

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2556 of 2023

**Rinki Chakraborty Nee Das
Vs.
The State of West Bengal & anr.**

For the petitioner : Mr. Satadru Lahiri
Ms. Mahua Chattopadhyay
Mr. Safdar Azam

For the opposite party No.2 : Mr. Sandipan Ganguly
Mr. Debajyoti Deb
Mr. Shyamal Mondal
Mr. Somdyuti Parekh

Heard on : 08.07.2025

Judgment on : 12.09.2025

Dr. Ajoy Kumar Mukherjee, J.

1. This application has been directed against judgment and order dated 8th June, 2023 passed by learned Principal Judge, Family Court, Calcutta in Misc. Case no. 62 of 2013 whereby and where under, the court below rejected petitioner's/wife's prayer for maintenance made under section 125 of the Code of Criminal Procedure (in short Cr.P.C).

2. Petitioners case is that her marriage with the opposite party herein/husband took place on 4th August, 2012 under the Special Marriage Act, 1954. Upon registration of the Marriage the couple went back to their respective paternal home. Subsequently the husband/opposite party assured that upon return they will arrange for social marriage and the petitioner would be permanently taken to her matrimonial home. During the interim period the husband/opposite party from time to time lived together with the petitioner at her paternal home and their marriage was duly consummated and the couple also visited several places and stayed together as husband and wife. During this period the petitioner on various occasion requested the husband/opposite party and his parents to make arrangement for taking her permanently at her matrimonial home, but the husband/opposite party and his family members avoided the same on several pretexts. In the first week of August, 2013 the husband/opposite party represented that his parents are not willing to return her to her matrimonial home in Kolkata. The petitioner expressed her willingness to go to Panagarh and live there with her husband. While the petitioner and her parents insisted the opposite party and his parents to take the petitioner to her matrimonial home, the opposite party and his family members became furious and they threatened and pressurized the petitioner for mutual divorce.

3. The petitioner's further case is that in the aforesaid back ground, she lodged a written complain on 16th August, 2013. The petitioner repeatedly went to her matrimonial home at Taltala, Kolkata but the husband/opposite

party and his family members did not allow her to enter, even they refused to return her the stridhan articles.

4. Finding no other alternative petitioner preferred the instant application under section 125 of the Cr.P.C. praying for Rs. 10,000/- per month towards her maintenance along with a prayer for interim maintenance. The husband/opposite party herein appeared in the said maintenance proceeding and filed written objection against petitioner's prayer for interim maintenance. By an order dated 6th January, 2015 the trial court below was pleased to allow the petitioner's prayer for interim maintenance thereby directed the husband/opposite party to pay a sum of Rs. 4,000/- per month to the petitioner towards interim maintenance from 1st January, 2015 as well as a sum of Rs. 5,000/- towards litigation cost. The said order was assailed before this High Court being CRR no. 530 of 2015 and this court refused to interfere on the grounds stated therein. The said order passed by this High Court in CRR 530 of 2015 was again assailed before the Apex Court in SLP No. 5868 of 2015 but the said special leave petition was also dismissed by the Apex Court and thereby affirmed the order of court below.

5. During course of trial of the main maintenance preceding the petitioner adduced herself as P.W-1 in support of her contention and the opposite party/husband adduced himself as D.W-1 and also exhibited documents in order to shake the case of the petitioner. Upon recording of evidences from both the sides and also considering the affidavit of assets and liabilities submitted by both the parties and also hearing upon arguments advanced by the learned advocate appearing for the respective

parties, the court below by the impugned order dated 8th June, 2023, was pleased to dismiss the petitioner's prayer for maintenance. Thereafter the criminal proceeding initiated by the present petitioner under section 498A/506/406/114 of I.P.C ended in acquittal on the grounds mentioned in the judgement. Petitioner further case is that other proceeding being Misc Case no. 1 of 2013 as preferred by the petitioner under section 12 of the Protection of Women from Domestic Violence Act 2005 (in short PWDV Act), is pending before the learned Judicial Magistrate, 20th court, Calcutta. Another proceeding being Mat Suit no. 110 of 2013 initiated by the husband/opposite party herein praying for nullity on the ground of wilful refusal to consummate the marriage by the petitioner has already been dismissed by the said court.

