

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2851 of 2014

**Sanjita Das
-Vs-
Somnath Das**

For the Petitioner : Mr. Amartya Ghose
Mr. Sujan Chatterjee
Mr. Sanat Kumar Das
Mr. Souryadeep Ghosh

Heard on : 30.06.2023, 14.07.2023

Judgment on : 26.09.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is directed against the judgment and order dated 25.06.2014 passed by the Learned Additional Sessions Judge, 2nd Court, Hooghly, in connection with Criminal Motion No. 133 of 2012 arising out of judgment and order dated 20.03.2012 passed by the Learned Chief Judicial Magistrate, Hooghly in connection with M.C. Case No. 106 of 2006 under Section 125 of the Code of Criminal Procedure, which dismissed the Criminal Motion no. 133 of 2012 and affirmed the judgment and order dated 20.03.2012 passed by the Learned Chief Judicial Magistrate, Hooghly in connection with M.C. Case No. 106 of 2006 under Section 125 of the Code of Criminal Procedure.

2. The petitioner contended to be the legally married wife of the respondent, the marriage being solemnized on 23rd November, 2005, under the Special Marriage Act, 1954 before the Marriage Registrar, Kalna Municipality, Kalna, Burdwan.
3. Several valuable articles and gifts had been given to the respondent by the father of the petitioner at the time of marriage.
4. After the marriage the petitioner was taken to her in-laws home by the respondent.
5. On 30th November, 2005 petitioner along with her husband (respondent) came to her father's residence for "Astomangla" and thereafter returned on 2nd December, 2005 to petitioner's matrimonial home.
6. After the arrival of the petitioner in her in-laws house and after the passage of few days, the respondent and his family members started causing nuisance and annoyance to the petitioner for further demand of dowry, they also caused mental and physical torture upon the petitioner and the father of the petitioner was consequently compelled to pay a further sum of Rs. 10,000/-.
7. Thereafter, the respondent and his family gradually became greedier and also caused high handedness, as a result of such cruelty, petitioner had filed a written complaint addressed to the Officer-in-Charge, Kalna Police Station on 27th February, 2006. Subsequently, owing to adverse circumstances in her matrimonial home, petitioner was compelled to take shelter of her old retired father, now residing at 13/B, Radhanathy Chowdhury Road, Kolkata – 700015.

8. The petitioner was all along refused and neglected by the respondent in the matter of fooding, lodging and medicines. The respondent never attempted to make any provision for the same. Such neglect was despite the fact that the respondent earned more than Rs. 15,000/- from his medicine business, in the name and style of "Medicine View Point" situated at 36/43, Nimchand Mitra Street, Alambazar, Baranagar
9. Petitioner resorted to legal remedy under Section 125 of the Code of Criminal Procedure and filed an application before the Learned Chief Judicial Magistrate at Hooghly being Misc. Case 106 of 2006 against the respondent praying for an order of maintenance for a sum of Rs. 5,000/- per month.
10. After considering the evidence adduced by the respective parties and after hearing the Learned Advocates for both the parties, the Learned Chief Judicial Magistrate, Hooghly by a judgment on 20th March 2012, dismissed the application on contest.
11. Being aggrieved and dissatisfied with the judgment and order dated 20th March 2012 passed by the Learned Chief Judicial Magistrate, Hooghly in connection with Misc. Case No. 106 of 2006, the petitioner herein filed an application under Sections 397/399 of the Code of Criminal Procedure before the Learned Additional Sessions Judge, 2nd Court, Hooghly, in connection with Criminal Motion No. 133 of 2012 on the grounds stated therein.
12. On 25th June, 2014 the aforesaid revisional application came up for hearing before the Learned Additional Sessions Judge, 2nd Court, Hooghly and after

hearing the Learned Advocates for both the parties dismissed the said revisional application being Criminal Motion No. 133 of 2012 and further affirmed the judgment and order dated 20th March, 2012 passed by the Learned Chief Judicial Magistrate, Hooghly.

