

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:-

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CRR NO.1105 of 2023

**SMT GUDDI KUMARI BALMIKI
VS.
SRI RAKESH KUMAR BALMIKI & ANR.**

For the Petitioner : Mr. Saibal Basu, Adv.

For the Opposite Parties : None.

Last heard on : 17-12-2025

Judgement on : 17-12-2025

Uploaded on : 19-12-2025

CHAITALI CHATTERJEE (DAS), J. :-

- 1.** No one appears to represent the Opposite Parties.
- 2.** Heard the submissions of the learned Advocate appearing on behalf of the petitioner.
- 3.** This is an application filed on behalf of the present petitioner being the wife against an order dated December 05, 2022 passed by the learned Judicial Magistrate, 4th Court, Alipore, 24 Parganas (South), in connection with ACM-914 of 2019 whereby the Opposite Party no.1 was directed to pay an amount of

Rs.6000/- per month to the petitioner and Rs.5000/- per month to each of her two daughters as an ad interim maintenance.

4. The fact of the case of the petitioner in a nutshell is that the marriage between the parties solemnized on May 13, 1995 and they were blessed with three children. After that the present petitioner being neglected and deserted by the opposite party no.1 along with her three children, filed an application under Section 125 of the Code of Criminal Procedure, 1973 praying for the a monthly amount of interim maintenance of Rs.20, 000/- for herself and Rs.20, 000/- each for her two minor daughters from the date of filing of the application. The said application for maintenance was transferred to the court of learned Judicial Magistrate, 4th Court, Alipore for its final adjudication and, accordingly, the process was issued against the Opposite Party no.1. It was further alleged by the present petitioner in her application under Section 125 of the Code, that at the time of marriage, several valuable articles and ornaments were presented by her parents which were all entrusted to the Opposite Party no.1 herein. However, the present petitioner is unemployed and had no source of income to maintain herself as well as her minor daughters who were born on December 19, 2002 and May 24, 2009. The son, who was born on October 06, 1996, has attained majority.

5. The learned Magistrate considering rival views of the parties by an order dated December, 05, 2022, passed the direction to the husband to pay the interim maintenance of Rs.6,000/- per month for the wife and Rs.5,000/- per month each for two minor daughters totaling to Rs.16,000/- per month. It is

the further case of the petitioner that the opposite party no.1 is employed in Garden Reach Shipbuilders & Engineers Ltd. In the department of Maintenance and was drawing a salary of Rs.80, 000/- therefrom. But the learned Magistrate despite considering such fact, passed the aforesaid paltry sum of Rs.16,000/- in total per month for the wife and two minor daughters from the date of filing of the case considering the net income of the husband/Opposite Party no.1

6. The learned Advocate for the petitioner in this regard has relied upon the following decisions in the cases of ***Rajnesh Vs. Neha*¹, *Chitra Majumder Vs. Arun Majumder*², *Shuvojyoti Bagchi Vs. Banti Roychoudhury*³, *Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury nee Nandy*⁴, *Dr. Kulbhushan Kunwar Vs. Smt. Raj Kumari*⁵ and *Smt. Soma Mitra nee Gharai Vs. null*⁶.**
7. It is the specific contention of the learned Advocate for the petitioner that it was observed by the Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha (supra)*** decision so far as the maintenance of minor children is concerned, that the living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of the child. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding the child support. Serious disability or ill-health of the spouse, child/children, relative who require constant care and

¹ AIR 2021 SUPREME COURT 569

² AIR ONLINE 2018 SC 412

³ AIR ONLINE 2019 CAL 1051

⁴ AIR 2017 SUPREME COURT 2383

⁵ AIR 1971 SUPREME COURT 234

⁶ AIR ONLINE 2022 CAL 1471

expenditure, would be relevant consideration for determination of maintenance.

8. In this case, learned Magistrate did not consider the age of the children who are the minor daughters and are school going and in order to maintain them, a decent amount is necessary.

9. In the case of **Shuvojyoti Bagchi (supra)** regarding quantum of the maintenance to be given, it was observed in paragraph 12 which is as follows:

“ Despite the principle laid down in (1997) 7 SCC 7, the consistent view of this Court and other High Courts, is that the usual rule of thumb is between one-third and one-fifth of the income of the husband, although there is no set formula in that regard, as held by the Supreme Court. ”

10. In the case of Kalyan Dey Chowdhury (supra) where the application was initially filed under Section 9 of the Hindu Marriage Act where initial quantum of the maintenance was subsequently enhanced considering the net salary after deduction on account of GPF and income tax and held 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent wife. The learned Single Bench while passing this order took note of the decision of **Dr. Kulbhushan Kumar Vs. Raj Kumari & Anr.**⁷.

