

**HIGH COURT OF TRIPURA
AGARTALA
Crl. Rev. P. No.61 of 2023**

Sri Santanu Ghosh,
Son of Sri Subodh Ghosh, aged 37 years,
resident of Mahadev Tilla, P.O. + P.S Khowai,
Sub-Division-Khowai, District-Khowai, Tripura.

-----Petitioner

Versus

- 1. Smt. Shila Rani Ghosh,**
Wife of Sri Santanu Ghosh,
Daughter of Sri Sankar Ghosh,
Resident of Lalcherra,
P.O. + P.S Khowai,
Sub-Division-Khowai,
District-Khowai, Tripura;
- 2. Master Anuj Ghosh** (minor),
son of Sri Santanu Ghosh,
resident of Lalcherra,
P.O.+P.S Khowai,
Sub-Division – Khowai,
District – Khowai, Tripura;
(respondent no.2, being minor, is represented by his natural
guardian, mother-respondent no.1)
- 3. The State of Tripura**

----Respondents

Crl. Rev. P. No.8 of 2024

- 1. Smt. Shila Rani Ghosh,**
W/O Sri Santanu Ghosh,
- 2. Master Anuj Ghosh** (minor son represented by his mother),
S/O Sri Santanu Ghosh,
Both of them are resideing at Lalchhara,
P.O & P.S-Khowai,
District – Khowai, Tripura.

-----Petitioners

Versus

Santanu Ghosh,
S/O Sri Subodh Ghosh,
R/o- Village- Mahadeb Tilla, P.O. & P.S- Khowai,
District-Khowai, Tripura.

----Respondents

In Crl. Rev. P. No.61 of 2023

For Petitioner(s) : Mr. S. Lodh, Adv.
For Respondents : Mr. Samarjit Bhattacharjee, Adv,
Mr. S. Ghosh, Addl. P.P.

In Crl. Rev. P. No.8 of 2024

For Petitioner(s) : Mr. Samarjit Bhattacharjee, Adv.
For Respondent(s) : Mr. S. Lodh, Adv.
Date of hearing : 18.03.2024
Date of delivery of Judgment & Order : 04.04.2024
Whether fit for reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Both the revision petitions are of common interest as such both the cases, taken up together for hearing and decision. Accordingly, by a common judgment both the revision petitions are disposed of.

2. Heard Mr. S. Lodh, Learned Counsel for the petitioner in connection with Crl. Rev. P. No.61 of 2023 and also heard Mr. Samarjit Bhattacharjee, Learned Counsel for the respondent-wife. Also heard Learned Addl. P.P., Mr. S. Ghosh for the State. Similarly, in the connected case Crl. Rev. P. No.8 of 2024, heard Mr. Samarjit Bhattacharjee, Learned Counsel for the petitioner-wife, Mr. S. Lodh, Learned Counsel for the respondent-husband.

3. Before conclusion of the case, let us discuss about the subject matter of the dispute amongst the rival parties for

which both the revision petitions are filed before the High Court. The petitioner-wife Shila Rani Ghosh for herself and also on behalf of the minor son Master Anuj Ghosh filed one application under Section 125 of Cr.P.C. for granting of monthly maintenance allowance to the petitioner and the minor son at the rate of Rs.15,000/-(fifteen thousand) per month against her husband.

4. The gist of the petition filed by the petitioner-wife is that her marriage was solemnized with the respondent-husband on 27.01.2005 as per Hindu Marriage Rites and Customs at father's house of the petitioner under Teliamura Police Station. In the marriage, furniture, utensils and gold-made ornaments were given to the opposite party. After the marriage, both the husband and wife resumed conjugal life for a period of 1(one) year peacefully and thereafter their dispute started. The petitioner-wife noticed that her husband was indifferent towards her and also not allowed the petitioner to pay visit to her parents. Not only that he also created pressure upon her for bringing cash amount and articles from her father's house and for trifling matter, her husband used to cause cruelty upon her. On 19.10.2005, the petitioner gave birth of a male baby child namely Anuj Ghosh who is presently pursuing his studies and is reading in Class X and staying with her mother. The petitioner further submitted that she noticed some change of behavior of the respondent but inspite of that she continued to resume conjugal life with her husband. On 25.12.2007, the respondent-

