

ORDER of Misc(J) Case No. 8/20192.3.2020.

This order appertains to petition No. 875/2019 filed by Smti. Ranjana Devi U/S 24 of the Hindu Marriage Act, 1955 which has arisen out of TS (M) No.9/2019 seeking maintenance pendente lite.

In TS (M) No. 9/2019 the petitioner sought decree of divorce from her husband and also claimed permanent alimony and other relief as deem fit and proper.

In the present petition, Smti. Ranjana Devi pleaded that she married with Bal Bahadur Bista on 8.5.2007 as per Hindu religious rites and customs and used to live in the matrimonial house as husband and wife. As a result of their union they also procured two female child, first one is Miss Jamuna Devi, aged about 10 years and the second one is Miss Asmita Devi, aged about 8 years.

It is further pleaded that the opposite party is a habitual drunker who frequently used to torture her both physical and mental for not having a male child. It is further pleaded that her husband desires to marry another lady. Her husband returned home lately at night under the influence of alcohol and then subjected her torture making her life miserable. Regarding this, there was a village meeting on 11.2.2019 but her husband used filthy language towards her in presence of the public, also caused serious injury on her person and then thrown her out from her matrimonial house stating that he will not resume conjugal life with her in future.

It is pleaded that the petitioner has no option but to file divorce petition U/S 13 (1)(i-a) of the Hindu Marriage Act,1955 for divorce by dissolution of marriage. It is contended that the opposite party is a moneyed person having 7 Bighas of betel-nut garden and 10/12 Bighas of agricultural land and he earns Rs.5,00,000/- from betel-nut garden annually. Moreover, the opposite party is running a grocery shop and from all sources he earns not less than Rs.40,000/- per month. So, he can maintain the petitioner. As such, she claimed Rs. 15,000/- per month as maintenance.

As against the petition, the opposite party submitted written statement admitting that the marriage with the petitioner but denied that he is a habitual drunker and subjected the petitioner physical and mental torture. It is denied that on 11.2.2019 the opposite party abused the petitioner with filthy language and assaulted physically on her person and driven her out saying that he will not resume conjugal life with her. It is further denied that the opposite party is earning Rs.5,00,000/- from his betel-nut garden annually and running a grocery shop at Goroimari and earns Rs.40,000/- per month.

The real fact, according to the opposite party is that on 10.2.2019 at about 8 PM the petitioner was caught red-handed in compromising position with one Tek Bahadur Bhujel and Tek Bahadur Bhujel was identified by the opposite party. Moreover, when the opposite party questioned the petitioner for having involved in such antisocial and shameful act, she has no credible answer. The neighbours came to know about the incident. There was a meeting in the house of Nar Bahadur Newpane and at the behest of Gorkha Students Union attempt was made to resolve the issue, wherein the petitioner admitted her guilt. He further pleaded that the petitioner took away her daughter from his house and during his absence he came to know about this fact on 13.2.2019 from Tek bahadur Bhujel. Though the opposite party made attempt to resolve the issue, petitioner and Tek bahadur Bhujel were not present in the meeting. It is further contended that the opposite party has no land and grocery shop as alleged. It is further contended that all the ornaments and cash of the opposite party were taken away by the petitioner at the time she leaves his house. So, the opposite party pleaded to dismiss the petition.

On the basis of pleadings, the learned counsel appearing for the petitioner vociferously contended that the petitioner is a helpless lady and she has no means to sustain her life. On the other hand, the opposite party is a capable person having sufficient income from his landed property as well as from his grocery shop. Therefore, it is contended that the maintenance of Rs.15,000/- per month be granted in

favour of the petitioner during the pendency of the TS (M) case No.9/2019.

On the other hand, the learned counsel appearing for the opposite party countered the arguments of the learned counsel appearing for the petitioner contending that the case of the petitioner is unfounded in law and fact. She made some sweeping and baseless allegations to cover her misdeeds as she was found in compromising position with another person during the subsistence of the opposite party. So, in order to cover up her shame, she filed this false case. So, she is not entitled to any maintenance. It is further argued that the opposite party is ready and willing to accept the petitioner if she so desires.

Having considered the allegations and counter allegations and on consideration of the entire factual matrix of the case, what transpires before this court is that the petitioner and the opposite party is no longer living together as husband and wife. Though they admitted of their marriage, because of differences developed between them, they are now living separately from each other. Moreover, it appears that through the petitioner could not establish in black and white about the existence of 7 Bighas of betel-nut in the name of the opposite party and also earning of Rs.40,000/- per month from grocery shop, but the fact remains that the petitioner has no earning of her own. The opposite party has not established in court that the petitioner has any independent source of income and she can survive on her own. Mere denial of having any income will not help the opposite party as he being the husband, is under obligation to maintain his wife. Moreover, the fact that the opposite party saw the petitioner in a compromising position with another person remain in the term of allegation only as the same has not been established with credible and trustworthy evidence.

Section 24 of the Hindu Marriage Act makes provision for maintenance of wife pendent lite of divorce proceeding.

In the present case, the TS(M) 9/2019 is at the stage of evidence and it will take time a logical conclusion in the said case. But, in the meantime, the petitioner has to survive and the opposite party

cannot flee away from this onerous responsibility to maintain his wife by taking shelter of falsehood or his incapacity.

Under Section 24 of the Hindu Marriage Act, 1955, the court has the power to grant maintenance pendete lite, if it is shown to court that the petitioner has no independent income sufficient for her maintenance or support or to bear the expenses of the proceeding.

In the present case, petitioner claimed Rs.15,000/- per month as maintenance and Rs.50,000/- as expenses of the proceeding.

Since the opposite party is admittedly not a service holder or having any definite source of income, considering all the attending facts and circumstances in the intervening period of the pendency of TS(M) No.9/2019 this court feels it appropriate to grant Rs.3,000/- per month towards the maintenance of the petitioner and Rs.10,000/- towards the cost of the proceeding. The same shall be payable by the opposite party within 30 (thirty) days from the date of this order.

In view of the above, the Misc (J) case is disposed of.

Dictated

(C.B.Gogoi)

