

**HIGH COURT OF TRIPURA
AGARTALA
Crl. Rev. P. No.7 of 2023**

Smt. Santa Chakraborty,
W/o Sri Kartik Chakraborty,
D/o Sri Shaktipada Chakraborty
Resident of Khayerpur, Mudda Para,
P.O – Khayerpur, P.S – Bodhjungnagar,
District – West Tripura

-----Petitioner(s)

Versus

- 1. Sri Kartik Chakraborty,**
S/o Sri Kalipada Chakraborty
Resident of Lawgang, Sonar Tilla,
P.O & P.S – Santirbazar,
District – South Tripura
- 2. The State of Tripura**
Represented by the Secretary,
Home Department, Government of Tripura

-----Respondent(s)

**Along with
Crl. Rev. P. No.10 of 2023**

Shri Kartik Chakraborty,
Son of Sri Kalipada Chakraborty
resident of Lowgang, Sonartilla,
P.O + P.S. Santirbazaar,
District – South Tripura

-----Petitioner(s)

Versus

- 1. Smti. Santa Chakraborty,**
Wife of Sri Kartik Chakraborty,
D/O Sri Saktipada Chakraborty
resident of Khayerpur, Muddapara,
P.O. Khayerpur, P.S. Bodhjungnagar,
District – West Tripura;
- 2. The State of Tripura**

-----Respondent(s)

In Crl. Rev. P. No.7 of 2023

For Petitioner(s)	:	Mr. Kundan Pandey, Adv.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P, Mr. S. Lodh, Adv.

In Crl. Rev. P. No.10 of 2023

For Petitioner(s) : Mr. S. Lodh, Adv.
For Respondent(s) : Mr. S. Ghosh, Addl. P.P.,
Mr. K. Pandey, Adv.
Date of hearing : 19.01.2024
Date of delivery of
Judgment & Order : 25.01.2024
Whether fit for
reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This Criminal Revision Petition being Crl. Rev. P. No.7 of 2023 has been filed by the petitioner Smt. Santa Chakraborty before this Court with a prayer for enhancement of maintenance allowance granted by the Learned Additional Judge, Family Court, Agartala in connection with Case No. Crl. Misc. No.124 of 2020 under Section 125 of Cr.P.C from Rs.5,000/- to Rs.20,000/- per month invoking the power conferred under Section 397 of Cr.P.C. Similarly, the husband Sri Kartik Chakraborty has also filed another petition numbered as Crl. Rev. P. No.10 of 2023 before this Court for setting aside the order dated 16.12.2022 passed by Learned Additional Judge, Family Court, West Tripura, Agartala in the same case Crl. Misc. No.124 of 2020 under Section 125 of Cr.P.C. wherein the Learned Court below awarded maintenance in favour of Smt. Santa Chakraborty at the rate of Rs.5,000/- per month from the month of December, 2022 invoking the provision provided under Section 19(4) of the Family Courts Act. Since

the parties of both the cases are same and the subject matter is also same and identical so by this common judgment, the matter is taken up for consideration and decision accordingly.

2. The petitioner Smt. Santa Chakraborty preferred one petition under Section 125 of Cr.P.C. before the Learned Additional Judge, Family Court, Agartala which was numbered as Crl. Misc. No.124 of 2020. In her application for maintenance, she took the plea that her marriage was solemnized with OP, Sri Kartik Chakraborty on 02.07.2001 as per Hindu Rites and Customs at Siddhi Ashram, in presence of the guardians of both the sides. In the marriage, as per demand of her husband, gold ornaments, wooden furniture and other articles were given and thereafter both of them started their conjugal life as husband and wife peacefully. She further asserted that her husband was a T.S.R. personnel and out of their wedlock, a male child was begotten who was 15 years old at the time of filing of the claim petition. The petitioner further asserted that after marriage, her husband started misbehaving with her every now and then and he used to come back at home in the night in drunken condition and tortured her both mentally and physically. Not only that her husband also used slang languages to her as well as to her parents and in the year 2018, her husband suddenly left the quarter and started residing in a rented house. It was further asserted that the petitioner was busy in performing household works, but her husband used to suspect her and her husband never changed