husband severely assaulted the petitioner-wife for bringing cash amount from her father's house. She refused and after that she came back to the residence of her father along with her minor child. The matter was informed to the well wishers of both the sides and the OP-husband was so adamant that he was not ready to lead a peaceful conjugal life. However, by the intervention of their well wishers, a meeting took place and as per settlement of the meeting, both of them started residing in a rented house at Ganki under Khowai Police Station. Thereafter, after 3-4 years, both returned back to home but the husband of the petitioner did not take care of the petitioner, nor provided anything for treatment as well as maintenance of the petitioner and minor son. Rather, the father-in-law of the petitioner was looking after the petitioner and her son. She further asserted that the respondent made illicit relation with one lady for which he tortured upon the petitioner and the respondent also demanded cash amount from the parental house of the petitioner but the petitioner was not in a position to fulfill the demand. It was further submitted that the petitioner has/had no source of income and her father is not alive and the father-in-law of the petitioner has been maintaining his family along with the petitioner and her minor son with great hardships.

On the other hand, the OP is businessman and his monthly income is more than Rs.30,000/-(rupees thirty thousand only) and having two or three vehicles. The petitioner

further submitted that she was subjected to torture for unlawful demand of dowry for which she filed a case at Khowai Police Station which is ended in charge-sheet and the case is pending for disposal before the Learned J.M. 1st class Court. Hence, the petitioner filed the petition claiming maintenance.

5. The respondent-husband contested the case by filing written objection denying the entire assertions of the petitioner in her application. Rather in para 6, he submitted that he has got no source of solid income and he has got driving license and he drives vehicle of the others which is not a permanent job. It is further submitted that the opposite party pays money to the petitioner-wife as and when requires and the OP-husband also submitted that the petitioner and her minor son are staying at his residence rather he is residing in a rented house and passing his days in hardships.

6. To substantiate the case, both the parties adduced oral/documentary evidence on record which are reproduced hereinbelow:

Witnesses of the 1st party(Smt. Shila Rani Ghosh):

PW1 – Smt. Shila Rani Ghosh

PW2 – Smt. Rekha Ghosh

Documents of the 1st party(Smt. Shila Rani Ghosh):

i) Xerox copies of Adhaar Card of the 1st party-wife and her son Mast. Anuj Ghosh.

ii) Xerox copy of the birth certificate of Mast. Anuj Ghosh.

Witnesses of the 2nd party(Shri Santanu Ghosh):

OPW1 – Sri Santanu Ghosh

OPW2 – Sri Sanjan Sukla Das

Documents of the 2nd party(Shri Santanu Ghosh):

Exbt-A: Income Certificate of the 2nd party issued by the Dy. Magistrate & Collector, Khowai.

7. Finally after conclusion, Learned Judge, Family Court, Agartala by judgment dated 15.09.2023 allowed the claim application of the petitioner-wife and awarded maintenance allowance at the rate of Rs.4,000/- per month for the petitioner-wife and Rs.2,500/- per month for the minor son from the month of September, 2023.

8. Challenging that judgment, the husband of the petitioner preferred this revision before this Court. At the same time, the respondent-wife, Smt. Shila Rani Ghosh also filed another revision petition for enhancement of the amount of maintenance allowance. As the subject matters of both the petitions are same and almost identical so after hearing both the sides, it is decided to pronounce a common judgment & order.

9. In course of hearing of argument, Learned Counsel for the present respondent-husband, Mr. S. Lodh fairly submitted that the petitioner No.2 Master Anuj Ghosh at the time of passing final order/judgment has become major, so, as per law he is not entitled to get any maintenance from his father but the Learned Court below ignoring the legal provision of law has passed the order which needs immediate interference. Learned Counsel further submitted that the respondent-husband did not dispute his marriage with the petitioner-wife and also the paternity of the son due to their wedlock. Learned counsel further submitted that there is no evidence on record that the husband of the petitioner-wife ever refused/neglected to

