

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

Present:

Justice Bibhas Ranjan De

C.R.R. 4188 of 2024

IA No: CRAN 2 of 2025,

CRAN 4 of 2025

Amar Kumar Pal

Vs.

Sutapa Bhadra

With

CRR 697 of 2024

Amar Kumar Pal

Vs.

Sutapa Bhadra

For the Petitioner

:Mr. Ayan Bhattacharya, Adv.
Mr.Nahid Ahmed, Adv.

For the Opposite party No. 1

:Ms. Jharna Biswas, Adv.

Last Heard on

:22.09.2025

Judgment on

:25.09.2025

Bibhas Ranjan De, J.

1. Both the revision applications involving identical facts and circumstances and arising out of the self same cause of action shall be disposed of via this common judgment.
2. Revision application being no. CRR 4188 of 2024 has been preferred assailing the Order dated 20.08.2024 passed by Ld. Judicial Magistrate, 1st Court Barasat, North 24 Paraganas, in Miscellaneous Case no. 13 of 2012 under Section 127 of the Code of Criminal Procedure (hereinafter referred to as CrPC) thereby directing the petitioner to pay a sum of Rs. 30,000/- per month towards the maintenance of the petitioner from the date of the filing of application.
3. Whereas the other revision application being no. CRR 697 of 2024 has been instituted assailing the Order dated 03.01.2024 passed by Ld. Judicial Magistrate, 1st Court Barasat, North 24 Paraganas in connection with Miscellaneous Case no. 13 of 2012 wherein Ld. Magistrate rejected the petition filed by the opposite party therein with a prayer for cancellation of order of maintenance on the ground of award of permanent alimony already granted by the competent Civil Court in a Matrimonial suit.

Background:-

4. Ld. Judicial Magistrate, 1st Court, Barasat, North 24 Parganas disposed of an application thereby directing the opposite party/ petitioner herein to pay Rs. 1500/- per month to the petitioner from the date of filing of the application under Section 125 CrPC along with Rs. 2000/- per month as arrear maintenance till realization.
5. On 16th May, 2012 wife/opposite party herein filed one application under Section 127 of the CrPC for enhancement of maintenance amount, which was registered as Misc. Case no. 13 of 2012. After hearing that the maintenance amount was enhanced from 1,500/- to 14,000/-, being aggrieved, the opposite party/ petitioner herein preferred revision application being CRR No. 1726 of 2018 before this Court and at the same time wife/ opposite party also preferred one revision application being CRR 1129 of 2018. Both the revision applications were disposed of on 13.12.2022 by the Hon'ble Co-ordinate Bench and remanded back the matter with a direction upon the Ld. Magistrate to hear the application afresh as per guidelines laid down by the Hon'ble

Apex Court in ***Rajnish vs. Neha and Another, (2012) 2 Supreme Court Cases 324.***

6. Prior to the enhancement of maintenance to the tune of Rs. 14,000/- per month by the Ld. Magistrate on 10.04.2018 in Misc. Case 13 of 2012 under Section 127 of the CrPC, alimony *pendente lite* was passed directing the husband to pay Rs. 17,000/- per month with effect from 18.04.2017, in connection with MAT Suit no. 34 of 2015.
7. Said order of alimony *pendente lite* was assailed by the parties by filing their respective applications being no. C.O. 2183 of 2017 and C.O. 2483 of 2017 respectively. Both the Civil Orders were disposed of by a common judgment and order dated 31.10.2017, affirming the amount of alimony *pendente lite*.
8. The Mat Suit No. 34 of 2015 was decreed on 29.09.2020 wherein Ld. Additional District Judge, Fast Track, 3rd Court, Barasat, directed the petitioner/ husband to pay Rs. 20,000/- per month. Thereafter, on 20.08.2024, Ld. Magistrate, 1st Court, Barasat, North 24 Paragnas, disposed of an application under Section 127 of the CrPC filed by the opposite party/ wife on 19.05.2012 against her husband

with a prayer for enhancement of maintenance allowance to the tune of Rs. 30,000/-. Ld. Magistrate allowed the application under Section 127 of CrPC with a direction to pay a sum of Rs. 30,000/- per month towards the maintenance of the petitioner from the date of filing of the application.