6. Petitioner's further contention is that in connection with the proceeding under P.W.D.V Act being Misc. Case no. 1 of 2013, the Magistrate by an order dated 25th March, 2014 was pleased to pass an order granting interim monetary relief of Rs. 1,500/- and Rs. 3,000/- towards alternative accommodation to the petitioner under section 23 of the Act. Assailing the said order of awarding interim relief for alternative accommodation, the husband/opposite party preferred an appeal, which was dismissed on contest on 21st April, 2017. Assailing the said order the husband/opposite party preferred criminal appeal being no. 86 of 2017 which was dismissed by an order dated 2nd April, 2018. Since the husband/opposite party was not paying any maintenance the petitioner preferred an application for striking out the defence of the husband/opposite party, which was rejected by the concerned Magistrate.

Assailing the said order, the petitioner herein preferred Criminal Appeal no. 94 of 2018, which was partly allowed by the Chief Judge, City Session court, vide judgement dated 15th January, 2019.

7. The petitioner further submits that in connection with the above mentioned matrimonial suit being no. Mat suit 110 of 2013, the petitioner herein as Respondent preferred an application for alimony pendente lite of Rs. 6,000/- per month and Rs. 20,000/- as litigation cost. The Principal Judge, Family Court by an order dated 25th June, 2015 was pleased to grant a sum of Rs. 4,000/- per month as alimony pendente lite to the petitioner from the date of preferring such application and was further pleased to direct the husband/opposite party to pay further sum of Rs. 10,000/- towards litigation cost. Assailing the said order the husband/opposite party preferred civil revisional application being C.O 3602 of 2015, which was disposed of by this court by an order dated 13th June, 2016.

8. Aggrieved by the instant impugned order wife/petitioner's contention is that the order impugned was passed mechanically and arbitrarily without taking into consideration the hardship of the petitioner. While rejecting the prayer for maintenance, the court below did not consider the lifestyle and status of the husband/opposite party and liabilities as well as vagrant condition of the petitioner. Infact the court below while rejecting the prayer for maintenance of the petitioner gave a sympathetic approach towards the husband/opposite party and mis-interpreted the well settled proposition of law as to able-bodied theory, ignoring the settled proposition of law for determining the maintenance. Court below did not bother to take into consideration the object behind enacting the provision of granting

maintenance to the applicant under section 125 of the Code which provides that primary object is to give social justice to the women and to compel the husband to perform moral obligation, which he owes to society regarding his legally married wife and children. Infact the opposite party herein just to circumvent the legitimate claim of the petitioner attempted to disown the matrimonial relationship and thereby initiated frivolous litigations to frustrate the petitioner's legitimate claim.

9. Her further argument is that it has been well settled by the various observations of court that she is the legally married wife of the opposite party herein and there is nothing to show that she voluntarily deserted her matrimonial home or that she has sufficient income to maintain herself. The court below completely erred in accepting the version of the husband/opposite party who stated that he is jobless and the company where he were employed has been wound up. Even if the petitioner has small earning which according to the court below may not be sufficient to maintain herself, cannot absolve the husband/opposite party from his moral as well as legal responsibility and obligation to maintain his wife and the income of the petitioner at best could have some relevance for the purpose of determining the quantum of the maintenance she is entitled. Court below refused petitioner's prayer for maintenance on the ground that the petitioner has been earning a sum of Rs. 12,000/- and the husband/opposite party is an unemployed person but he has failed to consider that employment does not necessarily imply that the women is able to meet even the basic needs for herself. Infact the learned judge imagined the probable consequence of passing an order of maintenance in favour of the petitioner which is un-

heard of. Petitioner's further contention is that the court below also erred in recording evidence of either parties by way of an affidavit, though no such provision is available in the procedural law.

10. The contention of the husband/opposite party's counsel is that the marriage between the petitioner and opposite party was just registered and no such consent was taken from either family, which is reflected from the marriage certificate. Moreover since marriage the petitioner herein never went to her matrimonial home being wife and never spent a single night or any moment with the opposite party and as such the question of subjecting the petitioner with cruelty does not arise. The opposite party herein just put his signature on the papers and immediate after registration of the marriage both parties resumed living separately in their respective paternal home. During this time, opposite party herein called the petitioner herein on several occasion to live with him in her matrimonial house and to lead a smooth and healthy conjugal life but the petitioner did not take initiative or attention in this regard, rather ignored or avoided the opposite party to live husband and wife together to meet their marriage tie. The petitioner filed this case falsely implicating the opposite party as there is no ingredient involved as per the provision under section 125 Cr.P.C. The petitioner is a working lady and draws huge salary, which she admitted in her application. On the other hand the opposite party is now unemployed as he has been sacked from his service on and from 01.04.2014. Therefore the petitioner is able to maintain herself and to meet up her every necessary expenses of her daily life. Opposite party relied upon Judgement of Supreme Court in ***Kusum Bhatia Vs. Sgar Sethi*** (Special Leave to Appeal No. 16051 of 2017)