his behaviour and every night he used to cause torture upon her on false allegations. Finally, her husband after physically assaulting her drove her out from her matrimonial home and threatened her not to come back. It was further asserted that during that period, father of the petitioner became ill, so finding no alternative, she took shelter in the residence of her friend at Ranirbazar and later on she came to know that her husband filed one missing diary before police. Subsequently, in the month of November, 2018, her husband pressurized and threatened her to sign one mutual divorce application which she refused to sign. But later on being assaulted by her husband, she had to sign the paper. The case was dismissed as she did not appear. The petitioner further asserted that she repeatedly requested her husband to take her back but her husband refused. In the month of January, 2019 when the petitioner was residing at Ranirbazar, her husband appeared all on a sudden with his friends and requested her to put her signature on a stamp paper, assuring her to take her back but after putting signature, her husband refused to take her back and made a prayer before the Court for seeking divorce without providing any maintenance or alimony. The petitioner further asserted that her husband, the opposite party (for short, OP) was serving at 11th Bn. T.S.R at Gokulnagar and his monthly salary was Rs.45,000/-. During that period, her husband neither provided any maintenance to her nor took any step for

resumption of conjugal life. Hence, she filed the petition claiming maintenance.

3. On receipt of notice, the OP husband appeared and filed objection and denied all the assertions of the petitioner in her claim petition. In the written objection, the OP husband took the plea that he was serving in TSR and used to reside in Govt. quarter and his wife suddenly fled away from his residence with another person when their minor son was at school and he was busy in official works. On 11.10.2018 after returning back to home, he found his wife missing. In this regard, he made one GD entry at Bishalgarh Women PS but Police could not trace her out. Subsequently, he came to know that his wife fled away to Ranirbazar and knowing the same, he came to Ranirbazar and informed the matter to Ranirbazar PS vide GD entry No.23 dated 13.11.2018. That time OC Ranirbazar PS intimated him about his wife that she was in the house of one Bikash Chakraborty at Brajanagar. Thereafter, both of them were brought to Ranirbazar PS. That time, the petitioner disclosed that she was not willing to go with her husband and preferred to live with Bikash Chakraborty saying that she would marry him after taking separation from her husband. Thereafter, her husband filed petition before the Family Court seeking mutual divorce which was registered as Case No.TS(Div)456 of 2018, but all on a sudden the petitioner demanded Rs.5,00,000/- from him which he refused. Furthermore, the OP husband stated that the petitioner

threatened him and on the date of hearing, she did not appear before the Court so the divorce petition was dismissed. It was further asserted by the OP husband that he filed one FIR against the petitioner and said Bikash Chakraborty, which was registered as Ranirbazar PS case No.63 of 2019 under Section 494/384/34 of IPC and on completion of investigation, police laid charge-sheet against the petitioner and said Bikash Chakraborty. It was further asserted that during investigation police seized one notarized document signed by the petitioner and said Bikash Chakraborty wherein it was asserted that on 10.10.2020, the petitioner left her husband voluntarily and came to the residence of Bikash Chakraborty and since then she has been living with said Bikash Chakraborty. Finally, the OP husband took the plea that his wife was living in adultery and prayed before the Court to dismiss the claim petition.

4. To determine the case, Learned Court below framed three points for determination which are narrated below:

"Points for Determination :

i) Whether the petitioner has been subjected to torture by the 2nd party and that she has sufficient reasons to live separately from him?

ii) Whether the 2nd party has been neglecting and refusing to pay maintenance to the 1st party, inspite of having sufficient means?

iii) Whether the petitioner is entitled to get maintenance from the 2nd party and if so, what would be the quantum?"

5. Before the Learned Court below, the petitioner adduced two witnesses including herself and relied upon one

documentary evidence marked as Exhibit-1 i.e. the letter dated 07.03.2021 issued by Commandant, 11th B.n TSR.