9. Being aggrieved by and dissatisfied with the said order, the instant revision application has been filed.

At the Bar:-

10. Mr. Ayan Bhattacharya, Ld. Senior Counsel, appearing on behalf of the petitioner has contended that subsequent to the solemn promulgation of permanent alimony, the judicial framework precludes any further augmentation of maintenance under provision of Section 127 of the CrPC. It has been vehemently urged that any subsequent enhancement can only be sought for and granted within the sanctified realm of matrimonial proceedings under Section 25 (2) of the Hindu Marriage Act. Mr. Bhattacharya has further submitted with considerable emphasis that while the application seeking enhancement was diligently filed in the year 2012, the Ld. Magistrate, in what appears to be an exercised fraught with procedural irregularities, disposed of

said application only in the year 2025, thereby directing maintenance at an enhanced rate effective from the date of original application, whilst paradoxically considering salary increments that materialized only in the year 2024 - a temporal incongruity that strikes the very foundation of judicial propriety and procedural fairness.

11. Before parting with, Mr. Bhattacharya has submitted that this Court cannot modify the impugned order while exercising inherent power under Section 482 of the CrPC save and except to verify correctness, legality or propriety of any findings of sentence or order passed by any inferior court within the meaning of Section 397 of the CrPC.

12. In opposition to that, Ms. Jharna Biswas, Ld. Counsel, appearing on behalf of the opposite party no. 1 has drawn my attention to the impugned order and submits that Ld. Magistrate duly considered the legal principles laid down in ***Ranjesh vs. Neha reported in (2021) 2 SCC 324*** before passing order impugned in this revision application. It has been further submitted that there is no bar to seek maintenance both under the D.V. Act and Section 125 CrPC or under Hindu Marriage Act simultaneously.

Analysis:-

- 13.** Both the Ld. Counsel appearing on behalf of the parties relied on the principles and judicial precedent while has been crystallized in the land mark judgment of ***Rajnesh vs. Neha*** (*supra*).
- 14.** From the record as well as impugned order, I find that Ld. Magistrate took up the application under Section 127 of CrPC dated 19.05.2012 and disposed of the same without having any opportunity to consider the affidavit of assets and liability filed on behalf of the opposite party /petitioner herein. From the record it appears that the opposite party /petitioner herein did not even comply with the order of the Hon'ble Co-ordinate Bench of this Court.
- 15.** Therefore, despite being accorded ample and repeated opportunities by this Court, petitioner/husband regrettably failed to comply with the judicial mandate of filing his affidavit of assets and liability. Consequently, Ld. Trial Court was constrained to adjudicate and dispose of the application under Section 127 of CrPC in absence of such crucial documentation from the petitioner's side, and was compelled to rely solely upon the comprehensive affidavit of assets filed

by the respondent/wife in strict compliance with specific and unambiguous directions by the Hon'ble Co-Ordinate Bench in CRR 1822 of 2024.

- 16.** Referring to the argument on the issue of overlapping jurisdiction advanced on behalf of the petitioner, I would like to reproduce the principle laid down by the Hon'ble Apex Court in **Rajnesh vs. Neha** (supra) which runs as follows:-

“Directions and overlapping jurisdictions

60. *It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the DV Act and Section 125 CrPC, or under HMA. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/Family Court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.*

61. *To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the court concerned in the previous proceeding.”*

- 17.** In the aforesaid view of the matter, I am not agreeable with the contention of Mr. Bhattacharya that the wife/opposite party is not entitled to any enhancement of

maintenance granted under Section 125 of CrPC after promulgation of permanent alimony in the Matrimonial Suit.

