

1. Date of application for Copy	24/7/08
2. Date fixed for notifying the requisit stamps	24/7/08
3. Date of delivery of the requisite stamps	24/7/08
4. Date on which the copy was ready for delivery	24/7/08
5. Date of making over the Copy to the Applicant	24/7/08
6. Costs of Copy	Rs 6.00
7. Expedition Costs	—
8. Number of Xerox Sheets used	3 Sheet
9. Costs of Application	Rs. 00/-

IN THE COURT OF THE LD. 2nd JUDICIAL MAGISTRATE, ALIPUR,
SOUTH 24-PARGANAS.

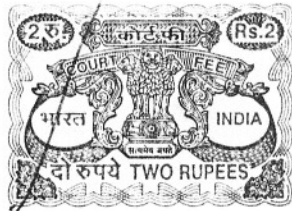
M CASE NO. 180/08

UNDER SECTIONS MS 125 Cr.P.C.

Smt. Nalini @ Sakha Rajesh Motwani

VERSUS

Sr. Rajesh Pehlojirani Motwani



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Both parties are present.

Perused the petn for interim maintenance and the written objection thereto.

Perused the copies of documents filed on behalf of both sides.

Considered the submissions of Ld. Counsels for both the sides.

Ld. Adv. for the petnr. submits that the petnr is the legally married wife of the OP and their marriage took place on 7/1/2007 at Abhimaan - II, Teen Hath Naka, Domani Estate, Thane(W) Mumbai. Since her marriage the matrimonial life of the petnr was not a peaceful one. The OP misbehaved with her and taunted for coming from a poor family. She was assaulted by the OP for the demand of dowry and in this regard a case has been started being No. 455/07 u/s 498A/406 IPC at Mumbai. The petnr was tortured by the OP both mentally and physically and not allowed to talk to her parents. On 11.3.07, the petnr was mercilessly assaulted by the OP and her left hand was seriously injured. Fortunately the parents of the petnr was present at the time of the incident and the petnr came back to her paternal house at Kolkata. During the matrimonial life the petnr was neglected by the OP. The petnr is staying at her paternal house in a distressed condition and she has no source of income. The OP is an able bodied person and he works at Private company earning a salary of Rs. 45,000/- per month. But in spite of having sufficient income the OP neglects to maintain the petnr. As such the petnr has come before the Court of law praying for justice.

Ld. Adv. for the OP on the other hand raised vehement objection regarding the prayer of the petnr. He submitted that all the allegations levelled against the OP are totally false and baseless. The OP submits that the application of the petnr is not maintainable in law and on facts and has been filed only to harass the OP by ^{suppressing} suppressing material facts. However, the marriage between the parties have been admitted by the OP. At the very outset the OP stated that the petnr is a qualified person having her own source of income. She is Bachelor in Commerce and also has knowledge of computers and possess^{es} certificates in Capital Market (Dealer) Moderate, Derivatives Care Moderate from N.S.E's Certificate in Financial Market. She was a 'Research Analyst' in Microsec Capital Ltd of Kolkata and earning Rs. 24,000.00 per month. At present she is earning Rs.20,000.00 per month from Jessons Investment Consultancy Service and has her own Mutual Fund Investment and Microsec trading account for buying and selling shares under Trading Code. M040. The OP denies to have demanded any thing whatsoever from the petnr or her parents at any point of time. The OP stated that right from the beginning the petnr was very much indifferent and used to argue as to why her name was changed during the marriage as per the prevailing customs between the parties. She never showed any interest towards the domestic chores and always expected the mother and sisters of the OP to do all the household works. The whole day she used to pretend of preparing for the C.F.A. Examination and read newspapers and play Sudoku. She used to deliberately pick up quarrels with the family members of the OP on one pretext or the other and made false allegations of stealing her things against them thereby creating misunderstandings and quarrels and spoiling the whole atmosphere of the house. In order to avoid doing the household works the petnr used to pretend to be ill, but the moment she was to go out or visit her uncle's house she used to be fine. The petnr and her relatives always pressurised the OP for separate residence and she used to threaten the OP to implicate him and his family members in false criminal cases with the help of her cousin Smt. Leena Gyanchandani, who is a legal professional. On 11.03.2007, at about 10.30 PM the parents of the petnr along with her said cousin and maternal uncle came to the house of the OP and after collecting all the articles of the petnr left the matrimonial home abusing the OP and his mother and ^{threatening} threatening them of implication in false case. Later the OP came to know that a false case being CR No. I-29/07 u/s 498A/406/504/506/34 IPC was lodged against the OP and his family