provide maintenance allowance to the petitioner and the minor son rather Learned Counsel submitted that the Learned Family Judge without considering the evidence on record and also without application of proper mind awarded Rs.4,000/- as maintenance towards the wife and Rs.2,500/- for the minor son who is not legally entitled to get any maintenance. Learned Counsel further submitted that the respondent-husband produced and proved his income certificate issued by Deputy Collector and Magistrate which was marked as Exhibit-A but the Learned Court below did not consider Exhibit-A and came to an erroneous finding and awarded maintenance at the rate of Rs.6,500/- per month which was too high beyond the capacity of the respondent-husband and learned Counsel further submitted that since the petitioner-wife before the Learned Court below could not produce and prove any genuine income certificate of the husband-OP rather the document relied upon by the husband marked as Exhibit-A ought to have consider by the Learned Trial Court but the Learned Court below did not consider the same and gave a perverse finding. Moreso, the wife with boy are staying in the residence of husband rather the husband is staying in a rented house. Learned Counsel further submitted that the since the petitioner no.2 i.e. the minor son has become major now so the judgment of the Learned Court below needs to be interfered with and a fresh judgment is to be passed after modification. So, Learned Counsel prayed for setting aside the judgment of Learned Family Court.

10. On the other hand, Learned Counsel Mr. Samarjit Bhattacharjee representing the petitioner-wife submitted that Learned Court below rightly awarded the order of maintenance in favour of the petitioner-wife because Learned Counsel for the petitioner-wife referring the evidence of witnesses of the petitioner and the OP-husband drawn the attention of the Court that Exhibit-A relied upon by the husband cannot be taken into consideration as a genuine one because there is evidence on record that the husband has got 2-3 vehicles of his own and he is earning more than the prescribed income and in support of his contention he has relied upon few citations. Finally Learned Counsel prayed for upholding the order of maintenance passed by learned Court below. Rather submitted that since the petitioner-wife has got no income of her own and with the meager amount of Rs.4,000/- it would be difficult on the part of the wife to run her livelihood, so Learned Counsel prayed for allowing her prayer and to enhance the quantum of maintenance already awarded by Learned Family Judge.

11. In the case at hand, there is no dispute on record in respect of the fact of marriage with the petitioner-wife Smt. Shila Rani Ghosh with Shri Santanu Ghosh on 27.01.2005 as per Hindu Marriage Rites and Customs. There is also no dispute on record in respect of birth of Master Anuj Ghosh due to their wedlock/marriage tie. It appears that the date of birth of the said son is 19.10.2005. It is also on record that the said son is pursuing his studies in school. Furthermore, it is also on record

that due to misunderstanding/mal-adjustment, both the parties of the case are residing separately for a quite long period. More interestingly, the wife is staying at her matrimonial home whereas the husband is staying in a rented house. There is no evidence on record that any initiative was taken from the side of the husband of the petitioner-wife for resolving their dispute.

12. In course of hearing, Learned Counsel for the respondent-husband fairly submitted that the respondent-husband is very much eager to resume conjugal life with the petitioner-wife if she is willing to come back and join with her husband and finally submitted that occasionally the husband was paying some maintenance for livelihood of the petitioner and minor son and submitted that being natural guardian and father, he shall maintain the expenditures of the minor son although by this time he has become major but urged for setting aside the order of the Family Judge in respect of maintenance allowance granted in favour of the petitioner-wife ignoring Exhibit-A.

On the other hand, Learned Counsel Mr. Samarjit Bhattacharjee as already stated strongly countered the submission of Learned Counsel for the respondent-husband and submitted that considering the facts and circumstances of the case and the evidence on record, the Learned Court below ordered for maintenance allowance which according to Learned Counsel was very less for which he urged for enhancement of

the maintenance allowance granted in favour of wife-petitioner.

Now, let us see what evidences were adduced by the parties.

13. The petitioner Smt. Shila Rani Ghosh as PW-1 in her examination-in-chief tried to support her version in her application for granting maintenance. She also stated that her husband is a business man and he is earning more than Rs.30,000/- per month having 2/3 vehicles but during cross-examination, save and except denial nothing came out relevant.

14. PW-2, Rekha Ghosh is the mother-in-law of the petitioner-wife and the mother of the husband-OP. she in her examination-in-chief in affidavit tried to support the version of the petitioner-wife in her application for maintenance. She also submitted that her son is a businessman and earns more than Rs.30,000/- per month and he has got 2/3 vehicles. During cross-examination, save and except denial nothing came out relevant. To Court, she deposed that her son has business in vehicles and he drives one vehicle of his own and has employed driver to drive his another vehicle. Also stated that her husband is maintaining the entire family including daughter-in-law Smt. Shila Rani Ghosh and the minor son and further stated that the father of Shri Santanu Ghosh is also suffering from cancer and is undergoing treatment for cancer and the whole family is dependent upon the income of her husband and further submitted that the petitioner needs Rs.15,000/-(rupees fifteen thousand only) per month.