Witnesses of the 1st Party :

PW-1 : Smt. Santa Chakraborty &

PW-2 : Sri Shaktipada Chakraborty.

Documents of 1st Party :

Exbt-1 : The letter dt 07.03.2021 issued by the Commandant, 11 Bn. TSR

6. On the other hand, the OP husband adduced two witnesses including himself and his son as OPW-1 and OPW-2 respectively and relied upon some documentary evidences which were marked as exhibits in the case.

Witnesses of the 2nd Party :

OPW-1 : Sri Kartik Chakraborty

OPW-2 : Sri Koushik Chakraborty

Documents of 1st Party :

Exbt-A series : The OP in support of his case has submitted printed form of FIR and his ejahar dt. 06.06.2019 in connection with Ranirbazar PS case no.2019/RNB/063, dt.06.06.2019 u/s 494/384/34 of IPC.

Exbt-B : Certified copy of chargesheet filed by Ranirbazar PS in c/w. Ranirbazar PS case No.2019/RNB/063, dt.06.06.2019.

Exbt-C : Certified copies of Order-sheets from 23.11.2018 till 30.03.2019 in c/w. TS(Div)456 of 2018.

Exbt-D : Certified copy of Order dt.20.03.2020 in c/w. PRC(WP) 190/20.

7. Finally, after considering the evidence on record and also after hearing argument of both the sides, Learned Court below granted maintenance in favour of the petitioner at the rate of Rs.5000/- per month from the month of December, 2022 and challenging that order the petitioner has approached this Court for enhancement of maintenance allowance and at the same time, as already stated, the OP husband has preferred another revision petition before the High Court for setting aside the order passed by Learned Court below.

8. In course of hearing, Learned Counsel for the petitioner-wife submitted that there is no dispute on record in respect of the fact of marriage between the parties and the husband during his cross-examination very specifically stated that his monthly income is more than Rs.50,000/- per month and since 2018 he did not provided any maintenance to the petitioner-wife and his son is under his care and custody since the year 2018 and obedient to him. So, Learned Counsel submitted that from the act and conduct of OP husband, it is very clear that the OP husband refused and neglected to provide maintenance to his wife i.e. the petitioner since 2018 and inspite of admitting the fact that his salary is Rs.50,000/- per month, the Learned Court below only awarded maintenance at the rate of Rs.5,000/- per month, which needs to be enhanced. Further, Learned Counsel submitted that as per law the maintenance order should be made from the date of

application but the Learned Court below awarded the maintenance from the date of order, for which the petitioner has been seriously prejudiced. So, Learned Counsel for the petitioner urged before the Court for sympathetic consideration of the wife and to allow maintenance allowance from the date of filing of the claim petition. It was further submitted that except the maintenance case, no other case was filed by the petitioner against her husband but the husband laid false and vexatious allegation against her involving one person and levelled the charge of living in adultery against her. Although, a charge-sheet was filed against the petitioner but since the same was not a public document so there was no scope to place any reliance upon that document and just by mere filing of charge-sheet, it cannot be said that the charges have been proved against the petitioner and until and unless, the charge of second marriage or living in adultery is proved by the OP husband, there was no scope to deny maintenance by the OP husband to the petitioner. But, he intentionally to evade maintenance has laid a false and vexatious charge against his wife i.e. the petitioner of this case. Learned Counsel for the petitioner relied upon few citations.

9. In course of hearing, Learned Counsel for the OP husband, first of all, submitted before the Court that from the claim petition filed by the petitioner before the Learned Court below, no where it is apparent when she had left her matrimonial home rather she maintained illicit relation with one