13. The Learned Advocate for the petitioner submitted that: –

- i. The Learned Trial Court as well as the Appellate Court failed to appreciate the content, the purport and the object of Section 125 of the Code of Criminal Procedure being a measure of social justice to protect the destitute person, it or to have been constitute liberally and in favour of petitioner.
- ii. The Learned Trial Court as well as the Learned Appellate Court failed to appreciate that the petitioner had persistently abstained from lodging any criminal case with the hope of re-establishing cordial ties with her matrimonial home.
- iii. The Learned Chief Judicial Magistrate, at Hooghly while disposing of M.C. 106 of 2006 has been pleased to observe in the Judgment and Order dated 20.03.2012 inter alia that “....*Even of the day when she has left her matrimonial home she did not raise any complaint before any authority neither went to the Municipality nor to any local Panchayat nor to the local Police Station by lodging any F.I.R.*” However, it is a matter of record that in the same Judgment and Order the Learned Magistrate has been also been pleased to observe inter alia that “.... *The dispute arose when the O.P. and his family members started causing various nuisance and annoyance with the*

petitioner for further demand of dowry and also caused mental and physical torture upon the petitioner for which the father of the petitioner was compelled to pay Rs. 10,000/- but the opposite party became greedy and caused high-handedness and also compelled the petitioner to bring more amount of cash from her father. As a result the petitioner lodged a written complaint to the O.C., Kalna P.S. on 27.02.2006.”

Thus, the said finding of the Learned Magistrate that the petitioner has not approached any authority reporting her grievances against the opposite party is not only erroneous but also contrary to the materials on record and thus should be set aside and or quashed forthwith for the ends of justice.

- iv. It is further contended that the Learned Additional Sessions Judge, 2nd Court at Hooghly while disposing of Criminal Motion No. 133 of 2012 has been pleased to confirm the Judgment and Order dated 20.03.2012 passed by the Learned Chief Judicial Magistrate at Hooghly in M.C. No. 106 of 2006 by an order dated 25.06.2014 inter alia on similar premise without any proper appreciation of evidence. Hence, the said verdict of the Learned Judge suffers from similar infirmities and errors as present in the Judgment and Order dated 20.03.2012 passed by the Learned Chief Judicial Magistrate at Hooghly. Thus the same should be set aside and/or quashed forthwith.
- v. The Learned Trial Court as well as Appellate Court failed to appreciate that in a case of maintenance the petitioner is not required to produce

any documentary evidence to show that she was subjected to torture and cruelty for demand of dowry because of which she was forced to leave her matrimonial home.

- vi. The Learned Trial Court as well as the Appellate Court failed to appreciate that once a person has capacity to earn, he cannot refuse or neglect his wife.
- vii. The Learned Court as well as the Appellate Court ought to have appreciated the petitioner has no other source of income and she is totally dependent upon the charity of her old father for her survival.
- viii. A suit dissolution of marriage by a Decree of Divorce filed by the opposite party before the Additional District Judge, Hooghly being Mat Suit No. 152 of 2008 and the same was allowed on 28.09.2016 and was further directed to pay a sum of Rs. 6000/- per month as permanent alimony for the maintenance of the petitioner so long she is alive or does not re-marry. But the opposite party did not pay the alimony from the month of March 2020 to till now.
- ix. Petitioner states that opposite party/husband filed a revisional application before the Hon'ble High Court for quashing of the proceeding being complain Case No. 189 of 2015 under Section 498A/406/506/34 of the Indian Penal Code being C.R.R. No. 3658 of 2016 and the same was allowed on 01.03.2023.
- x. The dispute arose when the opposite party and his family members started causing various nuisance and annoyances to the petitioner for further demand of dowry and also caused mental and physical torture

upon the petitioner for which the father of the petitioner was compelled to pay Rs. 10,000/- but the opposite party become greedy and caused high handedness and also compelled the petitioner to bring more amount of cash from her father. As a result, the petitioner lodged a written complaint to the Officer-in-Charge of Kalna Police Station on 27.02.2006 and the same was overlooked by the Learned Trial Court as well as the Appellate Court and passed the impugned order against petitioner is otherwise bad in law.

14. In the case of **Sunita Kachwaha & Ors. Vs. Anil Kachwaha**¹, the Hon'ble Supreme Court held as follows:

"6. The proceeding under Section 125 CrPC is summary in nature. In a proceeding under Section 125 CrPC, it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant wife and the respondent and observing that the appellant wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of the appellant wife and the factual findings, as recorded by the Family Court.

7. Inability to maintain herself is the precondition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant wife has stated that only due to help of her retired parents and brothers, she

¹ (2014) 16 SCC 715

is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance.”