18. With respect to next argument advanced on behalf of the petitioner, I have gone through the impugned order and it becomes manifestly evident that the at the time of filing application in the year 2012 salary of the petitioner husband stood at Rs. 65,000/-. However, during the course of adducing evidence, the opposite party /wife astutely disclosed the enhanced salary structure of the petitioner, whereupon the Ld. Court ought to have directed the payment of maintenance at the augmented rate with effect from the date of the order and not retrospectively from the date of application.

19. With reference to the argument advanced on behalf of the petitioner regarding inherent power of the court, it is settled that Section 482 of the CrPC begins with a non-obstante clause:

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court..."

20. This indicates that inherent powers are preserved and can be exercised to prevent abuse of process or secure ends

of justice. However, these powers are not unlimited; they are to be exercised within the bounds of statutory provisions and judicial precedents.

21. In furtherance it would be axiomatic to set out the settled mandate of Law which states that an application under Section 127 of the CrPC for enhancement of maintenance granted under Section 125 CrPC can be made even after a decree of permanent alimony has been granted under Section 25 of the Hindu Marriage Act, provided there is a change in circumstances that justifies such modification. The order of permanent alimony under Section 25 of the Hindu Marriage Act, is not an absolute bar to subsequent applications for enhancement of maintenance under Section 125 CrPC, especially when circumstances such as increased needs or changed financial capacity of the spouse occur. The Law explicitly recognizes that proceedings under Sections 125 CrPC and 25 of the Hindu Marriage Act are independent, and modifications are permissible in light of changed circumstances. While both orders aim to provide maintenance, they operate in different spheres—Section 125 is a summary, social justice measure, and Section 25 of the

Hindu Marriage Act is a substantive, civil remedy. However, the purpose of both these provisions is to ensure support based on the prevailing circumstances, not a static right and are subject to change based on evolving circumstances. The law also does not prohibit seeking enhancement under Section 125 CrPC after a decree of permanent alimony under Section 25 of the Hindu Marriage Act. Instead, it permits such modifications if justified.

22. On careful perusal of the impugned order, it comes to my view that Ld. Magistrate duly considered the affidavit of assets filed by the wife/opposite party herein as well as evidence adduced by the parties in course of hearing. Upon careful deliberation of the matter at hand, I find myself with scarcely any tenable basis to question or disturb the well founded observations articulated by the Ld. Trial Court with regard to judicious enhancement under the salutary provisions of Section 127 of CrPC.

23. In the impugned order Ld. Magistrate has finally recorded the order of enhancement relying on the principle laid down in ***Rajnish vs. Neha*** (supra) in the following words:-

“ The petitioner has been awarded Rs. 20,000/- per month in MAT 34 /15 I think additional Rs. 10,000/- is sufficient towards the maintenance of the petitioner.”

- 24.** In the ordering portion, Ld. Magistrate allowed the application under Section 127 CrPC with a direction to pay a sum of Rs. 30,000/- per month towards the maintenance of the petitioner from the date of filing of this application.
- 25.** I do not find any infirmity in the order save and except a discrepancy between the observation in last portion of paragraph 8 and in the ordering portion of paragraph 9.
- 26.** To clarify the same, considering the salutary principles and judicious guidelines meticulously laid down in the landmark pronouncement of ***Ranesh vs. Neha*** (supra), I am inclined to judiciously modify and ameliorate the impugned order by holding, *inter alia*, that the petitioner husband is hereby directed and ordained to pay maintenance to the tune of Rs. 10,000/- per mensem, in addition to and over and above the permanent alimony granted and awarded in the matrimonial suit from the date of the impugned order, thereby ensuring adequate sustenance and dignified livelihood for the opposite party/wife.

- 27.** With the aforesaid observation, both the revision applications being no. CRR 4188 of 2024 and CRR 697 of 2024 stand disposed of.
- 28.** All connected applications stand disposed of accordingly.
- 29.** Interim order, if there be any, stands vacated.
- 30.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 31.** 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.]