



**Serial No. 14**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

Crl. Petn. No.3 of 2024

Date of Order: 10.03.2025

Shri. Shwetank Jindal  
S/o Shri. Rajkumar Jindal,  
R/o A209, A, Sushant Lok I,  
Near M.G. Road Metro Station, Chakarpur (74),  
Gurugram, Haryana-122002

.....Petitioner

**-VERSUS-**

Smti. Shivani Pde  
W/o Shri. Shwetank Jindal  
R/o "Prasanti", House No.217 Upper Lachumiere,  
Shillong-793001, East Khasi Hills District, Meghalaya

.....Respondent

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**Coram:**

**Hon'ble Mr. Justice B. Bhattacharjee, Judge**

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**Appearance:**

For the Petitioner/Appellant(s) : Mr. S. Sen, Adv with  
Mr. A. Momin

For the Respondent(s) : Mr. M. Sharma, Adv  
Ms. T. Buam, Adv

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**(ORAL)**

This Criminal petition is filed against the impugned order dated 02.03.2023 and 20.10.2023 passed in C.R. Case No.57 (S) of 2022 under Section-125 Cr.P.C by the Judicial Magistrate First Class, Shillong, whereby the petitioner was directed to pay an amount of Rs.30,000/- per month to the respondent as interim maintenance.



The brief fact of the case is that the respondent has instituted C.R. Case No.57 (S) of 2022 before the Court of the Judicial Magistrate First Class, Shillong, against the petitioner under Section-125 Cr.P.C praying for grant of maintenance for herself and her minor child. As the petitioner herein defaulted in his appearance and did not file his response within the time stipulated by the Trial Court, the ex-parte order dated 02.03.2023 was passed against the petitioner directing payment of an amount of Rs.30,000/- per month to the respondent as interim maintenance. By the same order, the learned Trial Court issued a bailable warrant of arrest against the petitioner. Thereafter, the petitioner filed an application before the Trial Court praying for setting aside of the ex-parte order dated 02.03.2023, which was rejected by the Trial Court by order dated 20.10.2023. Hence, the present criminal petition has been filed before this Court.

Mr. S. Sen, learned counsel for the petitioner has assailed the impugned orders by contending that the mandate of law laid down by the Apex Court in *Rajnesh v. Neha*, (2021) 2 SCC 324, reiterated in *Aditi Alias Mithi v. Jitesh Sharma* (2023) SCC Online SC 1451 has not been followed by the Trial Court in assessing the amount of maintenance allowance, as the impugned orders do not refer to any affidavit of Disclosure of Assets and Liabilities. He further contends that the learned Trial Court has committed a grave error of law by issuing bailable warrant of arrest against the petitioner without appreciating the fact that the law does not permit Court to issue warrant for ensuring appearance of a party in a maintenance matter. He submits that the only provision which empowers Court to issue warrant in a maintenance matter is under Section-125(3) Cr.P.C, and that also for the purpose of recovery of amount due for payment of maintenance. He, thus, submits that the impugned orders are not tenable in the eye of law and liable to be set aside and quashed.

Mr. M. Sharma, learned counsel appearing for the respondent, on the other hand, contends that the petitioner could not have approached this Court without first exhausting the remedies available to him before the Trial Court, more particularly, when the order dated 02.03.2023 stipulated that the amount of maintenance was subject to alteration.



He submits that the challenge to the legality of the order of issue of bailable warrant also does not survive in view of the fact that the bailable warrant has already been executed. He, therefore, submits that the criminal petition is devoid of merit and requires no consideration by this Court.

Submissions made by the learned counsel for the rival parties and perusal of materials on record indicate that the learned Trial Court did not take into consideration the affidavit of Disclosure of Assets and Liabilities of the respondent while assessing the amount of interim maintenance inasmuch as the impugned order dated 02.03.2023 has no reference of the same. The manner in which maintenance payable is to be assessed was considered by the Apex Court in *Rajnesh (Supra)* and detailed guidelines were issued. While reiterating the said requirement, the Apex Court in the case of *Aditi Alias Mithi (Supra)* made it clear that no Court can pass an order of maintenance, either interim or final, without there being any affidavit of Disclosure of Assets and Liabilities on record. Although, in the present matter affidavit was filed by the respondent, it appears that the learned Trial Court has not considered the same while assessing the amount of maintenance. The filing of affidavit of Disclosure of Assets and Liabilities is not an empty formality as the purpose of such affidavit is to enable the Court to assess the just and fair amount of maintenance allowance.

Furthermore, it appears that the learned Trial Court issued the bailable warrant of arrest against the petitioner without considering the fact that the proceedings under 125 Cr.P.C are primarily civil in nature, though they can involve penal consequence for non-compliance of order of payment of maintenance. Section-125(3) lays down that, if any person fails without sufficient cause to comply with the order of payment of maintenance, the Magistrate may issue a warrant for levying the amount due in the manner laid down by law and may sentence any such person to imprisonment if any amount remains unpaid after the execution of the warrant. The first proviso to sub-section (3) of Section-125 lays down that no warrant shall be issued for recovery of any amount due under this Section unless application is made to the Court. It is, therefore, clear that the aforesaid provision does not empower a Court to issue warrant



of arrest for securing appearance of a party before the Court in a maintenance case instituted under Section-125 Cr.P.C. The learned Trial Court, therefore, could not have issued the bailable warrant against the petitioner to secure his presence before the Court.

For what has been discussed above, this criminal petition succeeds. Resultantly, the impugned orders dated 02.03.2023 and 20.10.2023 passed in C.R. Case No. 57 (S) of 2022 are set aside. The matter is remanded back to the Trial Court for fresh consideration in accordance with law.

It is submitted by the learned counsel for the petitioner that the petitioner has already filed his show cause and the affidavit of Disclosure of Assets and Liabilities before the Trial Court. The learned Trial Court shall take into consideration all the materials brought into record by the rival parties while deciding the matter afresh including the question of interim maintenance. It is further submitted by the learned counsel appearing for the parties that the Court of Judicial Magistrate, which passed the impugned orders, is on leave and not likely to resume functioning immediately. In view of the submission, the matter can be placed before any other Court of competent jurisdiction as deemed appropriate by the learned Chief Judicial Magistrate, Shillong.

**Judge**

Meghalaya  
10.03.2025  
"Shrity"