

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

**BEFORE:
THE HON'BLE JUSTICE UDAY KUMAR**

1.

CRR 134 of 2018

Harbindar Kumar Sharma

Vs.

Smt. Baby Kaur Sharma & Anr.

For the Petitioner	: Mr. Abhishek Verma, Mr. Atulya Sinha Verma, Ms. Brihanwita Debnath, Ms. Aparna Sarkar, Mr. Suraj Naskar
For the Respondent No.1	: Mr. Sumanta Ganguly, <i>Ld. Amicus Curiae</i>
Hearing Concluded on	: 04 th July, 2025
Judgment on	: 18 th July, 2025

Uday Kumar, J.:-

1. This Revisional Application, CRR No. 134 of 2018, has been preferred by Harbindar Kumar Sharma (the petitioner/husband), for setting aside of the interim order of maintenance and protection granted to Smt. Baby Kaur Sharma (the opposite party/wife) and her minor daughter under Sections 12 and 23 of the Protection of Women from Domestic Violence Act, 2005 (the DV Act). This order was passed by the Learned Metropolitan Magistrate, 13th Court at Calcutta, in Misc. Case No. 25 of 2017, on December 16, 2017, following an application by the opposite

party/wife. The petitioner/husband also sought quashing of the entire proceedings of domestic violence initiated against him, raising fundamental questions about the very existence of a "domestic relationship" between the parties, a prerequisite for the Act's applicability.

2. The dispute originated from the opposite party/wife's assertion that she married the petitioner/husband on March 5, 2006, under Hindu rites, and that their minor daughter, Isha Sharma, was born on November 10, 2007. She alleged that following their daughter's birth, she suffered severe physical and mental torture from the petitioner/husband and his family due to unfulfilled dowry demands. This, she claims, led to her forceful expulsion from the matrimonial home on October 20, 2015, allegedly without her 'Stridhan'. The opposite party/wife further contended that she is currently unemployed and dependant on her parents, while the petitioner/husband, who purportedly owns a transport company, earns a substantial monthly income of Rs. 1 lakh but has failed to provide for their maintenance. A related police complaint (Cossipore P.S. Case No. 227 of 2015 under Sections 498A/506/34 IPC read with Section 4 of the DP Act) was also lodged. Based on these allegations, she sought various reliefs under the DV Act, including crucial interim maintenance of Rs. 40,000/- per month, accommodation, and litigation costs under Section 23 of the DV Act. She filed an application before the Learned Additional Chief Metropolitan

Magistrate-II at Calcutta, which was subsequently transferred to the Learned Metropolitan Magistrate, 13th Court at Calcutta.

3. The petitioner/husband and his family appeared in the DV Act case on October 16, 2017. They vehemently denied the marriage with the opposite party/wife, the paternity of the child, and all other allegations by filing a written objection. They asserted that all allegations were false, malicious, and intended to extort money and coerce the petitioner/husband into marriage. Their pivotal contention in their objection was that on March 5, 2006, the purported date of marriage, the opposite party/wife was already the legally married wife of one Sri Sanjoy Arora, rendering any subsequent marriage void. To buttress this claim, they presented still photographs allegedly depicting the opposite party/wife with Sri Sanjoy Arora in matrimonial attire, and crucially, a certified copy of the divorce decree between the opposite party/wife and Sri Sanjoy Arora, obtained subsequent to the initial complaint. On November 18, 2017, the opposite party/wife filed a specific application for interim reliefs under Section 23 of the DV Act, seeking Rs. 40,000/- per month as maintenance, along with accommodation or rent, and litigation costs. The petitioner/husband filed his counter-objection to this interim application on December 12, 2017, reaffirming his denial of the marriage and the allegations. He argued that the entire DV Act proceeding was a malicious attempt at extortion, and stated his actual monthly income was merely Rs. 6,000/-, providing a salary certificate to that effect.

