IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 1465 OF 2018

PARTHA SARATHI GUHA

VS

SUPRIYA GUHA

For the Petitioner	**:**	**Mr. Rishav Singh, Adv.**
		Ms. Sreeparna Ghosh, Adv.
		Mr. Soumalya Dutta, Adv.
For the State	**:**	**Mr. Soumyajit Das Mahapatra , Adv.**
		Mr. Supriyo Das, Adv.
		Ms. Upasana Banerjee, Adv.
Reserved On	**:**	**01.09.2026**
Judgement on	**:**	**12.10.2026**
Uploaded on	**:**	**12.10.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. The instant criminal revisional application is filed assailing an order dated March 16, 2018 passed by the learned Additional Principal Judge, Family Court, Calcutta in Misc. Case No. 23 of 2014, whereby the prayer made under Section 125 Cr.PC has been allowed, directing the present petitioner

to pay an amount of ₹25,000/- per month from the date of order along with a litigation cost of ₹20,000/- to the opposite party /wife.

Brief fact of the case

2. The case of the petitioner is that the marriage between the parties was solemnised on August 16, 2007 under Special Marriage Act, 1954 and they lived as husband and wife, but the marital discord started between them as the opposite party / wife being much older than your petitioner did not treat him properly or his family members. The opposite party no.1/wife did not show any intention to carry on the family life and behaved badly with him and equally with the mother of the present petitioner and she refused to lead the matrimonial life with the petitioner. She on her own left matrimonial house and deserted the petitioner's life. The petitioner constrained to file an application under Section 36 of the Special Marriage Act for restitution of conjugal life being Matrimonial Suit no. 97 of 2008 but that suit was withdrawn by the petitioner. After that the petitioner filed a suit for divorce against her before the learned Family Court.

3. The opposite party wife in the said Matrimonial Suit submitted her written statement admitting to be a graphic designer having independent source of income. She further admitted that opposite party /wife is the owner of many movable and immovable properties. Surprisingly by suppressing the entire aforesaid fact she filed an application under Section 125 of Cr.P.C against the petitioner before the learned Family Court which is not maintainable itself since she herself refused to live with the petitioner without any sufficient reasons and also admitted to have sufficient income to support

herself. The proceeding was contested by the present petitioner by filing written objection and controverted all allegations made in the application. The opposite party also with malicious intention, filed false complaint against the petitioner and his family members long after 6 years from the date of deserting him and due to such the petitioner had been arrested and released after prolong incarceration.

Submissions

4. The learned Advocate representing the petitioner contended that the Learned court without considering the materials on record and the documents submitted by the parties, particularly the fact that opposite party wife has suppressed her income and deserted the petitioner , passed the order in mechanical manner, directing the petitioner to pay an amount of ₹25,000/- per month. The learned Court did not consider that the wife is not entitled to such order of maintenance under Section 125 Cr.PC stated in the written statement filed in connection with the divorce proceeding. The petitioner is having her dependent mother who is aged and ailing lady and this huge amount of maintenance has caused severe prejudice to the petitioner.

5. It is further argued that the petitioner is a Manager at private Firm named Poojan Enterprise having a salary of ₹45000 per month as monthly income. He took loan from the Firm to pay the wife of ₹13, 50, 000/- and every month deducted ₹20,000/- and he receives only ₹25, 000/- in hand. He resides in Mumbai where his monthly expense is ₹33, 500/-. It is specifically argued that the wife resided with the petitioner in Kolkata only for 39 days

and together for approximately two months and thereafter, she deserted the petitioner and left the matrimonial house without intimating the petitioner. Therefore, the basic criteria for availing the benefit of 125 Cr.P.C has not been fulfilled and hence she is not entitled to maintenance. In this regard relied upon the decision of ***Deb Narayan Halder versus Anushree Halder***[1]**.**

It is further submitted that the petitioner filed application for Restitution of conjugal rights being Mat Suit no. 97 of 2008, which was withdrawn in 2013 and thereafter he filed the suit for divorce being Mat Suit No. 52/ 2013. This suit was dismissed for default since the petitioner could not appear at that point of time as he had to shift to Mumbai for finding job. It is pertinent to mention that after filing such cases, only the wife filed the application for maintenance when she got separated in 2007 and the case was filed in the year 2014.

