

**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 1711 of 2019**

**Smt. Laxmi Das**

**Vs**

**Madhusudan Das & Anr.**

**For the Petitioner** : Mr. D.K.Adhikary,  
Mr. Debdeep Adhikary.

**For the State** : Mr. B.K. Roy,  
Ms. Rita Dutta.

Heard on : 25.11.2022

Judgment on : 13.12.2022

**Shampa Dutt (Paul), J.:**

The present revisional application has been preferred against an order dated 14.06.2019 passed in Misc. Case no. 2050 of 2016 by the learned Additional Chief Judicial Magistrate, 2<sup>nd</sup> Court, Kalyani.

The petitioner's case is that an application under Section 125 of the Code of Criminal Procedure was filed by her in the Court of Additional Chief Judicial Magistrate, Kalyani against her husband stating therein that the petitioner's marriage was solemnized with the opposite party on 13.05.2001. The opposite party has a grocery shop at 12 Harish Neogi Road, Murari Pukur Lane, Ultadanga, Kolkata-67 by the name of "Laxmi Bhandar" and has an income of Rs. 70,000/ per month. The opposite party/husband used to inflict mental and physical torture upon the petitioner since their marriage. On 24.06.2014 the petitioner was driven out from her matrimonial home "Mayurakhi apartment", 121/79 Rahara Madhyapara, P.O. Rahara, P.S. Khardah, Dist. North 24 Parganas and since then has been living at her father's place at Kalyani and passing her days in distress as she has no permanent income, thus facing extreme poverty. In spite of promising to pay some money for maintenance, the opposite party/ husband has failed to do so.

Initially an order of maintenance of Rs. 2000 per month was allowed by the learned Magistrate on 24.11.2017, from the date of filing of the case (23.12.2012).

The petitioner/wife then preferred a criminal revision before the High Court (CRR 187 of 2018). The High Court on 08.04.2019 disposed of the matter directing the learned Magistrate to take into consideration the facts as stated by the High Court in its order and to reconsider the said order. The learned Magistrate then reconsidered the said matter of maintenance as directed by the High Court and passed an order on 14.06.2019 enhancing the amount of maintenance to Rs. 3500 per month. The present revisional application is against the said order.

**Mr. D.K. Adhikary learned Counsel for the petitioner** has submitted that the opposite party/husband is an able-bodied person and has sufficient means (grocery shop) to maintain his wife. It is further submitted that the learned Magistrate erroneously calculated the daily expense of the petitioner wife to be Rs. 90.60 paisa and the total monthly cost to be Rs. 2718 and has erroneously come to the conclusion of providing a sum of Rs. 3500 per month as maintenance, which is unreasonable and insufficient. The said order is not in accordance with law and against the principle of natural justice and has caused severe miscarriage of justice to the petitioner/wife. It is further submitted that the opposite part/husband in CRR 48 of 2018 (filed by

him) admitted that the petitioner is his legally married wife. He has also stated therein that he has a grocery shop and has no other dependent. The learned Magistrate has failed to take all these facts into consideration and erroneously passed the order of maintenance under revision herein and as such the said order being against the principle of natural justice and passed without due consideration of the present position of law and also the facts and circumstances in proper legal interpretation has passed the erroneous order which is liable to be set aside failing which the petitioner will suffer irreparable loss and injury.

Heard. Perused the materials on record. Considered.

The opposite party no. 1/Madhusudan Das/husband has failed to appear in this case and deny the case of the petitioner/wife as made out. In spite of due service the opposite party no. 2 has chosen not to contest the claim of the petitioner/wife.

The revision is limited to the quantum of maintenance vis-vis the income of the able-bodied husband. There is no materials on record to show that the husband is not physically capable of having any income. It is on record that the opposite party/husband has a grocery shop at Ultadanga, a prime location in Kolkata, by the name of "Laxmi Bhandar". It is claimed that as such the petitioner/husband has the responsibility to maintain his wife so that his legally married wife does not starve and has the benefit of basic amenities in life to which she is

entitled. It is unfortunate that the learned Magistrate has prepared a chart giving the cost of basic amenities which is required by an adult woman per day and has come to the conclusion that the expenses of an adult woman per day is less than Rs. 100. The said nature of calculation by the learned Magistrate is totally against the guidelines of the Supreme Court as to how the quantum of maintenance is to be considered and granted.