4. On December 16, 2017, after hearing both sides, the Learned Metropolitan Magistrate passed the impugned interim order. The Magistrate formed a *prima facie* opinion that the opposite party/wife was indeed the petitioner/husband's wife and the daughter their legitimate child, noting the husband's failure to *prima facie* establish otherwise or seek nullity of marriage. The Magistrate concluded that the petitioner/husband's extreme denial of marriage and paternity, without acceptable evidence, suggested an attempt to evade maintenance and a lack of dignity. The Domestic Incident Report (DIR) and the charge sheet under Section 498A IPC against the petitioner/husband were also considered to provide *prima facie* support to the opposite party's claims. While acknowledging the income dispute, the Magistrate ordered the petitioner/husband to pay interim maintenance of Rs. 10,000/- per month to the opposite party/wife and Rs. 10,000/- per month to the daughter, totalling Rs. 20,000/- per month, effective from the date of the order. A protection order against further violence was also issued. This interim order is now the subject of the present Revisional Application before this Hon'ble High Court.
5. Mr. Abhishek Verma the Learned Advocate for the petitioner/ husband, vehemently argued that a fundamental prerequisite for a DV Act proceeding—a 'domestic relationship'—is absent in this case. It was asserted that the petitioner/husband was never legally married to the opposite party/wife. This assertion rests on the claim that on March 5, 2006, the alleged date of their marriage, the opposite party/wife was

already legally married to Sri Sanjoy Arora. Such a prior, subsisting marriage, if proven, would render any subsequent purported marriage void, thereby negating the very basis of a domestic relationship under the DV Act. To support this crucial contention, the learned *Amicus Curiae* presented still photographs allegedly depicting the opposite party/wife in matrimonial attire with Sri Sanjoy Arora, and, crucially, a certified copy of the divorce decree between the opposite party/wife and Sri Sanjoy Arora, obtained subsequent to the initial complaint against the petitioner/husband. It was further emphasized that the opposite party/wife did not, either in writing or orally, dispute the petitioner/husband's claim regarding her prior marriage, which, in the learned *Amicus Curiae*'s submission, should be construed as an admission.

6. Furthermore, the petitioner/husband's counsel argued that the Learned Metropolitan Magistrate committed several errors. Firstly, the Magistrate allegedly exceeded his jurisdiction by *prima facie* determining the existence of a marriage and paternity, issues that, they contended, are for a civil court to decide conclusively. Secondly, it was argued that the Magistrate misplaced the burden of proof, implicitly requiring the petitioner/husband to disprove the marriage instead of insisting on conclusive proof from the opposite party/wife, especially given the strong counter-allegation of a prior marriage. Thirdly, the Magistrate reportedly ignored key evidence (photographs and a CD allegedly depicting the prior marriage) and failed to inquire about the opposite party's prior marital

status. Fourthly, it was contended that the Magistrate erroneously relied on the Section 498A IPC charge sheet as evidence of marriage, asserting that a criminal charge does not equate to a legal finding of marriage. Fifthly, the Magistrate's order was deemed contradictory: it acknowledged that a final conclusion on disputed facts required a full trial to avoid a 'travesty of justice,' yet simultaneously granted interim maintenance, thereby implicitly resolving the disputed relationship. Lastly, the petitioner/husband argued that the maintenance amount was arbitrarily fixed, disregarding his documented actual monthly income of Rs. 6,000/-, for which a salary certificate was provided. He submitted that the entire DV Act proceeding is a malicious attempt at extortion.

7. Conversely, Mr. Sumanta Ganguly, the Learned *Amicus Curiae* appointed by the Court after the opposite party/wife failed to secure representation despite repeated directions and opportunities, primarily raised a preliminary objection regarding the maintainability of the present Revisional Application. It was strenuously argued that the petitioner/husband had bypassed the explicit and efficacious remedy of appeal provided under Section 29 of the Protection of Women from Domestic Violence Act, 2005, which allows an appeal to the Court of Session within thirty days. By directly filing a Criminal Revisional Application under Sections 401/482 Cr.P.C. before the High Court, the petitioner/husband has resorted to an impermissible forum. Several High Court decisions, including the Calcutta High Court's ruling in

Chaitanya Singhania & Anr. vs. Khusboo Singhania, were cited to emphasize that such revisional applications are not maintainable when a specific statutory appeal remedy exists. It was also pointed out that the petitioner/husband's initial challenge to maintainability before the Trial Court had been rejected, and he failed to appeal that specific order.

8. Mr. Ganguly affirmed for claim of a valid marriage solemnized with the petitioner/husband on March 5, 2006, and the birth of their daughter in November 2007, and she was put into She reiterated her allegations of continuous physical and mental torture and dowry demands, leading to her forceful expulsion from the matrimonial home on October 20, 2015. He emphasized her current state of financial dependency as a housewife, relying on her parents, while the petitioner/husband, whom she alleges to be a wealthy transport company owner earning over Rs. 1 lakh per month, has utterly neglected his maintenance obligations. The Learned Advocate defended the Metropolitan Magistrate's interim order as a well-reasoned and justified measure, highlighting the Magistrate's observation that the petitioner/husband's extreme denial of marriage and paternity without producing acceptable counter-evidence was indicative of a lack of dignity and an attempt to evade maintenance. It was also stressed that despite the interim order, the petitioner/husband has not paid any maintenance to date, with a warrant in the execution case still pending.