6. In addition the opposite party had lodged a complaint under Section 498A of the Indian Penal Code against the petitioner after a gap of 6 years where the mother and grandmother of the petitioner, were arraigned as accused persons. The opposite party/wife had admitted in a cross-examination that she obtained Master Degree in Fine Arts from Vishwa Bharti University and is capable of work and in addition, she runs a business of designer products having valid trade license issued by Kolkata Municipal Corporation from the year 2008 to 2024–25. The opposite party filed income tax return for the year 2022–23, which would manifest that she has current income which is

[1] (2003) 11 SCC 303

sufficient to maintain herself. Furthermore she is working at Saint Joseph Northpoint School, Darjeeling, West Bengal, and had various investment in several bank accounts. In this regard he relied upon the case of ***Ashutosh Rai Asthana versus Yamita Rai Asthana*** CRL. Revision Case no. 122/2024, CRL.M.A 35886/2024, Delhi High Court, where it has been held that a Family court cannot determine the maintenance solely based upon the income of the husband and ignoring the cumulative factors like qualification of the wife and independent income and financial liabilities of the husband. Further put reliance in the decision of ***Kiran Jyot Maini versus Aneesh Pramod Patel[2].*** That apart the opposite party /wife also possess two lands in Bolpur and Birbhum , the market value of the said lands are ₹15 lakhs and Rs. 64 lakhs respectively, which clearly shows that she is not at all in destitute condition and has enough means to maintain herself. No evidence was adduced to show that husband earn handsome amount of Rs. 1,20,000/- monthly as alleged by the wife, and hence capable of paying maintenance of ₹25,000/- per month. In absence of any evidence, such order is not sustainable in the eye of law as it was passed on assumption. The husband currently makes ₹45000/- in private job and to take care of his ailing mother and to pay the rented accommodation in Mumbai, which is left with close to nothing after paying ₹14,61,600/- to the wife in past months. The litigation are filed by the opposite party only to the present petitioner and hence prayed for setting aside such order. Accordingly prayed for setting aside the order impugned.

[2] 2024 INSC 530

7. The learned Advocate representing the opposite parties/wife, on the other hand, raises objection. It is her case that the marriage took place in the month of August 2007 and the wife was driven out of the matrimonial home on January 13, 2008 and she was not paid a single penny even after the impugned order was passed. Only on June 4, 2025, when the husband was arrested, paid a sum of ₹12, 11, 660/- and undertook to pay of the remaining within November, 2025, which he did not obey. However, he has paid a further amount of ₹2, 00, 000/- after this court directed him to pay. It is the specific submission advanced on behalf of the learned advocate that the impugned order is a well-reasoned warrant no interference. The maintenance was fixed after the learned family court recorded that the petitioner husband laid no evidence of income and did not depose. The learned court drawn an adverse presumption under Section 114 (g) of the Indian Evidence Act, 1872 against him for withholding income proof which is his exclusive knowledge and found that the wife had no independent source of income and the account stood closed for insufficient funds and her design vocation having ended with the injury to her right hand. It is further argued that the learned family court far from proceeding Ex-parte in haste waited for six days to enable the petitioner husband to argue his case on merit and after his persistent default passed the order.

8. It is further argued that the significant fact appears that the husband participated in the trial but suddenly abandoned in the midway of cross-examination of the wife. He himself never availed before the learned trial court for his cross-examination by the wife. The income being his personal