Bikash Chakraborty and for that, she voluntarily left the company of her husband and in presence of police personnel, she confessed that she was not willing to go back to the residence of the OP husband and on the basis of complaint of the OP husband, a criminal case was registered wherein after completion of investigation, the IO of that case submitted charge-sheet against the petitioner and said Bikash Chakraborty and furthermore, in view of the provision of Section 125 of Cr.P.C., since she was living in adultery, as such, she is not entitled to get any maintenance from her husband and submitted before the Court to set aside the order passed by the Learned Court below as the Learned Court at the time of deciding the proceeding did not take into consideration all this aspects. Learned Counsel further submitted that the OP husband in his written objection in para 10, 11, 12 and 13 has narrated everything in detail that the petitioner-wife has voluntarily left her husband's residence and started conjugal life illegally with one Bikash Chakraborty. So, in view of the provision of 125 Cr.P.C, she was not entitled to get any maintenance from her husband. Learned Counsel further submitted that although the petitioner during her cross-examination deposed that she has brotherly relation with Bikash Chakraborty but to substantiate the allegation of OP husband, she was supposed to produce said Bikash Chakraborty before the Court to clear the entire cloud, which draws an inference

against the petitioner under Section 114(g) of the Evidence Act.

Section 114(g) provides as under:

"114. Court may presume existence of certain facts.-The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

The Court may presume-

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;"

10. Learned Counsel for the OP further submitted that as per evidence on record, the petitioner left the OP husband in the month of October 2018 which was also beyond pleading and she filed the case in the year 2020 then during this period how the petitioner survived, there was no explanation in this regard from the side of the petitioner-wife. It was further submitted that the father of the petitioner in course of his examination stated that during his absence, the petitioner stayed in a different residence but he could not say being a father, where she resided in his absence after voluntarily leaving her matrimonial home which shows that the present petitioner all along maintained hostile attitude against her husband and maintained illicit relation with that Bikash Chakraborty which need to be taken into consideration by this Court. He also drawn the attention of the Court that the OPW-2, being the son of the parties during his examination-in-chief stated that his mother voluntarily left his father in para 3 of his examination-in-chief but the petitioner save and except denial, failed to counter the said allegation levelled by her son

which shows that her act and conduct was all along doubtful and she had voluntarily left the company of her husband having maintaining illicit relation with the said Bikash Chakraborty so she is not entitled to get any maintenance but the Learned Court below did not consider all these things and granted maintenance at the rate of Rs.5,000/- per month which needs to be set aside by this Court disallowing the petition filed by the petitioner for enhancement of her maintenance.

11. I have heard detailed argument of both the sides. It appears that there is no dispute on record in respect of the marriage of the petitioner with the OP husband on 02.07.2001 as per Hindu Rites and Customs and out of their wedlock, one male child was begotten to them who is presently staying with his father and during their conjugal life no dispute popped up between the parties as because there is no evidence on record that either of the parties filed any case against each of them at any point of time. So, I can come to the conclusion that from the year 2001 to 2017, there was no major dispute between the rival parties of this case but their actual dispute started from the year 2018.

12. According to the petitioner, her husband used to torture her and in the year 2018, she was driven out from her matrimonial home by her husband and she took shelter in the residence of a family friend/relative Bikash Chakraborty.

13. On the other hand, the OP husband took the plea that in his absence, the petitioner left his residence on

11.10.2018 and went to the residence of one Biplab alias Bikash Chakraborty and there in the residence of said Bikash Chakraborty, she resumed adulterous life and knowing the same, he came to Ranirbazar PS. The Police called both of them but the petitioner refused to join him at her matrimonial home and he filed case. Ultimately, the case ended in charge-sheet. That was the main defence of the OP husband.

14. It is settled law that until and unless a person is proved to be guilty, it cannot be said that the charges brought against him/her is proved. The OP by his written objection did not dispute his marriage with the petitioner and also did not dispute that he resume conjugal life with the petitioner from the date of his marriage till 10.10.2018 but thereafter as the petitioner left his residence and went to the residence of one Biplab alias Bikash Chakraborty, he presumed/assumed that his wife was living in adultery with that person which she admitted before PS. Until and unless the said case is proved beyond doubt, there is no scope to come to any conclusion that the allegation of adultery or living in adultery is proved against the petitioner. Now from the evidence on record, it appears that the petitioner to support her case adduced two witnesses including herself. She, in her examination-in-chief supported her assertions in the claim petition. During cross-examination by her husband, she stated that earlier she and her husband filed one divorce case on mutual consent but she did not participate in the proceeding and denied the defence story laid by her

husband that she escaped with one Bikash Chakraborty and at Ranirbazar PS she refused to go back to her matrimonial home. Rather she specifically stated that said Bikash Chakraborty alias Biplab is her brother in relation and she denied the fact of any execution of any affidavit before notary, Shri Rajat Roy and also denied her signature in the certified copy of the affidavit being shown to her. Nothing more came out from her examination save and except denial.