15. The OP-husband in his examination-in-chief tried to support his version in the written objection. He also stated that his monthly income is Rs.4,000/- and he has no other source of income and denied the other allegations of the petitioner. During cross by the petitioner, he stated that the issuing authority of the income certificate or any of the office member is not the witness of his case.

16. OPW-2, Sanjan Sukla Das filed his examination-in-chief. He tried to support the version of OP-husband in his objection. During cross-examination, he stated that he has not seen any document of the 2nd party that he is a labourer or he could not say as to whether the husband has got vehicle or not.

These are the synopsis of the evidence on record of the parties under dispute.

17. I have already stated regarding marriage amongst the parties, there is no dispute on record and also regarding paternity of the minor son, there is also no dispute on record. There is also evidence on record that due to mal-adjustment, both the parties are residing separately for a quite long period. Now, it is to decide whether the maintenance awarded to the petitioner is reasonable or not.

18. In the context of evidence on record of the husband, the husband has relied upon Exhibit-A. On the other hand, the petitioner and her independent witnesses have asserted that he has got 2/3 vehicles and he is earning more than Rs.30,000/- per month. As per Exhibit-A, the monthly income from other

source of the OP-husband is shown to Rs.4,000/- per month. Both the parties relied upon few citations which are discussed hereinbelow.

19. Learned Counsel for the respondent relied upon judgment of Hon'ble Apex Court. In Jagir Singh vs. Ranbir Singh and Anr. reported in **(1979) 1 SCC 560**, wherein Hon'ble Apex Court in para 8 observed as under :

"8. Section 125 of the 1973 Code makes a slight departure. Under this provision a child who has attained majority is not entitled to be awarded maintenance unless such child is unable to maintain itself by reason of any physical or mental abnormality or injury."

Referring the same, Learned Counsel submitted that since the minor son has attained majority so the award needs to be interfered with and needs to be modified because the judgment of the Learned Court below was totally silent in this regard and if it is allowed to be continued in that case that would be a total miscarriage of justice beyond the scope of the legal authority.

20. Learned Counsel finally referred another judgment of this Court in **Crl. Rev. P. No.41 of 2023** dated 12.02.2024 in para nos. 21, 22, 23 this Court observed as under:

"21. Here, in the case at hand, although, the OP-wife all along took the plea that her husband has got his monthly income around Rs.50,000/- and the petitioner-husband has got rubber plantation, auto rickshaw, income from cultivation, etc. But in this regard, not a single piece of documentary evidence has been adduced by the OP-wife before the Learned Court below. The petitioner-husband although took the plea that his earning is Rs.3,000/- per month but in this regard he has failed to adduce any satisfactory cogent evidence on record before the Learned Court below and the Learned Court below thus discarded that plea of the petitioner-husband

that his monthly income is Rs.3,000/- per month and determined the amount of compensation at the rate of Rs.8,000/- per month. Learned Court below also came to the observation that his monthly income can be assessed to Rs.30,000/- to Rs.40,000/- per month but it is not clearly explained as to how the Learned Court below assessed the amount of monthly income of the petitioner-husband at the time of disposal of the proceeding. At the same time, it is also true that the petitioner-husband being a able bodied person cannot not avoid his responsibility to maintain his wife i.e. the OP of this proceeding since she is the legally married wife of the petitioner-husband and there was no dispute on record in this regard.