11. I have considered submissions made by both the parties.

12. Needless to say that in order to succeed in a proceeding under section 125 Cr.P.C. in the facts and circumstances of the present case, the petitioner is required to prove four important factors namely

(i) The petitioner is the wife of the opposite party.

(ii) Such wife is unable to maintain herself

(iii) The opposite party husband have sufficient means

(iv) He has refused and neglected to maintain his wife

13. In the instant proceeding the parties are married but they are residing separately. During the course of hearing I am also apprised that though the husband opposite party filed a matrimonial suit, seeking nullity of marriage on the ground that the marriage has not been consummated but said suit has already been dismissed and such dismissal order still stands in favour of petitioner wife.

14. Now so far as refusal and neglect part, it appears that there are allegation and counter allegation and during evidence it has practically become oath Vs. Oath. The most important part which has been highlighted during the course of argument is that the petitioner wife is a working lady admittedly having a monthly income of Rs. 12,000/-, as reflected in her affidavit of assets and liabilities, whereas the O.P./husband though is an able bodied person but is an unemployed having no monthly income. It further appears that the petitioner/wife along with the application for maintenance under section 125 of Cr.P.C. also made a prayer for interim maintenance. It further appears that the opposite party husband filed written objection against the said interim maintenance application wherein

the grounds taken by him is the same that the petitioner/ wife is a working lady and that she is capable of maintaining herself from her own income and on the contrary opposite party husband is now unemployed as he has been terminated from his service and that the petitioner wife draws a salary of Rs. 25,000/- per month from her service and that since the registration of marriage between the parties, they never resided together for a single moment as husband and wife and as such their marriage was never consummated and for which he has already initiated a matrimonial proceeding being Mat Suit no. 110 of 2013.

15. However, Trial Court considering all these objections granted interim maintenance of Rs. 4,000/- per month and litigation cost of Rs. 5,000/- at a time which order was assailed before this High Court and the High Court while disposing CRR 530 of 2015 on 2nd April, 2015 only had reduced the maintenance amount of Rs. 4,000/- to 3,000/- per month. That order was affirmed when it was assailed before the Apex Court.

16. Similarly, it appears from the order passed in connection with a proceeding initiated by the petitioner under the provision of protection of Women from Domestic Violation Act, that the Court while disposing the Criminal Appeal being no. 95 of 2018 directed the husband/opposite party to pay maintenance as directed by this High Court and also to pay Rs. 3,000/- per month for alternative accommodation. There also the husband opposite party took the same plea and his counsels submissions before the court was as follows:-

“Id. Advocate for the opposite party husband further submits that it is a fact that there are some dues regarding the payment of maintenance and her husband has already

paid Rs. 10,000/- to the wife on the last occasion and the husband was ready to pay the rest of the dues to the wife during trial before the lower court.”

17. It also appears from the order dated 25th June, 2015 passed by the Family Court in the aforesaid matrimonial proceeding, being Mat suit no.110 of 2013, wherein the petitioner filed an application for maintenance pendente lite. The plaintiff/husband took the same plea that the respondent/wife is capable to maintain herself and he himself is now unemployed and his service being terminated due to non-performance of duty, and that the marriage between the parties had not be consummated. Ld. Family court after considering submissions made by both the parties ordered to pay Rs. 4,000/- per month to the wife/defendant/petitioner towards alimony pendente lite and also a lump sum amount of Rs. 10,000/- towards expenses of proceeding. Said order of granting maintenance pendente lite was again assailed before this High court in CO 3602 of 2015 but this High Court did not interfere with the pendente lite maintenance order passed by the Family Court but only observed that the wife cannot get separate maintenance in three separate proceeding, initiated under section 125 of the Code and under the Act of 2005 as well as in the divorce proceeding and therefore, this High Court directed the trial court to consider which one is highest among the awarded amount and considering that highest amount was Rs. 4,000/- was directed to be paid by the husband to the wife.