15. PW-2, Shaktipada Chakraborty is the father of the petitioner. He in his examination-in-chief supported the version of the petitioner but during cross-examination, he could not say anything about filing of any divorce case on mutual consent and also could not say when his daughter left her husband's house.

16. The OP as OPW-1 in course of his examination-in-chief narrated the contents made by him in his written objection. During cross-examination, he specifically stated that his income is more than Rs.50,000/- per month and since 2018 he did provide any maintenance to the petitioner and he also did not cite any person as witness on his behalf who were the witnesses of the Ranirbazar PS case No.63/2009 in support of his defence not even the IO and the OC. He also did not file any case for RCR for getting his wife back nor submitted any copy of GD entry dated 11.10.2018 made before Bishalgarh Women P.S. He did not cite Bikash Chakraborty as witness in his case nor Swapan Chakraborty, the priest of his marriage, also did not cite Bishnupada Chakraborty, Dipak Debnath, Sunil Ch.

Ghosh and Rajat Roy as witnesses of his case to support his defence.

17. OPW-2, Kaushik Chakraborty is the son of the parties. He in course of his examination-in-chief tried to support the version made by his father. During cross-examination, nothing came out relevant.

It is quiet natural that the son who is under the custody of the father would definitely support the version of his father.

18. From the evidence on record, it appears that the OP husband to substantiate the allegation levelled against the petitioner did not adduce any material witness, who were the witnesses of the charge-sheet of the case filed by him against his wife and said Bikash Chakraborty. OP also failed to adduce Rajat Roy as witness before whom according to the OP husband, his wife i.e. the petitioner and said Bikash Chakraborty made one declaration or affidavit. Neither took any effort to produce that affidavit nor proved the signature of the petitioner in the said declaration. The OP also failed to adduce any witness/evidence to substantiate that the petitioner was maintaining adulterous relation with Bikash Chakraborty alias Biplab. In absence of clear cogent evidence on record, there is no scope to come to any conclusion that the petitioner was living in adultery as mentioned in Section 124(4) of Cr.P.C. So, the submission of the Learned Counsel for the OP husband cannot be accepted.

But at the same time, it is on record that from the year 2018 the dispute started and due to that dispute, the petitioner is staying separately from her husband. It is also on record that since 2018, the OP husband did not provide any maintenance to the petitioner, she is staying in the residence of her father who was a retired T.S.R officer. So, evidently it is clear that the dispute existed between the parties and due to that dispute, both the parties are residing separately and the present OP husband also refused/neglected to provide maintenance. In my opinion, the allegation levelled by the OP husband is so serious that it affects the chastity of a women in a society like us. Until and unless that allegation is proved beyond doubt, there is no scope to place any reliance upon the said allegation in absence of material evidence on record which the OP husband has failed to prove by way of defence before the Learned Court below.

19. As I have already stated Learned Counsel for the petitioner in course of hearing relied upon few citations. **In Amit Kumar Yadav v. Suman Devi and others** in case No.**CRR(F)-384-2021** dated 19.09.2022, the Hon'ble Punjab and Haryana High Court in page 6 observed as under:

"The maintenance can be declined, in the event, it is proved and established that the wife is living in adultery. "Living in adultery" means a continued adulterous conduct and not a single or occasional lapse. Solitary act of adultery or on isolated lapse of wife, will not disentitle the wife to claim the maintenance. The burden of proof of unchastity is on the husband. Unless it is found that at the relevant point of time, the wife was actually living in adultery, she is not disentitled to claim maintenance. The

material on record must indicate that the wife was living in adultery shortly before or after the petition of maintenance has been instituted. It is not the case of the petitioner that shortly prior to the institution of the petition or subsequent thereto, the respondent no.1 is continuously living in adulterous life. The course of adulterous conduct must not be a matter of past, but must be continuing at the time of presentation of the petition. The stale alleged act of adultery is indicative of the fact that such act has been condoned and consequently, the allegation to the effect that the respondent no.1 was living in adulterous life way back in the year 2005 cannot be termed to be a circumstance, which may be significant enough to dispute the claim of the respondents to claim maintenance from the petitioner. This is also a significant circumstance which indicate that the proposed evidence is not essential to decide the controversy."

Referring the same, Learned Counsel submitted that "living in adultery" means a continued adulterous conduct and not a single or occasional lapse. Solitary act of adultery will not disentitle the wife to claim the maintenance. But here in the case before the Learned Court below, the OP husband could not prove any charge of adultery or living in adultery against the petitioner-wife. So, Learned Court below rightly decided the claim petition of the petitioner granting maintenance in her favour.

20. Similarly, in **Suk Bir Chettri v. Jamuna Chettri** reported in **2019 SCC OnLine Sikk 185**, Hon'ble the High Court of Sikkim in para 21 and 23 observed as under:

"21. In *M.P Subramaniam* (supra), the Karnataka High Court was considering the term "living in adultery" appearing in clause (4) of Section 488 of Cr.P.C., 1898. It is to be noted that Section 125 (4) of the present Cr.P.C. also uses the very same expression. The Division Bench of the Karnataka High Court, relying on judgments of various High Courts, had observed that it is not a stray act or two of adultery that disentitles a wife from claiming maintenance from her husband; but

it is a course of continuous conduct on her part by which it can be called that she is living an adulterous life that takes away her right to claim maintenance. It was emphasized that the wording of Section 488 (4) of Cr.P.C. is not "if she commits adultery" but "if she is living in adultery".

23. In *Naranath Thazhakuniyil Sandha* (supra), Kerala High Court, on consideration of various judgments referred to therein had held that phrase "living in adultery" used in Section 125 (4) of the present Cr.P.C. and in Section 488 (4) of the Cr.P.C. 1898 contemplates a continuous course of conduct on the part of the wife with the adulterer or the paramour, as the case may be, and a single act of unchastity or a few lapses from virtue will not disentitle the wife from claiming maintenance from her husband under Section 125 of the Cr.P.C."

Referring the same, Learned Counsel also submitted the same fact that in absence of evidence of 'living in adultery', there is no scope to refuse any maintenance to the petitioner and the Learned Court below considering everything rightly granted maintenance in favour of the petitioner-wife.

21. Learned Counsel also relied upon another judgment dated 10.02.2020 passed by a Single Bench of this Court in **CrI. Rev. P. No.73 of 2019** titled as **Smt. Lipika Dey (Saha) v. Sri Babul Kumar Saha**, wherein Learned Single Judge while deciding the matter discussed "living in adultery" at page 5:

"Having appreciated the evidence as recorded and the finding on the basis of appreciation of such evidence, this Court does not find any evidence in respect of subsistence of marriage with someone else or the fact "to live in adultery". One act of adultery will not disentitle the wife from getting maintenance by importing the provision of Section 125(4) CrPC, inasmuch as the interpretation of the clause that has been engrafted in that section i.e. 'living in adultery' cannot and does not mean one act of adultery.

On the contrary, it should be the continuous act of adultery. No such evidence is available on records to infer 'living in

adultery'. Moreover, prima facie materials are in abundance to show that the matrimonial life of the petitioner was seriously at stake for the conduct of the respondent. Even the respondent has categorically stated by adducing evidence that he would not take back the petitioner. Even he has not come forward with any proposal for maintenance."

Referring the same Learned Counsel for the petitioner-wife also submitted that the OP husband failed to prove the allegation of 'living in adultery' against the petitioner and in view of the principle, there is no scope to place any reliance against the petitioner-wife to disentitle her claim of maintenance.