members and they had to obtain anticipatory bail from the Court of the Ld. Additional Sessions Judge, Kalyan. The OP submits that he only earns Rs 34,000.00 per month. There is never any neglect or refusal on the part of the OP to maintain the petnr and the petnr has her matrimonial house as per ^{her own} sweet will and hence prayer should be rejected.

It has also been argued by the Ld. Adv. for the OP that this Court has no jurisdiction to try this case as all the matters took place at Mumbai and the petnr used to reside at Mumbai at the time when the cause of action took place. In reply, the Ld. Adv for the petnr submitted that the OP cannot be allowed to take this point as it has not been agitated in his pleadings.

Now, there is no specific challenge towards the jurisdiction of this Court in the WO filed by the OP but as he has challenged the maintainability of the case on point of law I think it will be in the interest of the justice to decide whether this Court has the jurisdiction to hear the case or not. Now the petnr has claimed by affidavit that she resides within the jurisdiction of this Court, no counter affidavit has been filed by the OP in this regard. The petnr has also filed several documents like Ration Card, PAN Card, Voter's Identity Card, Passport, Driving Licence etc. showing her residence in Kolkata. Even the copy of the Income Tax Return of the petnr which has been filed by the OP also shows the petnr to be residing within the jurisdiction of this Court. Further it is quite unbelievable that if both parties stayed in Mumbai the petnr would have come to Kolkata to file a petition u/s 125 Cr PC. Hence, I am prima facie satisfied that the petnr is residing within the jurisdiction of this Court and as such this Court has the jurisdiction to hear the case u/s 126(1)(b) Cr PC.

Now, both the petn of the petnr and the WO filed by the OP are supported by affidavits and there are allegations and counter allegations made by both the parties against each other and without taking evidence on record it is not possible to ascertain the credibility of such assertions. However, the fact that the petnr is the legally wedded wife of the OP and that she is staying separately is the admitted position of the case. The petnr has claimed that OP earns Rs. 45000.00 per month and in support of her claim the petnr has filed the copies of some E-Mail Profile of the OP where he has claimed to earn Rs. 5,00,000.00 per annum. But such profiles cannot be held to be sacrosanct to the proof of income of the OP. But as OP has admitted to earn Rs. 34000.00 per month and from the copies of the documents filed by the OP himself it is found that OP gets a net pay of Rs. 26000.00 – 29,000.00 per month, there remains no doubt about the fact that OP has the sufficient means for maintenance of his wife.

The question that now comes for determination is that whether the petnr has any source of income. The petnr has claimed that she has no source of income of her own while the OP has claimed to the contrary. Now, in support of her proof of residence the petnr has produced the copy of her PAN card bearing the No. AFIPJ179Q and from the Income Tax Return of the petnr filed by the OP it appears that in the Assessment Year 2006-07 the petnr has shown her assessed income to the extent of Rs. 1,33,320.00 against the said PAN No.

Now, the petnr has suppressed the fact of her income in her application. It is settled principle of law that a party seeking relief must come before the Court in clean hands. The petnr could have stated that she earlier had the source of income but at present there is no such source available to her and stated the reasons for decline in her income. But the petnr has failed to impress upon the Court as to the circumstances that lead her to a situation where she has no source of income and her income has fallen to nil from Rs. 1,33,320.00 per annum. As such I am inclined to hold prima facie that the petnr is capable of maintaining herself.

In view of the above discussion I find that the petnr has failed to satisfy the Court regarding the prima facie existence of the conditions that are required to be proved by the petnr in order to be entitled to maintenance.


Hence, it is

ORDERED

that the petition for interim maintenance filed by the petnr is dismissed on contest but without any costs.

To 31-10-08

for Evidence.


2nd JM, Alipore