knowledge he did not disclose the same before the court. It is submitted that the whole edifice of the impugned order rest upon a concurrent adverse inference, which the petitioner has not and cannot now displace. The petitioner having not cross examined the wife on her incapacity of maintaining herself must be accepted as fully established. The income material belatedly annexed by the petitioner before this court is inadmissible to unset a concluded finding. Relied upon the decisions referred reported in ***Arvind Singh versus State of Maharashtra[3], para 58-66, 60-63, Gangabhavani versus Rayapati Venkat Reddy & Ors.[4], para 21–22, Atluri Brahmanandam Dead through LRs versus Anne Sai Bapuji[5]***. Further put reliance in the decision of ***Rajnesh versus Neha & Anr.[6],*** where the petitioner's non-disclosure invited an adverse inference, while he admitted payment proves his capacity to pay. In terms of the said decision, affidavit of disclosure of assets and liabilities by both the parties were mandatory in all maintenance proceeding and precisely because the tendency of the husband is to conceal his true income and non-disclosure invites and adverse against the defaulting party. The petitioner avoided the order for more than seven years, a warrant of arrest was issued and he was found absconding and only after being arrested from Mumbai in June 2025 he compelled to pay a part of what he owed that is ₹12, 11, 660/- towards the arrear amount and undertook to clear if for ₹21, 50, 000/- by November 2025 with ongoing maintenance. The petitioner's flat refusal at mediation confirms that his plea of incapacity is not bona fide. It is therefore argued

[3] (2021) 11 SCC 1
[4] (2013) 15 SCC 298
[5] (2010) 14 SCC 466
[6] (2021) 2 SCC 324

that the present revisional application has not been filed under Section 482 of the Code of Criminal Procedure, 1973 but under Section 397/401 of the Code, which is supervisory in nature and not a rehearing on facts and as such a finding so recorded is not to be disturbed in revision without on a demonstrated perversity, of each there is none.

Analysis

9. Heard both the learned advocates. On perusal of records, it is evident that the marriage took place on August 16, 2007 and the parties are leaving separately since January 13, 2008. The materials on record further disclose that the petitioner initially filed a Matrimonial suit in the year 2008 for restitution of conjugal right, which was registered as Mat. Suit no. 97 of 2008. The date since when parties are living separately is disputed by the petitioner ,according to whom on October 8, 2007 when disputed by wife, on January 13, 2008, but whatever be the same, it clearly demonstrate that either after two months of the marriage or at the most five months after the marriage, the parties got separated. According to the petitioner, the wife left voluntarily for which he filed the Suit for Restitution of Conjugal life, and the proceeding was contested and after failure to reconcile the matter on the part of the wife the petitioner filed an application for non-prosecution and it was dismissed on 25.2.2013. The matrimonial suit for divorce was filed in the year 2013 after dismissal of the earlier suit which was further contested by the wife/opposite party. However that suit was dismissed for default in the year2023. It was recorded by the Learned Court that the petitioner stopped taking steps since 2019. The 125 Cr.PC proceeding was filed in the

year 2014. The chronology of event suggest throughout the petitioner /husband exhibited his negligence in conducting the case either filed by himself or filed by the opposite party wife and also did not bother to comply with the direction passed by the learned Family court and did not pray for stay of the execution of the order while challenging the order before this Court.

10. The contention of the wife if accepted would demonstrate that she was driven out from the matrimonial home in the month of January, 2008 alleging severe torture both physical and mental meted out to her hence it would have been natural that she being an educated lady would have lodged a complaint before the police but it is evident that she did not take any step against any of the family members of the matrimonial home till May 2013 that is for long five years though she was not residing with the petitioner and or with the in-laws . It further transpires that she lodged the complaint under section 498A IPC against the petitioner and the mother and grandmother of the petitioner for which the petitioner got arrested on June, 2013 and for seven days he was behind the bar. In her application for maintenance she did not utter any such cogent reason which prompted her to file the maintenance application after such a long delay. She further did not utter a single word about any subsequent developed compelling her to file a maintenance application . It is further evident that a proceeding was filed by the husband for restitution of conjugal right and it was withdrawn on February, 2013 as the wife did not turn up and the suit for divorce was filed on April, 2013. This factual aspect demonstrate that an attempt was

made by the husband immediately after the wife got separated and the said proceeding continued till 2013 and was withdrawn and after that the Matrimonial Suit for Divorce was filed .The husband also failed to continue with the same and it was dismissed for default after that, the wife filed the proceeding under Domestic Violence Act, 2005 and lodged the complaint under Section 498A IPC.

