintenance in Section 125 and hence the argument is required to be discarded at this stage. In ***Sunita Kachwaha & Ors. Versus Anil Kachwaha, AIR 2015 SC 554*** it has been held as follows:

“ 8. 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. While so, the High Court was not right in going into the intricacies of dispute between the appellant-wife and the respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance.”

Therefore the much argued point of the opposite party merits no consideration at this stage. At this stage another piquant question raised by the opposite party in his written objection, needs to be addressed. Ld lawyer for the opposite party during the course of his submission has submitted that the opposite party has a very little income and with that income it is practically impossible for him to maintain the petitioner. The law on this score has been clinched by now by the pronouncement of the Hon'ble High Court in **Saili Halder vs Debaprasad Halder And other reported in 2005 (3) CHN 87** the Hon'ble High Court has observed that:

“ 8. Section 125 prescribes a summary procedure with a view to providing a speedy remedy against vagrancy and starvation of a deserted wife or child or indigent parents, the object being to compel a man to

perform the moral obligation which he owes to society in respect of his wife, children and parents so that they are not left beggared and destituted on the scrap-heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence.

9. At the stage of hearing an application for interim maintenance which is generally disposed of on the basis of affidavit filed by or on behalf of the applicant stating the grounds in support of the claim for such maintenance, the Court is to satisfy itself regarding existence of a prima facie case for making such an order. Where such a prima facie case has been made out, interim maintenance cannot be denied unless it is barred by any other provision.

10. Residing of the wife in a place on her own arrangement at the charity and mercy of others cannot be held to amount to discharge of the moral and legal obligation of the husband to look after his wife. The wife cannot be treated as a chattel. The word "maintenance" is not to be narrowly interpreted. It means the most reasonable requirement for existence of a person to live separate. As regards the above contention of O.P. relating to his receipt of a meagre subsistence allowance of Rs. 830/- per month. the certificate produced by him reveals that his total subsistence allowance per month is Rs. 4720/-, out of which a major portion (Rs. 3500/-) is deducted for payment of building loan, GPF loan and co-operative loan and Rs. 340/- towards GIS and GPF contribution. If the above contention of the O.P. is taken into consideration, any person who is obliged to maintain his wife, children etc. by adopting the same recourse can avoid his solemn obligation to maintain and thus frustrate the very raison d'etre of the provision which is not permissible.”

Thus projecting the alibi that the opposite party has a very meagre income or no income at all cannot exonerate the opposite party from his responsibility of maintaining his wife. It is axiomatic that the opposite party is an able bodied person and can work and earn his living. At this juncture a judgment of Hon’ble Madras High Court **Kandaswami Moopan vs. Angammal AIR 1960 MADRAS 348(V 47 C 121)** demands mentioning here. In that case the Hon’ble Court held “So long as a man is able bodied and can work and earn his livelihood, it is his duty to support his wife. Therefore notwithstanding the fact that a husband may be insolvent or a professional beggar or a minor or is a sadhu or monk, he must support his wife so long as he is able bodied and can eke out his livelihood and support his wife.”

The Hon’ble Kolkata High Court in **Ali Hossain v. Baby Farida Khatoon 1998 CRI.L.J. 2762** observed: “....The fact remains that the husband is an able bodied young healthy man. This fact may not give rise to a presumption that he is capable of earning sufficient money and is in a position to pay sufficient maintenance to his wife and two children, as was held by our High Court in **Dasarathi Ghosh v. Anuradha Ghosh 1988 CRI.L.J. 64**, but this much safely can be said that he had capacity to earn and the fact that he has capacity to earn is also borne out by his own case during the trial.”

So even if the opposite party is a rickshaw puller or has negligible income (as contended by him), that does not absolve him of the responsibility to maintain his wife. Moreover when at the time of marriage the opposite had sufficient means to maintain his wife then it is corollary that he is still able to maintain his wife and he cannot evade that responsibility of his. So, the O.P.’s contention of his being having no or inadequate sufficient means to maintain himself and the petitioner is no ground per se to refuse maintenance to the petitioner. Also whether or not the petitioner had left her matrimonial home voluntarily or was forced out by the O.P. is a matter of evidence which cannot be gone into at this stage because the proceeding is at its threshold. In absence of strong prima facie evidence to the contrary on this point, it can be said that the petitioner being the legally wedded wife is entitled to some interim maintenance for herself.

Now the question germane for consideration is what should be the amount of maintenance. The legislative edict behind section 125 Criminal Procedure Code 1973 is not to penalize a person for his past neglect, but to prevent vagrancy in future of those who pass their days in penury, by compelling those who are obligated to look after and maintain them by catering to their requirement commensurate with the standard of

living which is neither luxurious nor penurious but is modestly consistent with the status of the family. However no arithmetic formula can be adopted as there cannot be mathematical exactitude. Each case depends upon its own facts; and it must be said that the Section is not a code of rigid and inflexible rules, arbitrarily ordained to be blindly obeyed; it does not enact any mathematical formulae; it gives wide power, flexible and elastic to do justice in a given case and leaves everything to the Judge's discretion. The Court is duty bound to take a just view of the matter and to see that it does not rehabilitate a party at the cost of the other and leaving the other side destitute. One thing however is clear in this case, the opposite party being an able bodied person and being the husband of the petitioner is bound both socially and legally to maintain his wife.

In this case the O.P. has brought nothing on record to prima facie satisfy this Court that the petitioner has sufficient means to support herself. Moreover this is a question which is needed to be proved at the stage of trial after taking evidence and not at this stage. Only evidence can illumine this court on the point of the true income of the parties.

It is a settled fact that the provisions of maintenance have been embodied in the Code of Criminal Procedure as a measure of social justice to protect the women and children of the society. The provisions as well as a plethora of judgments of higher courts have amply made it very clear that an able bodied person, who has his wife to support, has to maintain them in any condition. Here also, the O.P is under a social, moral and legal obligation to look after his legally married wife and maintain her. This has been clinched by catena of judicial pronouncements that there having no fixed and inflexible formula, what should be the quantum of maintenance is based on the discretion of the court but the court while exercising such discretion is duty bound to take a just view of the matter and to see that it does not rehabilitate a party at the cost of the other and leaving the other side destitute. However the soaring price index and the spiraling prices of articles of daily consumption must also be considered while considering the amount of maintenance.

In presence of a strong prima facie case to go to trial and considering all the facets of this case, and in view of the present social scenario as well as the status of both the parties which have transpired till date from the record, and taking into note all other facets of this case, I am of the opinion that the petitioner/wife is entitled to get interim maintenance from the O.P/husband to the tune of Rs. 3,000/- per month for herself. I think that such amount shall be enough for the petitioner to sustain herself for the time being till final order and in the present socio-economic archetype I am feel extremely loath in granting anything below Rs. 100/- per day to the petitioner in the prevailing socio-economic scenario.

Hence, it is **Ordered**

That the petitioner's application for interim maintenance dt. 04-01-2016 succeeds on contest in part. The O.P is hereby directed to pay Rs. 3000/- [three thousand] per month to the petitioner as interim maintenance from the date of passing this order till the final disposal of this case.

Such amount has to be paid within the 10th day of each succeeding months for which it becomes due.

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

To **02/02/2017** for evidence on behalf of the petitioner.

Typed by me;

A.C.J.M.

Additional Chief Judicial Magistrate
Bidhannagar