22. In **Pradeep Kumar Sharma v. Deepika Sharma** reported in **2022 SCC OnLine Del 1035**, the High Court of Delhi in para 27 also took the same plea. In Para 27, the Hon'ble High Court of Delhi observed as under:

"27. Hence, it is found that the law, as interpreted by the High Courts of the country, evinces that only continuous and repeated acts of adultery and/or cohabitation in adultery would attract the rigours of the provision under Section 125(4) CrPC. In the instant matter, the petitioner before the learned Additional Principal Judge sought the non-payment of maintenance on the ground of adultery under Section 125(4) CrPC, however, the grounds taken by him did not establish even prima facie that the respondent was living in adultery. Even the statement by the son of the parties was made by after considerable amount of time of the trial had passed and the respondent had already been cross-examined. Therefore, the second ground of the petitioner also could not be established to contend that the respondent was not entitled to any maintenance."

Referring the same, Learned Counsel for the petitioner-wife also submitted that the evidence on record of the OP does not *prima facie* reveal that the petitioner-wife was living in adultery. So the allegation as levelled by the OP needs

to be discarded and referring the same, Learned Counsel submitted that Learned Court below rightly granted maintenance in favour of the petitioner.

23. Now, regarding the charge-sheet of a case filed by the OP relied upon by the OP husband against his wife and the said Bikash Chakraborty, Learned Counsel further drawn the attention of this Court that charge-sheet is not a public document and it cannot be taken into evidence as the IO who submitted charge-sheet was not tendered for examination by the OP.

24. In para 37 of the judgment reported in **(2009) 9 SCC 221** in **Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and others**, Hon'ble the Apex Court observed as under:

"37. It is true that ordinarily if a party to an action does not object to a document being taken on record and the same is marked as an exhibit, he is estopped and precluded from questioning the admissibility thereof at a later stage. It is, however, trite that a document becomes inadmissible in evidence unless the author thereof is examined; the contents thereof cannot be held to have been proved unless he is examined and subjected to cross-examination in a court of law. The document which is otherwise inadmissible cannot be taken in evidence only because no objection to the admissibility thereof was taken."

25. Further, Learned Counsel also relied upon another citation of **Saurav Das v. Union of India and others** reported in **2023 SCC onLine SC 58** wherein the Apex Court observed in para 14 that the charge-sheet cannot be treated as a public document within the definition of Section 74 of the Evidence Act. So, since the charge in connection with Ranirbazar PS case

No.63 of 2019 as relied upon by the OP husband is not proved. So, legally there is no scope to place any reliance upon the charge-sheet and finally, Learned Counsel submitted that since the OP himself admitted that he was earning more than Rs.50,000/- per month so, considering the income of the OP husband the maintenance awarded by the Learned Court should be modified and it should be extended upto Rs.20,000/- and the same should also be awarded from the date of application of maintenance filed by the petitioner.

26. After hearing both the sides and also after going through the evidence on record of the Learned Court below and also after going through the principles of law laid down by the Hon'ble Apex Court and different High Court in the aforesaid judgments, in my considered view Learned Court below rightly decided the maintenance petition in favour of the petitioner of this case.

27. In para 109 of the judgment of **Rajnish v. Neha and another** reported in **(2021) 2 SCC 324**, Hon'ble the Apex Court observed as under:

"109. The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded. Even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 CrPC. In the practical working of the provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that

maintenance is awarded from the date of the application.”

From the aforesaid principle of law laid down by the Hon'ble Apex Court, it appears that maintenance allowance should be granted from the date of application but here in the case, Learned Court below awarded maintenance from the date of December, 2022, ignoring the principles as laid down by the Hon'ble Apex Court in the aforesaid judgment.