11. In the petition filed under section 125 Cr.P.C, the opposite party/ wife averred that immediately after marriage, she was treated with cruelties and the family members of the petitioner resorted to different techniques to extort money and articles from the petitioner and her family, and from the very inception of stepping into matrimonial home, she was imposed with various stringent conditions and restrictions upon the petitioners and she was subjected to immense mental and physical cruelties and ultimately forces to bow down at their pressure. On August 29, 2007, she went with the petitioner to Mumbai at his place of work. However, she was continued with pressure of demand of money and faced torture, both mental and physical. After that the petitioner intended to purchase a flat and asked her to arrange money and under severe physical torture and cruelties, the opposite party was forced to issue demand draft dated September 18, 2007 for ₹1,02,823/- and on September 20, 2007 Rs.1, 50, 000/- in favour of Marino builders from ICICI for purchasing the flat at Navi Mumbai, Maharashtra. She was also forced to pay ₹18, 910/- for registration charge after withdrawing from our savings bank account with ICICI. She also applied for bank loan of Rs. 3.5 lakhs for purchasing the flat and the

petitioner obtained signature of her in some printed and blank papers as coward. The petitioner took the key of the said flat without informing the opposite party and did not allow her to stay in the state flat. She was threatened with dire consequences and was not allowed to stay and pressurised to execute power of attorney in his favour. On October 8, 2007, she came from Mumbai to Kolkata to attend her family meeting and after coming to Kolkata the petitioner and his family members started controlling and restricting her movement over phone and forced her to return to their house, leaving her scheduled family engagement.

12. She further alleged that on October 20, 2007 the petitioner mercilessly assaulted her causing grave injury to her right hand thumb and two fingers petitioner which had affected her carrier and she could not carry anything or in a position to do any work with her right hand and finger properly. She also suffered in injuries in her left hand in Mumbai due to assault by the petitioner. Due to such injury the carrier of the opposite party as graphic design designer was badly affected. The wife has filed affidavit in opposition to this revisional application controverting the correctness of the allegations. She reiterated there that the petitioner forced her to leave her matrimonial house on January 13, 2008 and stopped communicating with her. He neither paid her a single farthing towards maintenance nor enquired her whereabouts. The opposite party has alleges that within few days, the petitioner got married with another lady with whom the petitioner had an extramarital affair and a female girl was born out of their wedlock on June 21, 2013 however this fact was never disclosed in her previous application

and despite such knowledge she did not lodge complaint against the petitioner alleging bigamy.

So from the above factual scenario it is well established that since 2008 till 2014, the wife did not pray for any amount of maintenance when she specifically stated that because of torture she sustained injury in her both fingers which has affected her work of graphic designing.

13. The instant revisional application has been filed, challenging the order impugned where by the proceeding under Section 125 Cr.P.C has been allowed. The first point raised by the petitioner regarding maintainability of the revisional application, and this court find its proper to decide the issue at the outset in the light of the fact and circumstances as discussed. The basic requirement of 125 Cr.P.C is to prevent the vagrancy, and the destitution caused to the spouse who is not a position to maintain herself provided, she has been driven out of the matrimonial home or under compiling circumstances, she had to leave her matrimonial home. Section 125 Cr.P.C reads as follows;

> ***"125. Order for maintenance of wives, children and parents.***
>
> *(1) If any person having sufficient means neglects or refuses to maintain -*
>
> > *(a) his wife, unable to maintain herself, or*
> >
> > *(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
> >
> > *(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or*

mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation. - For the purposes of this Chapter, -

(a)"minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority,

(b)"wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

> *(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] [Substituted by Act 50 of 2001, Section 2 for "allowance" (w.e.f. 24-9-2001).] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.*
>
> *(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."*

14. The Maintenance Proceeding is essentially civil in nature and the standard of proof required is not proof beyond the shadow of all reasonable doubt as would require in the criminal cases. The *sine qua non* of maintaining an application is that the wife is unable to maintain herself and the husband is not providing any maintenance for her sustenance and it is the wife who is to prove the same irrespective of the fact that the husband did not contest the proceeding. In ***Shamima Farooqui versus Shahid Khan***[7] the Supreme Court noted that –"*the inherent and fundamental principle behind Section 125 Cr.P.C is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home."*

15. In the case of ***Rajnesh versus Neha (Supra)*** Hon'ble Supreme Court emphasised that maintenance laws were enacted as a measure of social justice to provide resorts to dependent wife and children for their financial

