

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

PRESENT:

THE HON'BLE DR.JUSTICE AJOY KUMAR MUKHERJEE

CRR 875 of 2023

**Md. Akbar
Vs
Shazia Ahmed @ Shazia Akbar & Ors.**

For the Petitioner : Mr. Tarique Quasimuddin
Ms. Zainab Tahir

For the Opposite Party : Mr. Samson Francis Correa
Mr. Sunny Nandy
Ms. Sneha Singh
Ms. Yamini Tiwari

Heard on : 23.04.2025

Judgment on : 06.05.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioner and opposite party herein got married in 1998 and due to such wedlock two daughters and two sons were born. It is alleged by the petitioner that on 04.04.2017 the opposite party no. 1 herein left her matrimonial home of her own volition, leaving the petitioner as well as aforesaid four children and started living at her father's place. It is further case of the petitioner that on 31st August 2017, the opposite party no.1 herein dissolved her marriage with the petitioner by giving *khula talaq*. It is

further alleged that thereafter with ulterior motive to squeeze money from the petitioner in December, 2018 she has taken away their two minor sons with her and thereafter filed the instant application under section 125 of the Code of Criminal Procedure (in short Cr.P.C.) seeking maintenance along with an application for interim maintenance being Misc. Case no. 52 of 2019, where the petitioner has sought for maintenance of Rs. 40,000/- per month each for herself and for her two sons total Rs. 1,20,000/- along with litigation cost of Rs. 15,000/-.

2. The petitioner herein as opposite party of the said Misc. Case filed written objection against the main application and also against the prayer for interim maintenance filed by the opposite party no.1 herein, seeking interim maintenance of Rs. 30,000/- for each of them totalling Rs. 90,000/-.

3. Thereafter both the parties filed affidavit of assets and liabilities before the trial court, wherein the opposite party no.1 disclosed that her approximate monthly income is of Rs. 40,000/ per month and her approximate expenses for the sons is Rs. 90,000/- per month and for which her monthly expenses is about of Rs. 1,20,000/-

4. In this context petitioner further alleged that though the opposite party no.1 herein has stated that her income is of Rs. 40,000/- but it could be ascertained from the income tax assessment return for the year 2019-2020 that her gross annual income as shown therein is Rs. 5,70,820/-.

5. Petitioner herein as husband also filed his affidavit of assets and liabilities disclosing his earning as Rs. 12,000/- per month as a salesman at Islam Gems and Jewellers and he also earns from rented properties amounting to Rs. 43,500/-. Petitioner further submits that he had to pay

rent for the flat at the rate of 30,000/- per month and towards expenses for minor daughters for their food and others expenses 10,000/- per month and for their education 10,000/- and the petitioner is also paying the school fees of their sons who are opposite party no.2 and 3 herein, as and when it is required.

6. Petitioner in this context further alleged that in order to harass him, opposite party no.1 filed one complaint under the Protection of Women from Domestic violence Act. 2005, being Misc. Case no. 20 of 2020, whereupon after hearing learned Court was pleased to dismiss the said application by an order dated 30th December, 2020 on the ground of maintainability. Thereafter challenging the said order dated 30.12.2020 passed in connection with prayer for monetary relief, the opposite party no. 1 herein preferred criminal appeal before the appellate court, but the appellate court also pleased to reject the same.

7. However, in the instant proceeding under section 125 Cr.P.C, while the aforesaid interim application was taken up for hearing by the learned Family court, the petitioner herein has been directed to pay an amount of Rs. 25,000/- each for two children and Rs. 20,000/- for the opposite party no. 1 from the date of order without considering the contents of affidavit of asset and liabilities filed by the petitioner herein.

8. Being aggrieved and dissatisfied with the said order Mr. Tarique Quasimuddin, learned Counsel appearing on behalf of the petitioner submits that the court below acted illegality and with material irregularity in allowing the application for interim maintenance without considering the fact that the opposite party no.1 is earning a handsome amount which is

evident from the affidavit of assets filed by opposite party no.1. In fact it is the petitioner/husband who has been running pillar to post to earn his livelihood to maintain her two daughters. Learned Counsel for the petitioner strenuously argued that the marital relationship in between the petitioner and the opposite party no.1 has been dissolved by a *khula talaq* on 31.08.2017 and thereby the opposite party no.1 herein severed the marital tie on her own volition deserting her husband voluntarily by executing deed of talaq and as such she is not entitled to get any amount of maintenance. Moreover, the maintenance amount awarded for the two sons by the court below is also excessive, considering earning of the petitioner and also considering the fact that the petitioner use to pay the educational expenses of the two sons, who are in the custody of the opposite party no.1

9. Mr. Samson Francis Correa, learned counsel appearing on behalf of the opposite party submits that the petitioner/husband has wilfully neglected the opposite party no.1. Opposite party no. 2 and 3 who are the sons of opposite party no. 1 are studying in their respective classes in a reputed school in Kolkata. Further contention on behalf of opposite party no.1 is that she carries a garment shop of saree and salwar for her livelihood but the same is not enough to meet the basic needs. On the contrary the petitioner herein having sufficient means of income runs a transportation and jewellery business having big godown in two places, has refused to maintain the opposite parties herein. She strenuously argued that it is true that petitioner/wife's monthly income of Rs. 40,000/- from her business but for that reasons only she should not be denied maintenance from her husband.

10. Further specific case of the opposite party no.1 herein is that till now no Talaqnama has been executed /issued by the concerned authority for and on behalf of either of the parties nor it was executed in accordance with Muslim Law before a Kazi.