The Supreme Court in ***Rajnesh vs. Neha (Criminal Appeal No. 730 of 2020)*** laid down the guidelines for the courts to follow while considering the quantum or amount of maintenance to be granted. The Court also held:-

Section 23 of HAMA provides that while awarding maintenance, the Court shall have due regard to the criteria mentioned therein:-

*“23. Amount of maintenance. – (1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the court shall have due regard to the consideration set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable.*

*(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—*

*(a) the position and status of the parties;*

*(b) the reasonable wants of the claimant;*

*(c) if the claimant is living separately, whether the claimant is justified in doing so;*

*(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earning or from any other source;*

*(e) the number of persons entitled to maintenance under this Act.*

*(3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to—*

*(a) the net value of the estate of the deceased after providing for the payment of his debts;*

*(b) the provision, if any, made under a will of the deceased in respect, of the dependant;*

*(c) the degree of relationship between the two;*

*(d) the reasonable wants of the dependant;*

*(e) the past relations between the dependant and the deceased;*

*(f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other course;*

*(g) the number of dependants entitled to maintenance under this Act.”*

(d) Section 125 of the Cr.P.C.

*Chapter IX of Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 of the Cr.P.C. may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 Cr.P.C. is to provide immediate relief to an applicant. An application under Section 125 Cr.P.C. is predicated on two conditions : (i) the husband has*

sufficient means; and (ii) “neglects” to maintain his wife, who is unable to maintain herself. In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

The remedy provided by Section 125 is summary in nature, and the substantive disputes with respect to dissolution of marriage can be determined by a civil court / family court in an appropriate proceeding, such as the Hindu Marriage Act, 1956.

In *Bhagwan Dutt v Kamla Devi* (1975 AIR 83) the Supreme Court held that under Section 125(1) Cr.P.C. only a wife who is “unable to maintain herself” is entitled to seek maintenance. The Court held :

“19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family.....”

It was further held:-

“Proceedings under Section 125 of the Cr.P.C. are summary in nature. In *Bhuwan Mohan Singh v Meena & Ors.*, AIR 2014 (Supreme Court) 2875, this Court held that Section 125 of the Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.”

In the present case the opposite party no. 1 has not come before this Court to contest the claim of the petitioner in spite of several attempts for service. Admittedly the petitioner has a grocery shop at Ultadanga, a prime location in Kolkata.

The Supreme Court in ***Rajnish vs. Neha (supra)*** further observed:-

*“77. The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.”*

In the present case the learned Magistrate granted an amount of Rs. 3500 as a monthly allowance coming to the finding that the total cost of food in a day of an adult woman is Rs. 9.30. The learned Magistrate came to the finding that though the petitioner herein has stated that the husband earns Rs. 70,000 per month, there is no proper evidence before the Court to substantiate the said claim. The petitioner could not produce any evidence either oral and documentary in support of her contention regarding the opposite party's income. It is seen that the opposite party herein also did not adduce any evidence before the learned Magistrate and the learned Magistrate held that as such the monthly income of the opposite party could not be ascertained but held that the opposite party is an able-bodied person and has sufficient means to maintain his wife.

It is clear from the order of the learned Magistrate that the facts taken into consideration for deciding the quantum of maintenance is totally against the principle of natural justice and also clearly not in accordance with the relevant provisions of law. The manner in which the learned Magistrate has calculated the quantum of maintenance to be granted is totally against the interest of justice.

The learned Magistrate instead of coming to a finding as to the income of which the opposite party was capable, decided the cost of articles required for an adult women per day as Rs. 90.60 paisa.

It has been clearly laid down by the Supreme Court and also the relevant provisions of law that an able-bodied person has the responsibility to earn sufficiently so that he can maintain himself, his dependant family members which includes his dependant wife and children. It is his moral duty/responsibility and social obligation to ensure that his family is not reduced to destitution or vagrancy.

Now it is be considered as to what quantum of maintenance would be sufficient to maintain oneself in a place like Kolkata.

On record is the unchallenged testimony and case of the petitioner that the opposite party being an able-bodied person has a grocery shop namely "Laxmi Bhandar" at Ultadanga, Kolkata.

Thus considering the status and the financial capacity of the opposite party/husband and the financial condition of the petitioner herein, the order dated 14.06.2019 passed by the learned Additional Chief Judicial Magistrate, 2<sup>nd</sup> Court, Kalyani, Nadia in Misc. Case no. 250 of 2016 is hereby modified to the extent that the amount of monthly maintenance that the opposite party shall pay to the petitioner by the 10<sup>th</sup> day of each month is **enhanced to a sum of Rs. 7000 per month (Seven thousand per month)** from the date of filing of the case.

The cost of litigation as prayed for is refused considering the fact that the petitioner being a woman is entitled to get the services of the respective legal services authority.

Criminal Revision being **CRR 1711 of 2019 is allowed.**

Let a copy of the judgment along with the lower court records (if any) be sent to the Trial Court at once.

No order as to costs.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

**(Shampa Dutt (Paul), J.)**