18. It further appears that in the main application under section 125 of the Cr.P.C., in respect of which the impugned order was passed the husband opposite party adduced evidence as opposite party no.1 with

almost the same plea that presently he is unemployed jobless as he has been sacked from his job on and from 01.04.2014 and on the contrary the petitioner/wife is a working lady and draws a huge salary of Rs. 25,000/- per month from her job and that the marriage has not been consummated. In the cross examination he even admitted that the economic status of his family is higher than economic status of the father's family of his wife Rinky Chakraborty nee Das and no new fact has been incorporated in evidence which can nullify the earlier observations passed by different courts while dealing with the interim maintenance applications in the proceeding under section 125 and matrimonial proceeding seeking nullity of marriage and also in the proceeding under the Act of 2005.

19. Curiously on the background of self-same pleading, though the petitioner was awarded interim maintenance /monetary relief but by the impugned order learned Trial court rejected the wife's prayer for maintenance , making the following observation while discussed point no.4

"petitioner says that O.P. is able bodied and must be directed to pay her monthly maintenance allowance to maintain herself according to the status of the O.P. what is the status of the jobless O.P. ? he must be living at the expense of his parents and relatives. Able bodied does not mean that a persons would be making income or a decent income This is an age of equality of sexes. Orders made directing jobless persons without income to maintain his wife etc, has only resulted in filing of execution cases one after another, followed by orders of detention of O.Ps, without any corresponding benefit to the petitioner. A persons who has lost his job becomes a burden on his parents and relatives and on himself. It is the most painful experience of a person to loss his job and thrown on the streets, Experience shows that such orders directing payment of maintenance allowances are seldom executed unless some relative or other benefactor of the O.P. comes to his rescue. One of the tests for making sound order is the probability of it being executed. No useful purpose is ever served by directing a poor penniless person to maintain his wife who has at least some income. Had the wife been wholly destitute without any income may possibly be made thought its efficacy would be doubtful. I am of opinion that facts as found in this case does not justify granting the application. Petitioner should maintain herself within her income, though small, so long as O.P. does not find a job. Point is determined accordingly."

20. In evidence the opposite party husband admitted that the status of his family is higher than of his wife paternal family and the husband opposite party leading same lifestyle with his parents and his father is allegedly maintaining all his expenses. The husband opposite party adopted contradictory defence to rebut his liability. On one hand he alleged that inspite of being requested on several occasions, the wife/opposite party refused to lead conjugal rights and on the other hand he disputed the marriage on the ground that it has not been consummated. The law is well settled that the determining factor is the life style and strata which the petitioner is entitled to, if she has been at her matrimonial house and to consider whether her income of Rs. 12,000/- is sufficient to maintain same lifestyle or not. In this context nothing has been brought on record by the husband to substantiate that the petitioner is leading the same lifestyle that of her husband. In the instant case the learned Judge while refusing maintenance inspite of holding the petitioner's entitlement to get the same merely weigh him with the alleged plea of unemployment of the husband and the meagre income of the wife and thereby he completely ignored the principle of concept of equal strata and lifestyle and that the husband cannot take benefit of his own wrong or wilful decision. It is evident that the opposite party had been sacked from his job due to his default i.e. irregularity and the husband is not being the disabled person cannot remain unemployed unless he chooses to remain so and this is his wilful act/decision which does not come within the purview of not "having sufficient means" to maintain the wife. His decision to remain unemployed cannot be used as a shield against his legal obligation and also cannot be a

ground for compelling the wife to survive her hardship ignoring the lifestyle and strata of the wife, which she is entitled to.

21. In the affidavit of asset and liability the opposite party/husband did not disclose the expenses claiming to be maintained by his father and no details have been provided so that the court can be able to appreciate his lifestyle status and strata. The issue of maintenance can hardly be decided on pleadings and the court below with some amount of guess work and on the basis of scanty material which does not disclose the correct details have come to an objective assessment in favour of not granting maintenance to the petitioner/wife.