11. It has been further argued that there is a collusion between petitioner and his brother, who illegally issued an income certificate in favour of the petitioner, stating that he is getting remuneration of Rs. 12,000/- from Islams Gems and Jewellers. Moreover, the petitioner herein deliberately failed to show that he has paid school fees of the opposite party no. 2 and 3. Her further contention is that the petitioner being her husband, does not take care how the opposite party is residing at the premises in isolation without any help and also without any basic needs of survival. She further contended that the father's obligation to maintain his minor children is absolute and cannot be waived and the wife is entitled to same status and same amenities as enjoyed by her during her stay at her matrimonial house. In this context she relied upon judgment of ***Abhilasha Vs. Parkash and others*** reported in **AIR 2020 SC 4355** and ***Sarita Bakshi Vs. State and another*** reported in **2022 SCC Online Del 1707**. In support of her argument that merely because the wife is earning something would not make a ground to reject her claim for maintenance, opposite party no. 1 relied upon ***Sunita Kachwaha and others Vs. Anil Kachwaha***, reported in **(2014) 16 SCC 715**.

12. Therefore, he argued that a husband cannot be allowed to shirk his responsibilities of paying maintenance to his wife, minor children by availing loans and paying EMIs thereon, in order to lead to a reduction of his carry

home salary. In this context he relied upon ***Seema and another Vs. Gourav Juneja*** reported in **2018, SCC Online P&H 3045**. Accordingly opposite party no.1 has prayed for dismissal of the present revisional application filed by the petitioner/husband.

13. I have gone through the materials available in the record and also considered submissions made by the parties. From the order impugned it is clear that it relates to a prayer for interim maintenance made by the opposite party no.1 herein in the year 2019. Surprisingly the main application under section 125 has not yet been disposed of and still pending before the trial court. However, on perusal of affidavit of assets and liabilities filed by the opposite party no.1 herein, it appears that she has disclosed her monthly income as Rs. 40,000/- approximately. Though the opposite party no. 1 herein has mentioned that her monthly expenditure is about 1,20,000/- but it's a matter of common prudence that monthly expenditure incurred by a person may not have any limitation as such but nevertheless reasonableness in the context of facts and circumstances of the case is to be considered. She has mentioned that she has to incur Rs. 90,000/- for two children i.e. Rs. 45,000/- each and Rs. 30,000/- for herself.

14. Now from the affidavit of assets and liabilities filed by the petitioner herein/husband in the context of settled law that the wife is entitled to lead her life as she was leading during her stay at her matrimonial house, I find that the petitioner herein has mentioned that he has to incur Rs. 30,000/- towards rent and his monthly income is 12,000/- as an employee and 52,000/- from other sources. It also appears that the petitioner had to incur

expenditure towards food clothing and medical expenses for the dependent children is Rs. 10,000/- and towards expenses for their education is 10,000/-.

15. In the order impugned the court below has recorded that though it is true that the wife has income of Rs. 40,000/- from her business but for that reason only she should not be denied maintenance from her husband. The court below rightly pointed out that even if the petitioner be considered as a divorcee as alleged, still she is entitled to maintenance from her husband. Explanation to Section 125 of the Cr.P.C. defines the term “wife” which includes divorced wife, so long she has not remarried. Here the factum of marriage is not in dispute but the opposite party no.1 has disputed the dissolution of marriage. Be that as it may even if for the sake of argument if it is accepted that the wife obtained dissolution of marriage through *khula talaq*, still she is a “wife” within the meaning section 125 (1) of the Code and as such divorced wife has a right to claim maintenance. Accordingly to that extent learned Trial court has not committed any mistake in observing that the opposite party no.1 being the wife of the petitioner is entitled to get maintenance even if she has some sort of income to earn for her livelihood as well as to earn livelihood for her two sons.

16. The petitioner herein stated that she has to incur expenditure of Rs. 10,000/- for the maintenance and Rs.10,000/- towards food, clothing and medical expenses of two grown daughters who are aged about 21 years and 18 years respectively. I find that for the two sons who are aged about 14 years and 11 years and who are being maintained by the opposite party no. 1 herein, interim maintenance of Rs. 20,000/- each will serve the purpose

for the time being. However considering the fact that the opposite party no.1 has some sort of earning, an amount of Rs. 10,000/- towards interim maintenance, from the date of filing the interim maintenance application, if awarded pendente lite to the wife/petitioner no. 1 and simultaneously if the court below is directed to expedite the main proceeding filed under section 125 Cr.P.C., either party may not have any cause to prejudice.

17. In such view of the matter **CRR 875 of 2023** is hereby disposed of modifying the order dated 10.01.2023, directing the petitioner herein to pay Rs.50,000/- in all towards interim maintenance from the date of filing the present application of interim maintenance, within 10th of each succeeding month failing which the petitioner no. 1 will be at liberty to execute the order through competent court in accordance with law, without making further any reference to this court. The arrear amount, if any shall be paid through instalments as would be decided by the court below.

18. The court below is directed to expedite the final hearing of the application filed by opposite party no. 1 herein under section 125 Cr.P.C. and to make his best endeavour to dispose of the said application as early as possible preferably within a period of six months from the next date of hearing without granting any unnecessary adjournment to either parties. It is made clear that while the court below will adjudicate the main application filed under section 125 Cr.P.C., he shall not be influenced by any observation made herein and he will dispose of the main application in accordance with law and on the basis of documentary and oral evidence if any.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)