

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2053 of 2022

With

CRAN 1 of 2022

Gautam Mallick

Versus

Smt. Sudeshna Mallick and Anr.

For the Petitioner : Ms. Baisali Ghoshal, Adv.

For the Opposite Party No. 1 : Mr. Argha Banerjee, Adv.

Heard on : 26.08.2025

Judgment on : 03.09.2025

Ajay Kumar Gupta, J:

1. The petitioner being the husband of the opposite party no. 1/wife has assailed the Judgment and Order dated 22.04.2022 passed by the Learned Additional District & Sessions Judge, 8th

Court, South 24 Parganas in Criminal Motion No. 68 of 2020. The said Revisional application arose out of an order dated 21.12.2019 passed in Misc. Case No. 8/2019 filed under Section 127 of Code of Criminal Procedure, 1973 by the petitioner seeking thereby for modification or alteration of the order of maintenance granted at the rate of Rs. 4,000/- per month in a proceeding instituted under Section 125 of the CrPC.

2. By the impugned judgment, the Learned Judge dismissed Criminal Motion No. 68 of 2020 on contest without order as to cost, thereby affirming the order dated 21.12.2019 passed by the Learned Judicial Magistrate, 8th Court, Alipore, South 24 Parganas.

3. The background fact is that the opposite party no. 1/wife initiated a proceeding under Section 125 of CrPC claiming maintenance from the petitioner/husband and same was registered as Misc. Case No. 413 of 2012 before the Learned Judicial Magistrate, 8th Court, Alipore, South 24 Parganas.

4. During pendency of the said proceeding, the opposite party no. 1 also filed an application for interim maintenance. Upon consideration of written objection filed by the petitioner and materials on record, the Learned 8th Judicial Magistrate directed payment of Rs. 2,000/- per month as an interim maintenance

payable from the date of order with liberty to the wife to seek enforcement in accordance with law, in case of default.

5. Subsequently, vide order dated 08.01.2015, the main proceeding was disposed of ex parte, and directing the petitioner to pay a sum of Rs. 4,000/-per month as final maintenance in favour of the opposite party no. 1/wife and minor son.

6. According to the petitioner, the Learned Magistrate erred in awarding Rs. 4,000/- per month jointly for wife and minor child without applying his judicious mind to the actual income of the petitioner and proceeded on surmises and conjectures. It is the admitted position that no child was born from the wedlock yet maintenance was directed in favour of son.

7. The petitioner asserts that due to his limited means and financial incapacity, he has been unable to pay the said maintenance, being dependent on his father. Consequently, he filed an application under Section 127 of the CrPC seeking alteration and reduction of the maintenance on the ground of changed circumstances. The said application was registered as Misc. Case No. 08 of 2015.

8. Upon hearing both sides, the Learned Magistrate rejected the application. The petitioner contends that the rejection was

mechanical and without due consideration of the grounds urged or the materials placed on record.

9. Aggrieved thereby, the petitioner filed Criminal Motion No. 68 of 2020 contending that the Learned Magistrate had erroneously fixed the quantum of maintenance without sufficient evidence, and had failed to take into account the reduction in his income and the change in his financial circumstances.

10. The petitioner urged that he is employed as a casual helper (unskilled) at a workshop in New Barrackpore, earning approximately Rs. 150/- per day, excluding holidays, resulting in a monthly income of Rs. 3,000/- to Rs. 3,500/-. A salary certificate was annexed in support. However, the Learned Additional District & Sessions Judge dismissed the revisional petition, affirming the Magistrate's order, holding that no change of circumstances had been established.

11. The learned counsel appearing on behalf of the petitioner vehemently argued that neither the Learned Magistrate nor the Learned Judge considered the fact that the income of the petitioner His earning was Rs. 3,000/- to Rs. 3,500/- per month in average from his work as a casual helper (unskilled) with a workshop at New Barrackpore and to that effect salary certificate was also incorporated in the application. Therefore, this Court can interfere

with the said impugned order because the High Court has superintending power over the court below under Article 227 of the Constitution of India if courts failed to discharge its duty judicially or without going through the evidence in accordance with law.

12. It was further submitted that it was also not considered by the Learned Judge that the said impugned order was initially passed by the Learned Magistrate ex-parte allowing Rs. 4,000/- as final maintenance in favour of the wife and son though it is admitted fact that there was no issue. The Learned Magistrate should have reduced the amount when application under Section 127 of the CrPC was filed but the Learned Magistrate ignored the same and rejected mechanically the application filed by the petitioner under Section 127 of the CrPC.

13. Per contra, learned counsel appearing on behalf of the opposite party no. 1/wife vehemently opposed the prayer of the learned counsel appearing on behalf of the petitioner and further submitted that it is true that there was no issue from the said wedlock, however, it is not disputed that the opposite party no. 1/wife had filed an application under Section 125 of the CrPC praying for maintenance for herself only. She did not pray for any maintenance in favour of any child. The Learned Trial Court inadvertently recorded in the body of judgment as well as ordering

portion to pay the maintenance of Rs. 4,000/- to the wife as well as son. It was merely an inadvertent typographical mistake and that order was being corrected in an application filed by the petitioner under Section 362 of CrPC. While considering an application filed under Section 362 of CrPC, the Learned Trial Court has corrected the order keeping the maintenance amount intact in favour of the wife considering all aspect, like income, status of the petitioner and market prices and directed to pay the said amount to the wife only.