22. It is also on record that after desertion from the matrimonial home the OP-wife is presently staying in the residence of her brother at Mohanpur, West Tripura. There is also no evidence on record that the OP-wife is earning any income for her livelihood rather it appears that she is depending upon the income of her elder brother and passing days in hardships in the residence of her brother as such she is legally entitled to get maintenance from her husband i.e. the petitioner of this proceeding. There is also no evidence on record that the petitioner-husband is a salaried person and furthermore, no income certificate of the petitioner-husband is proved or produced by the OP-wife before the Learned Court below. From the record of the Learned Court below, it appears that the OP-wife exactly could not say the actual profession of the petitioner-husband i.e. the OP of the original proceeding. Just the wife and her witnesses asserted that his monthly income from auto-rickshaw, rubber plantation, fishery is Rs.50,000/- but no documentary evidence is proved by the OP-wife in the proceeding before the Learned Court below. At the same time also, the petitioner-husband failed to discard that part of evidence of the OP-wife before the Learned Court below but in his affidavit submitted at the time of filling objection, he has mentioned that he is a day labourer by profession/occupation and is aged about 40 years.

Since there is no evidence on record that the petitioner-husband was/is suffering from any illness and it was also on record that probably he was staying with his mother and considering the status of the petitioner-husband, it appears that as a day labourer/cultivator or auto-driver, he used to earn not less than Rs.20,000/- per month and it appears to this Court that Learned Court below at the time of determination of compensation in para 27 of the judgment wrongly assessed his monthly income Rs.30,000/- to Rs.40,000/- per month which needs to be modified.

23. So, after going through the record of the Learned Court below and considering all the circumstances, it appears that the monthly income of the petitioner-husband as OP in the original proceeding should not be less than Rs.20,000/- per month, if he either earns his monthly income as a day labourer/auto driver or as a cultivator, etc. So, taking into consideration all aspects, his monthly income is determined not less than Rs.20,000/- per month and considering the present status and position of the OP-wife in my considered view, it would be prudent if the OP-wife is awarded maintenance allowance at the rate of Rs.7,000/- per month from the date of petition/application i.e. from the month of March,2021 onwards.

Referring the same, Learned Counsel submitted that since the Learned Court below did not consider the oral/documentary evidence on record properly and gave a perverse finding violating the statutory provisions of law and finally urged for setting aside the order passed by the Learned Court below.

21. On the other hand, Learned Counsel for the petitioner-wife, Mr. Samarjit Bhattacharjee in course of hearing of argument relied upon few citations.

In Anju Garg and Ors. V. Deepak Kumar Garg dated 28.09.2022 reported in **2022 SCC OnLine SC 1314** wherein the Hon'ble the Supreme Court of India in para nos. 10 and 13 observed as under:

"10. This Court had made the above observations as the Court felt that the Family Court in the said case had conducted the proceedings without being alive to the objects and reasons, and the spirit of the provisions under Section 125 of the Code. Such an impression has also been gathered by this Court in the case on hand. The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his

obligation, except on the legally permissible grounds mentioned in the statute. In *Chaturbhuj v. Sita Bai* : (2008) 2 SCC 316, it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.

13. Though it was sought to be submitted by the learned counsel for the respondent, and by the respondent himself that he has no source of income as his party business has now been closed, the Court is neither impressed by nor is ready to accept such submissions. The respondent being an able-bodied, he is obliged to earn by legitimate means and maintain his wife and the minor child. Having regard to the evidence of the appellant-wife before the Family Court, and having regard to the other evidence on record, the Court has no hesitation in holding that though the respondent had sufficient source of income and was able-bodied, had failed and neglected to maintain the appellants. Considering the totality of facts and circumstances, we deem it proper to grant maintenance allowance of Rs.10,000/- per month to the appellant-wife, over and above the maintenance allowance of Rs. 6,000/- granted by the Family Court to the appellant no. 2-son."

In *Reema Salkan v. Sumer Singh Salkan* dated 25.09.2018 reported in **(2019) 12 SCC 303** wherein Hon'ble Supreme Court at para 13.82 and 13.83 observed as under:

"13. *** *** *** *** *** ***

82. It is an admitted fact emerging on record that both the parties got married as per Hindu rites and customs on 24.03.2002 and since then the petitioner was living with her parents from 10.08.2002 onwards, and the parents are under no legal obligation to maintain a married daughter whose husband is living in Canada and having Canadian citizenship. The plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able-bodied person having good health and physique and he can earn enough on the basis of him being able-bodied to meet the expenses of his wife. In this context, the observation made in *Chander Parkash v. Shila Rani* :AIR 1968 Del

174, by this Court is relevant and reproduced as under: (SCC OnLine Del Para 7)

"7. an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child."

