

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 770 of 2024

Tumpa Basak

Vs.

Tufan Basak

With

CRR 472 of 2024

Tufan Basak

Vs.

Tumpa Basak

For the Petitioner in CRR 770	:Mr. Avik Ghatak, Adv.
of 2024 & for the opposite party	Ms. Afreen Begum, Adv.
in CRR 472 of 2024	Ms. Swastika Chowdhury, Adv.

For the Opposite Party in CRR 770	:Mr. Asit Baran Raut, Adv.
of 2024 & for the Petitioner	Ms. Ishita Raut, Adv.
in CRR 472 of 2024	Mr. Tuhin Subhra Raut, Adv.
	Mr. Atul Basak, Adv.

Last Heard on	:24.06.2025
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Judgment on	:18.07.2025
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Bibhas Ranjan De, J.

1. Both the revision applications challenging the impugned order are hereby consolidated and taken up for disposal through this singular, comprehensive judgment.
2. The revision application being no. 770 of 2024 has been preferred by the wife/petitioner assailing the order dated 30.12.2023 passed by Ld. Judicial Magistrate, 5th Court, Barackpore, North 24 Parganas in connection with Misc. Case no. 22 of 2022 under Section 127 of the Code of Criminal Procedure (hereinafter CrPC), wherein Ld. Magistrate reduced the quantum of maintenance from the tune of Rs. 30,000/- granted in disposing an application under Section 125 of the CrPC to the tune of Rs. 20,000/- per month, with effect from the date of the order impugned.
3. Whereas, the revision application being no. 472 of 2024 has been preferred by the husband/ petitioner assailing the same order dated 30.12.2023 with a prayer for further reduction in the quantum of maintenance from the tune of Rs. 20,000/- and also with respect to date of effect which should be from the date of retirement of the estranged husband.

Background Fact:-

4. Both the parties to the revision applications were married and a male child was born out of the wedlock. In the wake of a distressing matrimonial discord, petitioner initiated proceedings under Section 125 CrPC for maintenance, which was disposed of by promulgating an order of maintenance to the tune of Rs. 30,000/- per month in favour of the petitioner/wife.
5. Considering the changed circumstances i.e. retirement of the opposite party /husband, one application under Section 127 CrPC was filed by the husband for seeking reduction of the maintenance which was also disposed of by an order thereby reducing the maintenance to the tune of Rs.20,000/- per month.
6. The wife preferred the revision application being no. CRR 770 of 2024 assailing the order of reduction of maintenance and husband also challenged the same order in the revision application CRR 472 of 2024 with a prayer for further reduction of the amount and with date of effect being from the date of retirement.

At the bar:-

7. Ms. Afreen Begum, Ld. Counsel, appearing on behalf of the Petitioner in respect of CRR 770 of 2024 & the opposite party in respect of CRR 472 of 2024 has mainly canvassed her argument on the settled principle of law that maintenance is not charity but a legal obligation of the husband. In this regard, Ld. Counsel by relying on some of the celebrated decisions of the Hon'ble Apex Court, has strenuously argued that the husband's attempt to evade maintenance by suppressing his actual earnings and thereby claiming a meager salary is non-est in the eye of law as maintenance should actually reflect the dignity and standard of living that the wife was accustomed to during marriage, keeping in mind the concept of **equi status**.
8. Before parting with, Ld. Counsel has tried to make this court understand that although the impugned order dated 30.12.2023 recorded findings to the effect that the opposite party obtains his wages through separate means in terms of Share Market, Provident Fund, Gratuity, Leave encashment etc. but still went on to reduce the quantum of maintenance. Moreover, the Ld. Trial Judge also did not consider the angle

of retirement benefits which the opposite party was entitled to being a retired High Level Banking Official in addition to the factual position that the opposite party has two stalls in the Sisir Market, Sealdah along with a flat at Tanwar Colony under South Dumdum Municipality. It is also admitted position that the petitioner is a home maker who lives with her son, who, although being an adult is still completely dependent on her. Therefore, the petitioner has to sustain her livelihood only based on the maintenance that she receives from the opposite party which makes the impugned order of reduction of maintenance even more unjustified and accordingly the Ld. Counsel prays for setting aside of the same.