15. In the case of **Rajnish Vs. Neha & Anr.**² the Hon'ble Supreme Court observed as follows:-

“(d) Section 125 of the Cr.P.C.

32. 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.

33. 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.

34. In Bhagwan Dutt v Kamla Devi 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 : (SCC p.392, para 19)

“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

² (2021) 2 SCC 324

neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments.” (emphasis supplied)

35. Prior to the amendment of Section 125 in 2001, there was a ceiling on the amount which could be awarded as maintenance, being Rs. 500 “in the whole”. In view of the rising costs of living and inflation rates, the ceiling of Rs. 500 was done away by the 2001 Amendment Act. The Statement of Objects and Reasons of the Amendment Act states that the wife had to wait for several years before being granted maintenance. Consequently, the Amendment Act introduced an express provision for grant of “interim maintenance”. The Magistrate was vested with the power to order the respondent to make a monthly allowance towards interim maintenance during the pendency of the petition. Under sub-section (2) of Section 125, the Court is conferred with the discretion to award payment of maintenance either from the date of the order, or from the date of the application. Under the third proviso to the amended Section 125, the application for grant of interim maintenance must be disposed of as far as possible within sixty days’ from the date of service of notice on the respondent.

36. The amended Section 125 reads as under:

“125. Order for maintenance of wives, children and parents.-

(1) If any person having sufficient means neglects or refuses to maintain-

- (a) his wife, unable to maintain herself, or*
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by*

reason of any physical or mental abnormality or injury unable to maintain itself, or

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

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

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

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

Explanation. – For the purposes of this Chapter-

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

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

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

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

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

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

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

(4) No wife shall be entitled to receive an allowance for the maintenance or interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.” (emphasis supplied)

37. In *Chaturbhuj v Sitabai* this Court 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. Section 125 of the Cr.P.C. is a measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.

38. Proceedings under Section 125 of the Cr.P.C. are summary in nature. In *Bhuwan Mohan Singh v Meena & Ors.* 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.

39. The issue whether presumption of marriage arises when parties are in a live-in relationship for a long period of time, which would

give rise to a claim under Section 125 Cr.P.C. came up for consideration in Chanmuniya v Virendra Kumar Singh Kushwaha & Anr. before the Supreme Court. It was held that where a man and a woman have cohabited for a long period of time, in the absence of legal necessities of a valid marriage, such a woman would be entitled to maintenance. A man should not be allowed to benefit from legal loopholes, by enjoying the advantages of a de facto marriage, without undertaking the duties and obligations of such marriage. A broad and expansive interpretation must be given to the term "wife," to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time. Strict proof of marriage should not be a pre-condition for grant of maintenance under Section 125 CrPC. The Court relied on the Malimath Committee Report on Reforms of Criminal Justice System published in 2003, which recommended that evidence regarding a man and woman living together for a reasonably long period, should be sufficient to draw the presumption of marriage.

40. The law presumes in favour of marriage, and against concubinage, when a man and woman cohabit continuously for a number of years. Unlike matrimonial proceedings where strict proof of marriage is essential, in proceedings under Section 125 CrPC such strict standard of proof is not necessary."

16. In the aforesaid decision it was further held by the Hon'ble Supreme Court that:-

"12. Given the backdrop of the facts of the present case, which reveal that the application for interim maintenance under Section 125 Cr.P.C. has remained pending before the Courts for seven years now, and the difficulties encountered in the enforcement of orders passed by the Courts, as the wife was constrained to move successive applications for enforcement from time to time, we deem it appropriate to frame guidelines

on the issue of maintenance, which would cover overlapping jurisdiction under different enactments for payment of maintenance, payment of Interim Maintenance, the criteria for determining the quantum of maintenance, the date from which maintenance is to be awarded, and enforcement of orders of maintenance.

Guidelines / Directions on Maintenance-

13. Maintenance laws have been enacted as a measure of social justice to provide recourse to dependant wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy. Article 15(3) of the Constitution of India provides that :-

“15. (3) Nothing in this article shall prevent the State from making any special provision for women and children.”

Article 15 (3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.

14. **Justice Krishna Iyer** in his judgment in **Ramesh Chander Kaushal v. Veena Kaushal & Ors.** held that the object of maintenance laws is :

“9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts.”