22. Cumulative appraisal of the observation made by the court below appears to be on the basis of probable consequence of passing an order of maintenances in favour of petitioner, which is un-heard of and does not come within the purview of section 125 of the Code. The discretion imbibed under section 125 of the code does not permit the court below to exercise his power or interpret the provision in a mechanical way in order to frustrate the beneficial legislation for which the said provision was introduced. The court below ignored the furtive conduct of the husband and also the life style and strata of husband. Section 125 is based on the theory of capacity to earn by an able bodied person and as such there is hardly any scope of showing leniency or adopting liberal approach towards the husband/ opposite party holding that being allegedly jobless the husband has no status or has become burden of his parents or relatives.

23. It is also well settled that mere earning of the wife does not ipso facto rendered her ineligible to get the maintenance. The object of section 125 of

the Code is to ensure sustenance of the wife at the same status and strata of the husband but not merely an animal sustenance and therefore wife's earning of Rs. 12,000/- per month cannot be a ground for refusing her maintenance specially when husband admitted that his economic status is higher. There is nothing to show that the wife is sufficiently earning to maintain herself in the same status and strata with the husband and the opposite party has not adduced any positive evidence to that effect. Suffering sentence in default of payment as a probable consequence does not relegate the husband/opposite party's responsibility to pay maintenance.

24. While saying that on the basis of self same defence of husband, different courts granted interim monetary relief to the petitioner/wife, but court below rejected her prayer for maintenance after trial on the basis of self same defence, I am not unmindful to the fact that interim order cannot have any binding effect upon final order passed after full fledged trial but at the same time, a court of competent jurisdiction cannot shirk his responsibility of doing justice by branding husband as '*poor penniless person*' and to give advice to the petitioner/ wife that '*she should maintain herself within her income so long as (opposite party) does not find a job*' admitting that her income is small and when it is admitted position that the status of husband's family is higher than the wife/petitioner family.

25. The court below had conducted the proceeding without appraising the objects and reasons and the spirit of the provision laid down under section 125 of the Code. He has disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and

he cannot avoid his obligation except on the legally permissible ground mentioned in the statute. The proceeding under section 125 Cr.P.C., is a measure of social justice and has been enacted to protect vagrant wife, though its object is never to punish the husband and such enactment falls within the constitutional mandate of Article 15(3) reinforced by Article 39 of the Constitution of India. As per law she is entitled to lead a life in the similar manner as she would have been lived in the house of her husband and that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. It is well settled, as long as the wife is held entitled to grant of maintenance within the parameters of section 125 Cr.P.C, it has to be awarded so that she can live with dignity as she would have live in her matrimonial home and she cannot be compelled to become a destitute. Since it is the obligation of the husband to maintain his wife, he cannot be permitted to take the plea that he is unable to maintain the wife due to financial constraint as long as he is capable of earning. In this context the observation made by Delhi High Court in **Chander Prakash Bodraj Vs Shila Rani Chandar Prakash**, reported in **AIR 1968 Delhi 174**, relevant portion of which may be profitably referred:-

“.....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. In the present case, as the husband has not frankly disclosed to the Court, as he ought, his allowances which he admittedly gets, the presumption would be easily permissible against him.”

26. Therefore once there is no denial of the fact that the husband is an able bodied young man capable of earning, he cannot simply deny his legal obligation of maintaining of his wife equal to the status and strata. The mere fact that the petitioner/wife is earning some amount of money to survive, since she has been allegedly thrown out of her matrimonial home, cannot be a reason to deny maintenance, which is husband's social, legal and moral responsibility

27. In view of aforesaid discussion the order impugned is not only speculative but also perverse where Court observed that "*one of the tests for making sound order is the probability of it being executed.*" The parameter laid down in support of impugned order is something unheard of and is not sustainable in the eye of law and therefore liable to be quashed. The judgment relied by the husband/opposite party in ***Kusum Vatia Vs. Sagar Shetty*** is not applicable in the present case and factually distinguishable as in that case the petitioner/ wife was admittedly a working lady with sufficient salary.

28. CRR 2556 of 2023 is allowed. The impugned order passed by the Family Court dated 8th June, 2023 in Misc. Case no. 62 of 2013 is hereby set aside. The husband/opposite party herein is directed to pay Rs. 4,000/- per month from the date of filling the maintenance application towards maintenance to the wife within 10th of each succeeding month, and the arrear amount of maintenance shall be cleared by twelve equal monthly instalments within 31st October, 2026, failing which the petitioner/wife shall be at liberty to execute the order before the executing court in accordance with law.

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.)