14. It was further contended that Rs. 4,000/- is a minimum maintenance amount. With this meagre amount life of a person may not be run smoothly in the present market price statics. It is the obligation of the husband to maintain his wife, when there is no her own sufficient income to maintain herself and she is residing separately from the matrimonial home since long due to reasons of matrimonial discords.

15. Counsel for the opposite party argued that the petitioner, being an able-bodied man, is capable of earning at least Rs. 12,000/- to Rs. 15,000/- per month even as an unskilled labourer, and that the plea of diminished income is a deliberate attempt to evade responsibility. Finally prayed that application should be

dismissed as the Learned Trial Court as well as Learned Additional District and Sessions Judge has rightly passed the order.

16. Heard arguments of the learned counsel for the respective parties and upon perusal of the records, this Court is of the opinion that the husband has statutory and moral obligation to maintain his wife if she is unable to maintain herself. It is admitted fact that opposite party no. 1 is the wife of petitioner and she has no independent income of her own. Initially, interim maintenance of Rs. 2,000/- per month was granted, which was subsequently enhanced to Rs. 4,000/- by order dated 08.01.2015.

17. From the records, it is clear that the opposite party no. 1 had sought maintenance for herself alone, and that the reference to a son in the ex parte order was inadvertent. The petitioner had filed a written objection but subsequently chose not to contest the proceeding, which was therefore decided ex-parte.

18. The plea of reduction in income raised under Section 127 of the CrPC has not been substantiated. Both the courts below rightly declined to accept the plea of the petitioner.

19. An able-bodied person can earn at least Rs. 400/- to Rs. 500/- per day in present market conditions, translating to Rs. 10,000/- to Rs. 12,000/- per month. The petitioner has disclosed no other liabilities and admits to being supported by his father. In

such circumstances, this Court finds no justification to interfere with the concurrent findings of the courts below. Reference may be made to the decision of the Hon'ble Delhi High Court in **Chander Parkash v. Shrimati Shila Rani**¹, wherein, in paragraph 7, the Court observed as follows:—

“7. an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child.”

20. This court relies on a judgment passed in the case **REEMA SALKAN VS SUMER SINGH SALKAN**² particularly on paragraph no. 13 thereof. Paragraph is set out herein below for convenience:

“13. Be that as it may, the High Court took into account all the relevant aspects and justly rejected the plea of the respondent about inability to pay maintenance amount to the appellant on the finding that he was well educated and an able-bodied person. Therefore, it was not open to the respondent to extricate from his liability to maintain his wife. It would be apposite to advert to the relevant portion of the impugned judgment which reads thus : (Reema Salkan case [Reema Salkan v. Sumer Singh Salkan, 2018 SCC OnLine Del 9380 : (2018) 250 DLT 16] , SCC OnLine Del paras 80-84)

¹ 1968 SCC OnLine Del 52

² (2019) 12 Supreme Court Cases 303

“80. The respondent during the cross-examination has admitted that he too is BCom, MA (Eco) and MBA from Kentucky University, USA; the respondent is a Canadian citizen working with Sprint Canada and is earning Canadian \$(CAD) 29,306.59 as net annual salary. However, he has claimed that he has resigned from Sprint Canada on 23-11-2010 and the same has been accepted on 27-11-2010 and the respondent since then is unemployed and has got no source of income to maintain himself and his family.

81. In the instant case, the petitioner has filed the case under Section 125 CrPC, 1973 for grant of maintenance as she does not know any skill and specialised work to earn her livelihood i.e. in Para 26 of maintenance petition against her husband. However, the respondent husband who is well educated and comes from extremely respectable family simply denies the same. The respondent husband in his written statement does not plead that he is not an able-bodied person nor he is able to prove sufficient earning or income of the petitioner.

82. It is an admitted fact emerging on record that both the parties got married as per Hindu rites and customs on 24-3-2002 and since then the petitioner was living with her parents from 10-8-2002 onwards, and the parents are under no legal obligation to maintain a married daughter whose husband is living in Canada and having Canadian citizenship. The plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able-bodied person having good health and physique and he can earn enough on the basis of him being able-bodied to meet the expenses of his wife. In this context, the observation made in Chander Parkash v. Shila Rani [Chander Parkash v. Shila Rani, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] by this Court is relevant and reproduced as under : (SCC OnLine Del para 7)

‘7. ... an able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in position to earn enough to be able to maintain them according to the

family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child.'

83. *The husband being an able-bodied person is duty-bound to maintain his wife who is unable to maintain herself under the personal law arising out of the marital status and is not under contractual obligation. The following observation of the Apex Court in Bhuwan Mohan Singh v. Meena [Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200 : AIR 2014 SC 2875] , is relevant : (SCC p. 357, para 2)*

'2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is

not entitled to get maintenance from the husband on any legally permissible grounds.'

84. The respondent's mere plea that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife in presence of good physique along with educational qualification."

(emphasis in original)

21. In the light of above facts and discussions, this Court does not find any merit in the present application. Accordingly, **CRR No. 2053 of 2022** stands **dismissed**.

22. **CRAN 1 of 2022** and all connected applications, if any, also stand disposed of.

23. Interim order, if any, stand vacated.

24. Let a copy of this judgment and order be communicated to the Learned Court below for information.

25. All parties shall act in terms of the copy of this judgment duly uploaded from the website of this Court.

26. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties, as expeditiously, upon compliance of all legal formalities.

(Ajay Kumar Gupta, J)