15. The legislations which have been framed on the issue of maintenance are the Special Marriage Act 1954 (“SMA”), Section 125 of the Cr.P.C. 1973; and the Protection of Women from Domestic Violence Act, 2005 (“D.V. Act”) which provide a statutory remedy to women, irrespective of the

religious community to which they belong, apart from the personal laws applicable to various religious communities.

I. Issue of Overlapping Jurisdiction

16. Maintenance may be claimed under one or more of the afore-mentioned statutes, since each of these enactments provides an independent and distinct remedy framed with a specific object and purpose. For instance, a Hindu wife may claim maintenance under the Hindu Adoptions and Maintenance Act 1956 (“HAMA”), and also in a substantive proceeding for either dissolution of marriage, or restitution of conjugal rights, etc. under the Hindu Marriage Act, 1955 (“HMA”) by invoking Sections 24 and 25 of the said Act.

17. In *Nanak Chand v Chandra Kishore Aggarwal & Ors.* 2, the Supreme Court held that there was no inconsistency between the Cr.P.C. and HAMA. Section 4(b) of HAMA would not repeal or affect the provisions of Section 488 of the old Cr.P.C. It was held that:

“4. ...Both can stand together. The Maintenance Act is an act to amend and codify the law relating to adoptions and maintenance among Hindus. The law was substantially similar before and nobody ever suggested that Hindu Law, as in force immediately before the commencement of this Act, insofar as it dealt with the maintenance of children, was in any way inconsistent with Section 488 CrPC. The scope of the two laws is different. Section 488 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. Recently the question came before the Allahabad High Court in *Ram Singh v. State*³, before the Calcutta High Court in *Mahabir Agarwalla v. Gita Roy*⁴ and before the Patna High Court in *Nalini Ranjan v. Kiran Rani*⁵. The three High Courts have, in our view, correctly come to the conclusion that Section 4(b) of the

³ AIR 1963 All 355

⁴ [1962] 2 Cr. L.J.528 (Cal)

⁵ AIR 1965 Pat 442

Maintenance Act does not repeal or affect in any manner the provisions contained in Section 488, Cr.P.C.” (emphasis supplied)

18. While it is true that a party is not precluded from approaching the Court under one or more enactments, since the nature and purpose of the relief under each Act is distinct and independent, it is equally true that the simultaneous operation of these Acts, would lead to multiplicity of proceedings and conflicting orders. This would have the inevitable effect of overlapping jurisdiction. This process requires to be streamlined, so that the respondent / husband is not obligated to comply with successive orders of maintenance passed under different enactments. For instance, if in a previous proceeding under Section 125 CrPC, an amount is awarded towards maintenance, in the subsequent proceeding filed for dissolution of marriage under the Hindu Marriage Act, where an application for maintenance pendente lite is filed under Section 24 of that Act, or for maintenance under Section 25, the payment awarded in the earlier proceeding must be taken note of, while deciding the amount awarded under HMA.”

17. In the case of **Anju Garg & Anr. Vs. Deepak Kumar Garg**⁶, the Hon’ble Supreme Court held as follows:

“At the outset, it may be noted that Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children, as observed by this Court in *Bhuwan Mohan Singh vs. Meena & Ors.* This Court in the said case, after referring to the earlier decisions, has reiterated the principle of law as to how the proceedings under Section 125 Cr.P.C have to be dealt with by the Court. It held as under:

“In *Dukhtar Jahan v. Mohd. Farooq* [(1987) 1 SCC 624 :1987 SCC (Cri) 237] the Court opined that : (SCC p. 631, para 16)

16. “... Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable

⁶ 2022 SCC OnLine SC 1314

destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner.”

8. A three-Judge Bench in *Vimala (K.) v. Veeraswamy (K.)* [(1991) 2 SCC 375 : 1991 SCC (Cri) 442] , while discussing about the basic purpose under Section 125 of the Code, opined that : (SCC p. 378, para 3)

3. “Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife.”

9. A two-Judge Bench in *Kirtikant D. Vadodaria v. State of Gujarat* [(1996) 4 SCC 479 : 1996 SCC (Cri) 762] , while adverting to the dominant purpose behind Section 125 of the Code, ruled that : (SCC p. 489, para 15)

15. “... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation.”