11. In the decision passed in **Smt. Soma Mitra nee Gharai (supra)**, the husband was a businessman having an income of rupees 1.5 lakh to rupees 2 lakh per month and he was an income tax assessee and the learned court considering income tax return as submitted by the petitioner, modified the

⁷ AIR 1971 SC 234

order impugned to the extent by enhancing the amount of interim maintenance towards the wife as well as the minor son.

12. The factum of marriage and the upbringing of the children was not disputed. It is also admitted that the parties are living separately. However, whether the petitioner had left the matrimonial home voluntarily or she was driven out can only be decided by the learned trial Court in course of trial while parties will adduce evidence. In terms of the celebrated decision of the Hon'ble Supreme Court in the case of **Rajnesh Vs. Neha (supra)** discussed the various judicial pronouncement where the provisions for maintenance to be given to the wife .In **Chaturbhuj vs Sita Bai**⁸ this Court held that the object of maintenance proceedings is not to punish a person for his past neglect but to prevent vagrancy and destitution of a deserted wife by providing her food clothing and shelter by a speedy remedy. Section 125 Cr.Pc is a measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15 (3) reinforced by Article 39 of the constitution

13. The learned Court considered the submission of the opposite party and the place of employment which was admitted by the husband and also relied upon the salary slip for the month of February 2021 which discloses the net salary of Rs.33,240/- per month when the gross salary was Rs. 89,989.29/-. The learned court took note of all deductions totaling monthly expenditure of

⁸ (2008) 2 SCC 316

Rs. 14,400/-and further the voluntarily contribution of the husband of an average of Rs.10, 000-12,000/- per month to the petitioner and his minor daughters. In this case, the opposite party placed the affidavit of assets and liabilities of the present petitioner before this Court and also the salary slip for the month of February, 2019 issued by the Garden Reach Shipbuilders & Engineers Ltd. The said salary slip prima facie shows that the total amount is Rs.1, 11,124.03 and after deduction, the net pay is Rs.48, 420.

Learned Court did not consider that while considering the maintenance amount the court must consider the status of the parties and their respective needs and the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and for the maintenance of others who he is obliged under the law to maintain including statutory deductions. The learned Court considered the other deductions other than the statutory deduction which cannot be considered while calculating the maintenance amount and, therefore, the learned court was not correct in considering the income of the husband of Rs.33, 240/- and, therefore, the quantum of interim maintenance that was granted on the basis of the net income of Rs.33, 240/- also cannot sustain.

14. In view of the decisions discussed above it is clear that there is no straight jacket formula and wide discretion is there upon the court to assess the quantum but that should be in consonance with the statue of the parties. Therefore in the wake of the aforesaid discussion this court is of the view that the quantum as was granted by the learned court is not justified. The total

amount paid from the date of filing till December, 2025 is Rs,5,04,000/- plus Rs.4,93,000/- totaling to Rs.9,97,000/- and this calculation is on the basis of the amount of Rs.16,000/- given to the mother as well as two minor children. Since the Opposite Party has not come before the Court the veracity of this statement cannot be tested by this court and the learned Trial Court during trial would definitely consider the total amount paid by the husband.

15. Hence the impugned order is modified to the extent that the Opposite Party no. 2 is directed to pay an amount of Rs.10, 000/- per month to the wife and Rs.6, 000/- per month each to the minor children for the present totaling to Rs.22, 000/- per month towards interim maintenance from the date of filing of the application till the disposal of the proceeding under Section 125 Cr.Pc and in default the petitioner will at liberty to put the order for execution. The Opposite Party will further pay the arrear amount accrued on the modified amount in 12 instalments within March 2027.

16. The learned Magistrate while calculating the final maintenance amount will pass necessary order of adjustment if any amount found to be paid in excess by the husband /opposite party.

17. Therefore learned Magistrate is directed to dispose of the proceeding as expeditiously as possible without granting any unnecessary adjournment to either of the parties. The other part of the order impugned shall remain unaltered.

18. The revisional application stands allowed and disposed of.

19. All parties shall act on the server copies of this judgment duly downloaded from the official *website* of this Court.

20. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]