[7] (2015) 5 SCC 705

support, so as to prevent them from falling into destitution and vagrancy. It is undisputed that the purpose for which the provision was incorporated was to prevent vagrancy and destitution immediately after being deserted by the husband to the wife, or if she is under compulsion left her matrimonial home provided she is not living in adultery or is living separately with mutual consent and she has been either driven out from our matrimonial home or under compulsion, she left the matrimonial home, and the husband has not provided any maintenance to her, and she has no sufficient means to maintain herself. Therefore, the essential criteria for claiming and maintenance is to establish that she did not leave the matrimonial home, voluntarily or fully deserted her husband.

16. On close scrutiny of the entire petition filed under Section 125 Cr.P.C, this Court finds that the order passed by the Learned Magistrate is absolutely silent about the entitlement of the opposite party since the proceeding was filed long after 7 years from the date of their living separately .Nothing is stated regarding the Misc**.** Case of 2015 the order of which has been annexed in this revisional application but it is seen that the opposite party filed such Misc. case and was kept pending from 2015 to 2023, and no requisites was filed by the present OP/wife and it was dismissed. Therefore it is necessary to ascertain whether any previous application claiming maintenance was filed by her or not.

17. The present opposite party did not complete the cross examination of the wife nor adduced evidence and it is undisputed that the husband petitioner abandoned the proceeding and failed to prove his case though assailed the

order in the revisional application. However this revisional application was pending since 2018 and in absence of any order of stay the order passed by the Learned Magistrate was rightly put in Execution and long thereafter he was arrested due to non-compliance of the order of the court. It is expected that the petitioner has now understood the consequences of not complying with the order of court after he had to spent some days in custody.

18. It is settled provision of law that the Hon'ble Supreme Court held in ***Kiran Jyot Maini vs Anish Promad Patel (Supra)*** also emphasized that the,standard of living and financial disclosures of both the spouse which has not been done in the proceeding. The learned Court while passing the order of maintenance could not ascertain the actual income of the husband on the basis of which he has determined the monthly maintenance as Rs 25000/-. This court is unable to agree with the submission advanced by the Learned Advocate of the opposite party that since he did not turn up in the trial he cannot now questioned the fact proved against him as it is a matter of granting maintenance and every endeavour should be made to give opportunities to both the parties in order to avoid multiplicity of proceeding. Legislature never intended by incorporating the provision as a tool of punishment to the husband and before passing any order of maintenance the court must ascertain the entitlement of the spouse claiming maintenance and the income of the husband. In this case in connection with another proceeding initiated under PWDV Act, 2005 an amount of Rs. 7000/-has been directed to be paid but the court granted Rs. 25000/- without ascertaining the income of the husband especially under the facts placed before this court which demonstrate

prolong delay in filing this application of maintenance by the wife. The proviso clause of section 125 Cr.PC stated about fulfilment of certain conditions in order to have the order of maintenance.

Conclusions

19. In the light of above this court of considered view that the order passed by the Learned Court is liable to be set aside.

20. Accordingly this revisional application is hereby allowed in part. All other connected application if any stands disposed of.

21. The learned Magistrate is directed to hear the maintenance application afresh after giving opportunity to both the parties to file their respective Affidavit of Assets and liabilities and giving opportunities to adduce evidence. The petitioner is directed to comply with the directions to be passed by the Learned Court.

22. The Learned Magistrate is further directed to complete the trial at an earliest without granting any further adjournment to either of the parties.

23. The petitioner is directed to continue to pay an amount of Rs. 10,000/- (inclusive of any other order of maintenance granted in connection with any proceeding) as monthly maintenance to the opposite party husband till the proceeding is disposed of by the Learned Magistrate and such amount is to be paid within 7th of each month with effect from this date .In default to pay the said amount the wife will be entitled to execute the order in accordance with law.

24. It is further made clear that the amount already paid will be directed to be adjusted depending on the entitlement of the order of maintenance and necessary order to be passed by the Learned Magistrate in the event she is found to be not entitled for maintenance under Section 125 Cr.P.C.

25. All other connected application, if any, hereby stand disposed of.

26. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]

High Court
सत्यमेव जयते
Calcutta