10. In *Chaturbhuj v. Sita Bai* [(2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] , reiterating the legal position the Court held : (SCC p. 320, para 6)

6. “... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Capt. Ramesh Chander Kaushal v. Veena Kaushal* [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted

wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in Savitaben Somabhai Bhatiya v. State of Gujarat [(2005) 3 SCC 636 : 2005 SCC (Cri) 787].”

11. Recently in Nagendrappa Natikar v. Neelamma [(2014) 14 SCC 452 : (2015) 1 SCC (Cri) 407 : (2015) 1 SCC (Civ) 346] , it has been stated that it is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children”.

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 vs, Sita Bai, 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.”

18. None appeared for the respondent.

19. The marriage between the parties is not disputed. Evidently the petitioner left her matrimonial house and resided at her father's house. Admittedly, the petitioner is unemployed and does not have any other means to earn her livelihood. The opposite party/husband irrespective of his present avocation is a physically abled to earn for a living and cannot refute the claim of the

petitioner on the grounds of resentment, indifference of characteristics and abandonment.

20. In view of the decisions cited above of the Hon'ble Supreme Court and considering the facts and circumstances of the instant case, the opposite party/husband is to pay a sum of Rs.3,000/- per month to the petitioner/wife within 7th day of each succeeding month from the date of passing of this order.
21. The Learned Advocate for the petitioner submitted that a suit for dissolution of marriage by a Decree of Divorce was filed by the opposite party before the Learned Additional District Judge, Hooghly being Mat Suit No.152 of 2008 and the same was allowed on 28.09.2016 and was further directed to pay a sum of Rs.6,000/- per month as permanent alimony for the maintenance of the petitioner so long she is alive or does not re-marry. However, the opposite party did not pay the alimony from the month of March, 2020 till dat.
22. The application under Section 125 Cr.P.C. was filed by the petitioner prior to the institution of Mat Suit No. 152 of 2008. If the Learned Trial Court had awarded an amount to be paid towards maintenance prior to the alimony awarded for maintenance under the proceedings of divorce, the amount awarded for maintenance under Section 125 of the Cr.P.C. would have gained precedence.
23. The opposite party/husband is to pay a sum of Rs.3,000/- per month within 7th day of every succeeding month from the date of passing this order and to

pay a further sum of Rs.1,000/- per month for every succeeding year till she is alive or she does not re-marry.

24. Since, the proceeding under Section 125 of the Cr.P.C. was filed prior to the institution of proceeding for dissolution of marriage considering the issue of overlapping jurisdiction as mentioned above in **Rajnesh Vs. Neha & Anr.** (Supra) being the maintenance amount awarded by this Court will prevail over the maintenance amount as claimed to have been granted by Learned Trial Court in a proceeding for dissolution of marriage.

25. In view of the observation of the Hon'ble Supreme Court in **Rajnesh Vs. Neha & Anr. (supra)**

*“97. The Orissa High Court in **Susmita Mohanty v. Rabindra Nath Sahu**⁷ held that the legislature intended to provide a summary, quick and comparatively inexpensive remedy to the neglected person. Where a litigation is prolonged, either on account of the conduct of the opposite party, or due to the heavy docket in Courts, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to provide maintenance from the date of the order.”*

26. The aforesaid amount of maintenance should be paid from the date of the application under Section 125 Cr.P.C. subject to adjustment of the amount paid to the petitioner/wife till date, if any.

27. The arrear so calculated to be paid in 24 equal installments by the opposite party/husband to the petitioner/wife, within 3 years from the date of this order.

⁷(1996) 1 OLR 361

28. In view of the above discussions, the order dated 25.06.2014 passed by the Learned Additional Sessions Judge, 2nd Court, Hooghly, in connection with Criminal Motion No. 133 of 2012 arising out of judgment and order dated 20.03.2012 passed by the Learned Chief Judicial Magistrate, Hooghly in Connection with M.C. Case No. 106 of 2006 under Section 125 of the Code of Criminal Procedure, thereby dismissed the Criminal Motion No. 133 of 2012 and affirmed the judgment and order dated 20.03.2012 passed by the Learned Chief Judicial Magistrate, Hooghly in connection with M.C. Case No. 106 of 2006 under Section 125 of the Criminal Procedure Code are set aside.
29. The criminal revisional application being No. 2851 of 2014 is allowed.
30. Accordingly, CRR 2851 of 2014 stands disposed of. Connected application, if there be any, also stands disposed of.
31. There is no order as to cost.
32. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
33. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)