9. In support of her contention, she has relied on a set of cases which are as follows:-

- ***Swadesh Kumar Paul vs State of West Bengal & Anr., 2023 SCC OnLine Cal 3312***
- ***Kusum Sharma vs. Mahinder Kumar Sharma., 2015 SCC OnLine Del 6793***
- ***Radhika vs. Vineet Rungta., 2004 SCC OnLine Del 6793***

- ***Shamima Farooqui vs. Shahid Khan., (2015) 5 SCC 705***
- ***Parvin Kumar Jain vs. Anju Jain ., (2025) 2 SCC227***

10. Per Contra, Mr. Asit Baran Raut, appearing on behalf of Opposite Party in CRR 770 of 2024 & for the Petitioner in CRR 472 of 2024 at the very outset has denied all the distorted facts and figures adduced by the petitioner in connection with the earnings of the opposite party. By relying on the annual return for assessment year 2024-2025 duly furnished by the Income Tax Authority, the opposite party/estranged husband has vehemently contended that his total annual income stands at Rs. 5,13,890/- which includes income from all sources i.e. income from savings account, dividend income etc. and if the said amount is divided by 12, it comes to roughly Rs. 42,824/- per month. Therefore, the amount of maintenance which has already given to the petitioner by the Ld. Magistrate is quite reasonable and justified as the petitioner can easily maintain herself with such a lump sum amount of Rs. 20,000/- per month.

11. Mr. Raut has further added that the wife has had her independent source of income from the fixed deposit made in

her name in two different bank accounts which has not been disclosed. It has been further argued that their son is now a major who earns a decent amount per month per month by way of imparting tuition. Ld. Counsel has also categorically contended that the wife has been in possession of the entire dwelling house and virtually the estranged husband has been driven out from his own house since June 2004. Moreover, it is the case of Ld. Counsel that the estranged husband has to incur various essential expenses including his medical bills, annual premium of his medi-claim policy, monthly rent of residential accommodation, driver salary to the tune of Rs. 15,000/- per month. In continuation of his argument, Ld. Counsel has also submitted that in pursuance of his mother's last wish the estranged husband has executed his shares in favour of his sister in connection with both the stalls at Sisir Market as well as the flat situated at Tanwar Colony.

- 12.** Before parting with, Mr. Raut has contended that the estranged husband obtained retiral benefit of Rs. 70,58,000/- out of which he re-paid Rs. 10,00,000/- by way of reimbursement to the different creditors in connection

with his medical expense and the balance amount of Rs. 60,58,000/- was given to his sister as interest free accommodation loan and therefore he does not possess any amount in his custody. Accordingly, Mr. Raut has pleaded that the maintenance to the tune of Rs. 20,000/- should be reduced and also the date of effect should be from the date of retirement of the estranged husband instead of date of impugned order i.e. 31.12.2023.

13. In order to further bolster his argument, Mr. Raut has taken assistance of the ratio delineated in the following cases:-

- ***Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy, (2017) 14 Supreme Court Cases 200***
- ***Dr. Avnish Pawar vs. Dr. Sunita Pawar, II (2000) DMC 283***
- ***Showkat Aziz Zargar vs. Nabeel Showkat & Anr., III (2022) DMC 491 (J&K, Lad)***
- ***Ravindra Haribhau Karmakar vs. Mrs. Shaila Ravindra Karmarkar and another, 1992 CRI.L.J. 1845***

Analysis:-

14. Having duly considered the rival contentions adduced on behalf of the parties as well as after going through the materials on record, only two decisive questions have come up for adjudication which are as follows:-

Issue A:- Whether the reduction in the maintenance amount by the Ld. Magistrate vide order dated 03.12.2023 is legally sustainable.

Issue B:- If the reduction is to be made then should it be made effective from the date of order or the change in the circumstances i.e. the date of retirement of the petitioner in connection with CRR 472 of 2024.

15. At the very outset, it would be pertinent to mention that the main argument of the estranged husband revolves around the factum of financial constraint due to his retirement from service, his own medical expenses and the fact that their son, now 25, is no longer dependant.

16. In this regard, the estranged husband has categorically relied on the annual return for assessment year 2024-2025, duly furnished by the Income Tax Authority under Section 143 (1) of the Income Tax Act wherein the total annual

income of the opposite party was assessed to be Rs. 5,13,890/- inclusive of all income sources. By relying on these averments the estranged husband has suggested that the Ld. Magistrate rightly decided on the quantum of maintenance that is Rs. 20,000/- per month but his only concern revolves around the issue of date of effect. In this regard, he has vociferously contended that the reduced maintenance amount should contemplate the date of change in his financial income capacity. Therefore, the ideal time frame should be from the date of his retirement from service rather than the date of impugned order.