83. The husband being an able-bodied person is duty-bound to maintain his wife who is unable to maintain herself under the personal law arising out of the marital status and is not under contractual obligation. The following observation of the Apex Court in *Bhuwan Mohan Singh v. Meena*, :AIR 2014 SC 2875, is relevant: (SCC p.357, para 2)

"2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is

able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

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In *Bharat Hegde v. Saroj Hegde* dated 24.04.2007 reported in **2007 (96) DRJ 110** wherein Hon'ble High Court of Delhi at para 8 observed as under:

"8. Unfortunately, in India, parties do not truthfully reveal their income. For self employed persons or persons employed in the unorganized sector, truthful income never surfaces. Tax avoidance is the norm. Tax compliance is the exception in this country. Therefore, in determining interim maintenance, there cannot be mathematical exactitude. The court has to take a general view. From the various judicial precedents, the under noted 11 factors can be culled out, which are to be taken into consideration while deciding an application under Section 24 of the Hindu Marriage Act. The same are:

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
10. The non-applicant to defray the cost of litigation.
11. The amount awarded under Section 125 Cr.P.C is adjustable against the amount awarded under Section 24 of the Act."

In another case, the High Court of Delhi in *Chander Parkash Bodh Raj v. Shila Rani Chander* dated 16.04.1968 reported in **1968 SCC OnLine Del 52** at para nos. 7 and 9 observed as under:

"7. But this apart, as submitted by Shri Bhandari, an able-bodied young man has to be presumed to be capable of earning

sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. In the present case, as the husband has not frankly disclosed to the Court, as he ought, his allowances which he admittedly gets, the presumption would be easily permissible against him.

9. At this stage, it may be observed that proceedings under section 488, Cr.P.C. are summary in nature for compelling a man to maintain his wife and/or children. It provides a cheap and speedy remedy for securing to a limited degree maintenance for the deserted wife and children. This Court on revision would ordinarily interfere with such orders only if the Court below has failed to exercise its discretion judicially and if substantial justice has not been done. So long as the proceedings before the Magistrate are in accordance with law and in order and when evidence has been properly considered and estimated, his decision, normally speaking, deserves to be upheld and it may not be liable to be disturbed merely because the Court of revision might have thought of coming to a different conclusion on the evidence while functioning as the original Court. I, however, must not be understood to lay down as a general rigid rule of universal application that, appraisal of evidence by the Magistrate, however, grossly infirm, is completely sacrosanct, never to be examined on revision, for, this Court's paternal jurisdiction is meant to promote and advance the cause of substantial justice, though of course according to law."

Referring the principles of aforesaid citations, Learned Counsel submitted that since the husband could not discard the evidence on record of the petitioner-wife regarding his monthly income, so, basing upon Exhibit-A, it cannot be conclusively said that the income of the husband is Rs.4,000/- per month because as alleged by the petitioner-wife, the respondent-husband did not adduce any strong counter evidence on record to discard that portion of evidence regarding his monthly

income. Moreso, since the husband is strong and able bodied so legally the husband is bound to pay maintenance to his wife for survival and to prevent her from suffering from vagrancy and destitution.

22. Here in the case, from the evidence on record, it appears that the husband has got 2/3 vehicles, one is being run by him another is given on rent. The petitioner-wife although could not rebut any proper account regarding exact monthly income of the respondent-husband and from Exhibit-A also it cannot be conclusively said that his monthly income is Rs.4,000/- because in Exhibit-A, it is written that income from other source is Rs.4,000/- but in respect of income from other sources like salary, business, etc, nothing is mentioned. Moreso, the issuing authority of the said certificate was not tendered for examination by the husband and there is no satisfactory evidence on record as to how the authority came to the finding that the monthly income of the respondent-husband is Rs.4,000/-. Even an unskilled day labourer also in our State earns not less than Rs.12,000/- to Rs.15,000/- per month. Learned Court below also did not give any proper account as to how he determined the income of the respondent-husband. The principles of the aforesaid citations relied upon by Learned Counsel for the petitioner-wife are very much relevant. Because according to law, since the marriage is not disputed and since the husband is able-bodied, so, it is the sacrosanct duty of husband to maintain his wife as per law. Just by mere asserting

that he has got no sufficient income cannot dislodge him from the liability of paying maintenance to his wife.