- 9.** Having meticulously perused the records and considered the arguments advanced by both the parties, the principal legal question that demands determination is:

"Whether a 'domestic relationship,' particularly one 'in the nature of marriage,' as defined under the Protection of Women from Domestic Violence Act, 2005, exists between the parties, despite the petitioner/husband's assertion of the opposite party/wife's prior subsisting marriage at the time of their alleged marriage, thereby entitling the opposite party/wife to reliefs under the DV Act, including interim maintenance. Concomitantly, is the present Revisional Application maintainable, given the existence of an alternative statutory remedy of appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005?"

- 10.** The pivotal question, as framed, hinges on two interconnected aspects: the substantive question of "domestic relationship" under the DV Act and the procedural question of the Revisional Application's maintainability.
- 11.** The most crucial preliminary point is the maintainability of this Revisional Application. The opposite party/wife has squarely raised this issue, asserting that the petitioner/husband has circumvented the specific statutory appeal mechanism. Section 29 of the Protection of Women from Domestic Violence Act, 2005, unequivocally provides an explicit and efficacious remedy of appeal to the Court of Session within thirty days from the date an order made by the Magistrate is served. This provision creates a clear statutory appellate mechanism. The jurisprudence established by the Hon'ble Supreme Court and various

High Courts consistently holds that where a specific statutory appeal remedy is available, the extraordinary revisional jurisdiction under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973, should not be routinely invoked as a substitute.

12. The Calcutta High Court, in *Chaitanya Singhania & Anr. vs. Khusboo Singhania* (CRR 2911 of 2019), as cited by the opposite party/wife, has indeed affirmed that orders concerning the maintainability of a DV Act proceeding are appealable under Section 29, reasoning that such orders are "final in nature affecting the rights and/or liabilities of the parties." While the current challenge specifically targets an interim maintenance order, the underlying principle of Section 29's comprehensive appellate scope generally applies to orders impacting rights and liabilities under the Act.
13. The petitioner/husband, despite challenging the maintainability before the Magistrate, chose not to appeal that decision but directly approached this High Court in revision. While the six-year pendency of this revision is noted, it does not, in itself, rectify a fundamental jurisdictional defect if such defect existed at the time of filing. Given the clear statutory mandate of Section 29 and the consistent judicial reluctance to bypass specific remedies, this Court finds substantial merit in the opposite party/wife's contention regarding the maintainability of the present Revisional Application. The supervisory jurisdiction under Section 482 Cr.P.C. is reserved for exceptional circumstances, not as an ordinary alternative to a statutory appeal.

- 14.** Notwithstanding the maintainability concern, it is pertinent to briefly discuss the merits of the Magistrate's interim order to ascertain if it suffered from such fundamental flaws as to compel revisional interference, even if an appeal was the proper course. The petitioner/husband's primary challenge rests on the alleged non-existence of a "domestic relationship." While he denies a formal Hindu marriage due to the opposite party/wife's alleged subsisting prior marriage, it is crucial to remember that Section 2(f) of the DV Act broadly defines "domestic relationship" to include "a relationship in the nature of marriage." The Hon'ble Supreme Court, in cases like *Indra Sarma vs. V.K.V. Sarma* (2013), has interpreted this to encompass relationships that closely resemble marriage, even if not formally valid, for the protective purposes of the DV Act.
- 15.** The Learned Metropolitan Magistrate, in the impugned order, clearly stated his *prima facie* findings. He perused marriage photographs and the daughter's birth certificate/school documents, concluding that these "*prima facie* reflected opposite party no.1 as husband of the petitioner and father of the child." Significantly, the Magistrate noted that the petitioner/husband had "nowhere... *prima facie* established... that opposite party no.1 is not the husband of the petitioner" and had not moved for nullity of marriage since 2006. The Magistrate also observed that the petitioner/husband's extreme denial of marriage and paternity "without making any attempt to establish such plea by any trace of acceptable evidence" suggested an intent to deprive

maintenance and a lack of dignity. The Domestic Incident Report (DIR) and the charge sheet under Section 498A IPC against the petitioner/husband were also considered as *prima facie* support for the domestic violence allegations and establishing the petitioner/husband's connection to the case under the 498A charge.

