

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 42 OF 2025

SAMIR HALDER

For the Petitioner : Mr. Abhijit Sarkar, Adv.

Mr. Raja Biswas, Adv.

For the Opposite

Party No. : Mr. Jayanta Banerjee, Adv.

Ms. Ruximini B. Roy, Adv.

Mr. Argha Bhattacharjee, Adv.

Last heard on : 12.09.2025

Judgement on : 12.09.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This revisional application under Section 528, read with Section 442 of BNSS 2023 is filed for quashing the impugned order dated 5.12.24 passed by the Learned Judicial Magistrate, Railway Court, Kharagpur, as well as the proceedings of M.R case number 43/2022, under Section 125 of the Criminal Procedure Code, 1973, pending before the Court of Learned Judicial Magistrate, Railway Court at Kharagpur whereby an order has been passed, directing the present petitioner to pay a sum of ₹15,000 per month to the opposite party No. 2 and ₹10,000 per month to the minor daughter till the day

of her attaining majority as an interim maintenance from the date of filing of petition that is from 20.12.2022 .

- 2.** The fact of the case, as it appears that the marriage between the parties were solemnised on 2.5.2004 at Chhoto, Batala, P.O and P.S – New Barrackpur, District 24 Parganas North, and after marriage, they resided together at Bombay and led their conjugal life. They were blessed with a girl child who was born on 17.3.2005 and presently an adult lady.
- 3.** The grievance of the petitioner /husband is that a case has been filed being M.R number 14 /2022 by the Opposite Party No. 2 before the Court of Learned Judicial Magistrate Railway court at Kharagpur, Medinipur, when she is not residing within the territorial jurisdiction of the said Court and therefore, the petition filed by the Opposite Party No.2 herein is not maintainable.
- 4.** It is submitted by the Learned Advocate representing the petitioner/husband that only in order to harass the petitioner, the opposite party No.2 has filed the proceeding before the Court at kharagpur with false statement that she is residing within the jurisdiction of the said Court. It is further submitted that the Opposite Party No.2 since 23.7.2019 is residing at her father's house and the notice of Mat suit NO. 623/21 was served upon the opposite party No.2 at her said address which was sent under registered post and the Mat suit is pending before the Additional District Judge, Fast track Court No III, Barrackpore 24 Parganas North.
- 5.** It is his contention that the Opposite Party No.2 has maliciously filed the maintenance case which is not under proper jurisdiction and she temporarily visits her elder sister's house whose husband is having the railway quarter at Kharagpur and by the order passed by the Learned Trial Court is not

maintainable. Therefore, the jurisdiction of the Court of Learned Judicial Magistrate, Railway Court at Kharagpur has been challenged by filing this revisional application.

- 6.** The Learned Advocate representing the Opposite Party No. 2, on the other hand raises objection and submits that challenging the same order she has also filed a revisional application being CRR 964 of 2025, on the ground that the Learned Court did not consider the monthly income of the husband as of ₹1, 26, 288, which was disclosed by him in his affidavit of asset and thereby prayed for enhancement of the monthly maintenance. That apart the Learned Magistrate, erred in holding that the maintenance will be given to the daughter till she attained majority when the daughter is major and she is only 19 years old and still studying, and the husband has never paid any amount towards her education, and she will be highly prejudiced if no maintenance is given to her for higher studies.
- 7.** It is her specific contention that presently she is residing at the address given and therefore question of lack of jurisdiction of the said court does not arise. It is further submitted that the petitioner husband has suppressed that this issue was raised earlier before the Learned Court which was refused, followed by an order of refusal by the learned District Judge and that order was not challenged. Hence, the said order has attained its finality.
- 8.** The contents of the revisional application and the argument advanced before this Court manifest that the seminal issue falls for consideration is whether the learned court of Judicial Magistrate Railway Court at Kharagpur, West Midnapore passed the order without having proper jurisdiction or not. It is undisputed and settled proposition of law that jurisdiction of a Court cannot

be created nor extinguished on the consent of the parties and any order passed without jurisdiction amounts to nullity. In a decision reported in, ***Chaturbhuj versus Sita Bai***¹ it was observed that the object of maintenance proceeding is not to punish a person for his neglect, but to prevent the vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by speedy remedy. It was further held that the proceeding under Section 125 CRPC is a benevolent legislation and a measure of social justice, specially enacted to protect women and children, falling under the constitutional sweep of Article 15 (3) reinforced by Article 39 of the Constitution. Under section 126(1) (b) of Cr.PC, a proceeding under Section 125 of the CRPC can be initiated in any district where the wife resides. It is also settled proposition of law that resident temporarily acquired solely for conferring the jurisdiction would not satisfy the requirement of Section 126 (1) Cr.Pc and therefore it is necessary to see how the opposite party No.2 has been successful in establishing that she is presently residing at the address given in the cause title.

9. In this case, the marriage took place in the District of 24 Parganas North, and after marriage, both of them resided at Bombay. According to the present petitioner/ husband, the Opposite Party No.2/wife, actually resided at her father's house, which is situated at 2:21./one Nazrul Sarani Kolkata 700131 and the parties came back from their native place and started residing there permanently with their daughter .The husband thereafter started inflicting torture upon her which became unbearable accordingly, she had to lodge complaint before the officer in charge, Barrackpore Police Station against her

¹ (2008) 2 SCC 316

husband on 24.7.2019, under Section 498A/323/506/504 of IPC. She also filed an application being criminal case No.65 of 2021, under section 18/19/20/22 and 23 of the protection of women from Domestic Violence Act, 2005 against her husband and the husband had filed a Matrimonial suit under Section 9 of the Hindu Marriage Act for restitution of conjugal rights against her before the Court of Learned District Judge 24 Parganas North at Barasat. During pendency of the matters, the wife started residing permanently under the care of her elder sister and brother-in-law at west Midnapore and as she was not getting any maintenance, she was forced to leave her matrimonial home and then filed application for maintenance on 26.8.2022. The husband took out an application on the point of maintainability of the proceeding before the court of learned Magistrate, Railway court and vide an order date 23.6.2023, the said prayer was refused and being aggrieved by the same one criminal revision application was filed before the Court of Learned Session, judge, West Midnapore and on 21.2.2024, and it was rejected, affirming the order of the Learned Judicial Magistrate, West Midnapore. The petitioner husband has not placed this fact of refusal to entertain the prayer of dismissal on the ground of lack of jurisdiction and thereby can be said to have suppressed the material facts from the Court.

- 10.** Fact remains that excepting this proceeding, no other proceeding is pending before any Court of West Midnapore but the period when the wife is stated to have resided at her parents' house is long before and the petitioner/husband has failed to establish that presently she is not residing at the address given in the petition. In this regard this Court has taken note of a decision reported in

Dhawal Sab.vs Khajasab² where the jurisdiction of the family Court were under challenge and High Court proceeded on the basis that the word resides is and where he last resided with his wife and the court held that the expression is has to be applied to the place where the person from whom maintenance is sought is normally available and cannot be constitute to be a mere fleeting presence. Moreover, this court cannot ignore the underlined principles of Section 125, which is a social welfare legislation and in that case, technicalities should not impede the purpose for which it was enacted.

- 11.** That apart, the point of jurisdiction was raised earlier before the Learned Court of Magistrate, which was not considered and order of the learned session judge, affirming, such order was not challenged and hence the said order has attained finality.
- 12.** In view of that this revisional application is hereby dismissed.
- 13.** Urgent Photostat copy of the order be supplied upon compliance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

² AIR 2009 SC (SUPP) 2116