28. Moreso, in my considered view, Learned Court below committed serious error in deciding the quantum of the maintenance fixing Rs.5,000/- per month, when the income of the OP husband is more than Rs.50,000/-. In this regard, I would like to rely upon one citation of the Hon'ble Supreme Court of India reported in **(2017) 14 SCC 200** in **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy** where in para 15, the Hon'ble Apex Court observed as under:

“15. The review petition under Order 47 Rule 1 CPC came to be filed by the respondent wife pursuant to the liberty granted by this Court when the earlier order dated 2-2-2015 : 2016 SCC OnLine Cal 4972 awarding a maintenance of Rs 16,000 to the respondent wife as well as to her minor son was under challenge before this Court. As pointed out by the High Court, in February 2015, the appellant husband was getting a net salary of Rs 63,842 after deduction of Rs 24,000 on account of GPF and Rs 12,000 towards income tax. In February 2016, the net salary of the appellant is stated to be Rs 95,527. Following *Kulbhushan Kumar v. Raj Kumari* : (1970) 3 SCC 129, in this case, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Since in February 2016, the net salary

of the husband was Rs 95,000 per month, the High Court was justified in enhancing the maintenance amount. However, since the appellant has also got married second time and has a child from the second marriage, in the interest of justice, we think it proper to reduce the amount of maintenance of Rs 23,000 to Rs 20,000 per month as maintenance to the respondent wife and son."

From the aforesaid citation, it appears that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the wife. But, in some other judgments, that has been decided up to 30%.

However, since the son of the parties under dispute is residing with the OP husband and the OP husband is taking care of the entire expenses of the said son, who is a growing child and pursuing studies so, in my considered view, if maintenance allowance is awarded at the rate of Rs.12,000/- per month then that would be a reasonable and rationale one for the petitioner-wife to lead her livelihood and also it appears that the petitioner has filed the petition before the Learned Court below on 05.03.2020. So, following the aforesaid law laid down by the Hon'ble Supreme Court in **Rajnesh** (supra), in my considered view, she should get the maintenance allowance from the month of March, 2020 which Learned Court below erred in allowing the same and allowed the maintenance from the month of December, 2022.

29. In the result, the revision petition filed by the petitioner is hereby allowed on contest. The Order dated 16.12.2022 passed by Learned Additional Judge, Family Court, Agartala, West Tripura is hereby modified to the extent that the

OP husband shall pay maintenance allowance to the petitioner-wife from the month of March, 2020 onwards at the rate of Rs.12,000/- per month. At the same time, the revision petition filed by the OP husband against his wife is thus stands dismissed.

Since Learned Court below awarded maintenance from the month of December, 2022 and at the time of hearing, nothing was submitted by the petitioner as to whether the said amount has been paid by the OP husband or not. So, the maintenance allowance as ordered shall be paid by the OP husband at the rate of Rs.12,000/- per month from the month of March, 2020 to November, 2022 i.e. arrear amount and thereafter as per judgment of the Learned Court below, if the maintenance allowance is paid then the arrear maintenance allowance also be paid from the December 2022 to till date deducting the amount already paid. From the month of March, 2020 to November, 2022, the amount comes to Rs.3,96,000/- and thereafter from the month of December 2022 to December 2023, the amount comes to Rs.1,56,000/-. Now, if the amount of maintenance awarded earlier is already been paid till December 2023, that amount should be deducted and the balance amount at the rate of Rs.7000/- per month for a period of one year shall be paid by the OP husband to the petitioner and from the month of January 2024 onwards, the OP husband shall pay maintenance at the rate of Rs.12,000/- per month to the petitioner-wife on regular basis and the amount be sent

either by money order or by any other mode to the address of the petitioner-wife by the OP husband within first week of the next following month on which monthly maintenance allowance becomes due to the petitioner-wife. The arrear maintenance allowance which comes to Rs.5,52,000/- shall be paid by the OP husband within a period of 36 months commencing from the month of February, 2024, in addition to his monthly maintenance allowance.

30. Send down the LCR along with a copy of the judgment. A copy of this judgment and order be supplied free of cost to the Learned Counsel for both the parties for information and compliance. A copy of this judgment also be kept in connected Crl. Rev. P. No.10 of 2023.

Pending application(s), if any, also stands disposed of.

JUDGE