23. More interestingly, in the given case the mother of the respondent-husband stood as witness against him. So, from the evidence, it appears that her evidence also could not be frustrated by the respondent-husband and thus from the evidence, it appears that the respondent-husband caused cruelty upon the petitioner-wife and neglected/refused to provide maintenance to his legally married wife and son, for which, the petitioner is entitled to get maintenance from her husband.

24. Here in the given case, the date of birth of the minor son is 19.10.2005 so on the date of delivery of judgment i.e. on 15.09.2023, his age appears to be 34 days lesser than attaining majority i.e. 18 years. So, as per law on attaining majority, he will not be entitled to get any maintenance. It is on record that the petitioner no.2 is pursuing his studies. But how much money required for maintaining his studies and other expenses, nothing is there on the evidence on record. So, legally there is very little scope to extend any benefit of maintenance allowance after attaining majority as per law.

25. In **Rajnesh v. Neha** reported in **(2021) 2 SCC 324**, the Hon'ble Apex Court ordered that maintenance should be granted from the date of application not from the date of order. But here in the given case, the case was filed before the Family Court on 06.01.2022 but the Learned Family Judge has

awarded maintenance from the month of September, 2023 i.e. from the date of judgment which in my considered view Learned Family Judge has committed gross irregularity in awarding the same which ought to have considered from the month of January, 2022.

26. So, after hearing both the sides and considering the facts and circumstances of the case and also the fact that, if we assume that the respondent-husband is a driver by profession and he is running one of his own vehicle and also he has given rent of his another vehicle in that case also his daily income can be assessed atleast Rs.1,000/- per day and assuming that if he is working for 25 days in a month, so, in that case, his monthly income may be assessed to Rs.25,000/-. But the Learned Court below at the time of delivery of judgment did not give any account as to how he arrived to the decision regarding fixing of monthly maintenance allowance. However, considering the materials on record, in my considered view, the minor petitioner Anuj Ghosh shall get maintenance allowance at the rate of Rs.2,500/- per month as ordered by the Learned Family Judge with effect from the month of January, 2022 to till October, 2023 i.e. till the date of attaining majority. Thus, his maintenance allowance comes to Rs.55,000/-. After that, said Anuj Ghosh shall not get any maintenance allowance from his father i.e. Santanu Ghosh. However, considering the fact that the petitioner-wife Shila Rani Ghosh is staying at her matrimonial home with her in-laws and she does not have any

independent income of her own rather she is depending on the income of her old and aged father-in-law who is a pensioner and patient also. So, it appears that if she is awarded maintenance allowance at the rate of Rs.7,000/- per month from the month of January,2022 onwards then substantial justice would be meted to her.

27. In the result, the judgment & order dated 15.09.2023 passed by Learned Judge, Family court, Khowai Tripura is partly modified. The Petitioner Shila Rani Ghosh shall be awarded maintenance by her husband Santanu Ghosh at the rate of Rs.7,000/- per month from the month of January, 2022 onwards in place of Rs.4,000/- and the minor son of the petitioner, Anuj Ghosh shall be only entitled to get maintenance allowance at the rate of Rs.2,500/- from January, 2022 to October, 2023 i.e. the date of attaining majority. Thus, the arrear maintenance allowance comes to Rs.1,89,000/- for the petitioner-wife with effect from January, 2022 to March, 2024 and in respect of the minor boy, it comes to Rs.55,000/- i.e. from the month of January,2022 to October, 2023 i.e. till the date of his attaining majority. The total arrear maintenance comes to Rs.2,44,000/-(Rs.1,89,000/- + Rs.55,000/-). The respondent-husband shall pay the maintenance allowance from the month of April, 2024 onwards within first seven days of the next following month in which the monthly maintenance allowance shall become due to the petitioner-wife to her SB account no.342801000004921 lying with the Indian Overseas

Bank, Khowai Branch. And the arrear maintenance shall be cleared up by the respondent-husband to his wife in 36 equal installments from the date of passing the judgment of this Court.

28. With these observations, both the revision petitions are disposed of on contest. Send down the LCRs along with a copy of this judgment. A copy of this order also be kept in the connected case Crl. Rev. P. No.8 of 2024.

JUDGE