16. The petitioner/husband's argument that the Magistrate exceeded jurisdiction by *prima facie* determining marriage and paternity needs careful consideration. For interim orders under the DV Act, a Magistrate is not required to make a final, conclusive determination of marital validity or paternity, which indeed requires a full civil trial. Instead, the Magistrate's role is to form a *prima facie* opinion on the existence of a domestic relationship and domestic violence to provide immediate relief. The Magistrate here did not definitively declare the marriage valid for all purposes but found sufficient initial evidence to proceed with interim relief, which aligns with the prophylactic nature of the DV Act. While the petitioner/husband claims his evidence (CD, photographs allegedly depicting the prior marriage) was ignored, the impugned order indicates that documents, including certain photographs, were filed and considered "during hearing." The true weight and conclusive effect of this evidence on the validity of marriage are matters for detailed examination during the main trial, where the petitioner/husband will have ample opportunity to lead substantive evidence.

- 17.** The Magistrate's acknowledgment of an "oath versus oath" situation and the need for a full trial to avoid a "travesty of justice" should be understood in the context of a final decision. For interim relief, the DV Act mandates prompt action based on a reasonable initial assessment. The Magistrate, having formed a *prima facie* case based on the available documents and the apparent conduct of the parties, proceeded to exercise his interim power, which is consistent with the DV Act's objective of providing immediate protection and basic sustenance. Regarding the income dispute, the Magistrate noted the conflicting claims (Rs. 1 lakh vs. Rs. 6,000/-) and the lack of conclusive proof from both sides. In such situations, courts often make a reasonable assessment considering factors like the parties' needs and the general earning capacity of an able-bodied individual, especially when full financial disclosure is lacking. While the petitioner/husband's salary certificate of Rs. 6,000/- was submitted, the Magistrate's decision to award Rs. 20,000/- suggests he did not fully accept this figure as the sole basis. While the quantum of maintenance can be a point of contention, the act of assessing it reasonably is not, in itself, a fundamental legal infirmity at the interim stage. Therefore, despite the petitioner/husband raising points critical for final determination during trial, the impugned interim order, at the *prima facie* stage, does not appear to suffer from such a glaring jurisdictional error or perversity that would compel interference in revisional jurisdiction, particularly

when a statutory appeal to the Sessions Court is available for a fuller re-appreciation of facts and law.

18. In view of the comprehensive discussion, especially concerning the crucial issue of maintainability of the present Revisional Application, I am of the considered view that the petitioner/husband had an alternative, efficacious, and statutory remedy available under Section 29 of the Protection of Women from Domestic Violence Act, 2005. This remedy permitted him to challenge the impugned interim order before the Court of Sessions. It is a well-established and consistently applied principle of law that the extraordinary revisional jurisdiction of the High Court should not be invoked when such a specific statutory remedy exists, unless there is a clear and exceptional case of gross abuse of process of law or a complete lack of jurisdiction, which is not overwhelmingly demonstrated at this preliminary stage to justify bypassing the prescribed appellate forum.
19. While the petitioner/husband has indeed raised substantial and serious questions regarding the very existence of a valid marriage and domestic relationship, these are fundamentally factual issues that demand detailed examination of evidence. Such an examination is best conducted during a full trial, and any findings can be effectively reviewed in an appeal to the Sessions Court, where both facts and law can be comprehensively re-appreciated. The Magistrate's interim findings, being *prima facie* in nature, are precisely what Section 29 intends to be reviewable in an appeal. Therefore, the

petitioner/husband's failure to avail himself of the statutory appeal may render this revision application inadmissible.

- 20.** Accordingly, this Revisional Application being CRR No. 134 of 2018 is hereby dismissed on the ground of maintainability.
- 21.** The interim order dated December 16, 2017, passed by the Learned Metropolitan Magistrate, 13th Court at Calcutta, shall continue to operate. The petitioner/husband is directed to comply with the said order forthwith.
- 22.** There shall be no order as to costs.
- 23.** Interim order/orders, if any, passed in this case by this Court, stands vacated.
- 24.** All connected applications, if any, stand disposed of.
- 25.** TCR, if any, shall be sent down to the Trial Court, at once.
- 26.** Let a copy of this judgment be sent to the Learned Metropolitan Magistrate, 13th Court at Calcutta, for information and necessary action.
- 27.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)