17. In response to the above contention, it would be axiomatic to remind one and all the settled proposition of law that the income tax return of an individual cannot be considered as conclusive proof of his income as primarily the return is based on the information provided by the tax payer himself. The figures reported therein are subject to the tax payer's understanding and interpretation which is not always accurate or comprehensive. In addition to that there is always a possibility of potential of under reporting. Therefore, the actual income of an individual would indeed be very

different from the figures shown in the income tax return that is why the courts often look beyond I.T. returns while determining the income of a person, especially in proceedings such as maintenance cases.

18. For brevity of discussion it would be pertinent to mention that the Hon'ble Apex Court recently has also called for deeper scrutiny of the income of the alimony prayer, including all declared, undeclared and historical earnings. Therefore, it is made crystally clear that the Courts while determining the quantum of maintenance should not just examine the present income of the alimony prayer but also his potential, past earnings and assets.

19. Therefore, this holistic approach breaks away from narrow income affidavits and opens doors to assess real financial capability, thus discouraging strategic under reporting or artificial income suppression to negate higher maintenance.

20. It is also well settled that while determining the quantum of maintenance the courts have to consider certain factors like :-

- Residential comfort.

- Health care standards.
- Social and economic status of both the parties.
- Qualification and employment.
- Sources of income and assets.
- Marital standard of living bench mark.
- Inflation.

21. In the present time and age there has been a drastic change in the society with relation to marital obligations. Therefore, this sharp fluctuation demands for a change in the judicial approach towards the grant of maintenance as well, as maintenance is no longer a hand out to barely cover subsistence. Rather it has now become a tool to preserve life style stability. As a sequel, it fundamentally repositions spousal support as a continuity of living, not compensation for separation.

22. The Hon'ble Apex Court in recent judgments has underscored the importance of the fact that post separation maintenance should mirror the life style of the wife during period of their married life. In the case at hand, the petitioner in connection with CRR 472 of 2024 has himself admitted that he has to incur expenses to the tune of Rs. 15,000/-

towards his driver's salary. But, ironically he is not inclined to pay maintenance to the tune of Rs. 20,000/- even to the person who has spent a considerable period of her life with him and also with whom he has a son. In this connection, it would be pertinent to mention that any settlements to be arrived at between the parties must take into account actual living standards and cost of inflation. On the other hand, it reinforces the idea that women who have devoted years to domestic responsibilities deserve to maintain a comparable life after separation.

23. Conglomeration of the discussion made hereinabove, leaves no other option to this Court but to re-evaluate the impugned order and make modification with regard to the quantum of maintenance.

24. Accordingly, the estranged husband (opposite party in connection with CRR 770 of 2024 and petitioner in connection with CRR 472 of 2024) is hereby directed to pay maintenance **to the tune of Rs. 25,000/- per month along with a 5% hike every two years considering issue of automatic adjustment for inflation.** Therefore, **Issue A**

stands decided against the opposite party in connection with CRR 770 of 2024.

25. Now, coming to **Issue B** with regard to the exact date from which the reduction should be effective, a meticulous assessment of Section 127 of the CrPC would make it abundantly clear that there is no specific provision which sheds light on effective date of determination of such reduction. Therefore, the object of the very statutory provision **grants discretion to the Court to decide the operative date.**

26. In that score, I do not find any reason to interfere with that portion of the impugned order which deals with the date of effect of reduction of maintenance.

27. In that view of the matter, **Issue B** also stands decided against the petitioner/estranged husband in connection with CRR 472 of 2024.

28. In conclusion, I direct the petitioner/estranged husband in connection with CRR 472 of 2024 **to pay maintenance to the tune of Rs. 25,000/- per month along with a 5% hike every two years and this order shall take effect from the date of passing of the impugned order i.e. 30.12.2023.**

- 29.** With the aforesaid observation, both the revision applications being no. CRR 770 of 2024 & CRR 472 of 2024 stand disposed of.
- 30.** Connected applications, if any, stand disposed of accordingly.
- 31.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 32.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]