

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

**Present:**

**The Hon'ble Justice Ajay Kumar Gupta**

**C.R.R. 673 of 2022**

**Jolly Bera nee Saha**

**Versus**

**Provakar Bera**

**WITH**

**CRR 2572 of 2023**

**Provakar Bera**

**Vs.**

**Jolly Bera nee Saha**

**For the Petitioner** : Mr. Ramdulal Manna, Adv.  
**In CRR 673 of 2022** Ms. Manju Manna (Dey), Adv.  
**& Opposite Party** Mr. Sayan Mukherjee, Adv.  
**In CRR 2572 of 2023**

**For the Opposite Party** : Mr. Raja Bhattacharjee, Adv.  
**In CRR 673 of 2022** Ms. Marie Kundu, Adv.  
**& Petitioner in CRR**  
**2572 of 2023**

**Heard on** : 02.09.2025

**Judgment on** : 24.09.2025

**Ajay Kumar Gupta, J:**

1. Both the Criminal Revisional applications being CRR 673 of 2022 and CRR 2572 of 2023 filed under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') are taken up together for analogous disposal since both the wife and husband have challenged the judgment and order dated 08.02.2022 passed by the Learned Judicial Magistrate, 4<sup>th</sup> Court, Howrah in connection with Misc. Case No. 280 of 2001 (CIS 745/2015)/T.R. No. 35/03 dated 11.02.2003 in a proceeding filed under Section 125 of the Cr.P.C. by the petitioner/ wife.
2. By the said judgment and order, the Trial Court has allowed maintenance allowance in favour of the wife to the tune of Rs. 8,000/- per month payable by 10<sup>th</sup> day of each succeeding English Calender months from the date of filing of the application under Section 125 of the Cr.P.C., failing which the petitioner/wife shall be at liberty to proceed as per law. The amount already paid by the Opposite party/husband towards interim maintenance/other proceeding shall be adjusted with the subsequent payments.
3. Sans unnecessary details, the facts of the case are that the petitioner, Jolly Bera nee Saha and the opposite party, Provakar Bera, are legally married. Their marriage was solemnised on 04.12.1997 at Arati Sett Villa, Ramcharan Sett Road, Ramrajatala Howrah as per Hindu Rites

and Customs. The marriage was a registered one. At the time of marriage, the parents of the petitioner gave gold ornaments, furniture and other valuable household articles, including cash amounting to Rs. 70,000/-. After marriage, they lived at the matrimonial home and out of their wedlock, they were blessed with one male child on 07.10.1998 at B.R. Singh hospital at Sealdah.

4. It is the case of the petitioner/wife that from the very inception of marriage, not only was she subjected to physical and mental abuse by her husband and his family members, but her husband was also involved in an illicit relationship with another lady.
5. After the child's birth, neither the opposite party/husband nor any of his family members undertook any care. It was also alleged that the opposite party/husband assaulted the petitioner/wife on numerous occasions. She was also not provided with proper medical care when she was pregnant.
6. Whenever the petitioner protested against her husband's illicit relationship, infuriated, he would threaten the petitioner with dire consequences, and finally, on 19<sup>th</sup> March, 1999, she was brutally tortured. She was, ultimately, driven out of her matrimonial home on 20<sup>th</sup> March, 1999, along with her baby. She was compelled to take shelter at her parental home at Jagacha, Howrah and is still residing thereat.

7. The petitioner, finding no alternative, filed a suit for divorce under Section 13 of the Hindu Marriage Act before the Learned District Judge, Howrah, being MAT Suit No. 252/1999. In the said proceeding, interim maintenance @ Rs. 3,000/- per month was awarded for herself and the child.
8. The amount of maintenance awarded by the Learned Judge in favour of the Petitioner was insufficient. She further filed an application under Section 125 of the Cr.P.C. on 21.08.2001. Earlier, she prayed for less maintenance, but subsequently, during adducing evidence, she prayed for maintenance of Rs. 8,000/- per month for herself and Rs. 7,000/- per month for their child, claiming she has no income of her own to maintain them. The opposite party neglected to maintain them in spite of his sufficient income from his service.
9. The opposite party/husband contested the said Matrimonial proceeding, as well as the maintenance application, denying and disputing all the allegations levelled against him and his family members and further contended that she is not entitled to get any maintenance allowance from him since she herself left the matrimonial home, deserting him. She is an educated lady with an educational qualification of M.A., B.A. He further contended that he is ready to lead a conjugal life with his wife, and prays for dismissal of the application under Section 125 of Cr.P.C.

10. The learned counsel appearing on behalf of the petitioner/wife vehemently argued and submitted that despite filing an affidavit of assets and liabilities, the Learned Trial Court allowed a minimum sum of Rs. 8,000/- per month as maintenance amount in favour of the petitioner/wife without granting any maintenance towards her child till the date of his majority, though it ought to have been awarded at least Rs. 13,000/- per month to them, considering the total actual income of the husband of Rs. 40,172/-. The husband has no other liability, as no one is dependent upon his income.
11. It was further submitted that the maintenance amount should be reasonable so that she can maintain herself and the child, considering the income, liability, position and standard of living of the opposite party/husband. The same was not considered by the learned Magistrate while awarding maintenance, and he erred by awarding only a sum of Rs. 8,000/- per month without any cogent and sufficient reasons. The said amount was awarded without applying a judicious mind or passed whimsically and capriciously. Therefore, the amount should be enhanced to at least Rs. 13,000/- per month as a maintenance amount, otherwise it would be very difficult to survive these days.
12. Learned counsel finally submitted that the Learned Trial Court further did not consider or allow the maintenance amount towards

the child till he attained majority. Initially, a sum of Rs. 1000/= was allowed as interim maintenance in favour of the child, but thereafter, it was ignored.

13. Per contra, the learned counsel appearing on behalf of the opposite party/husband vehemently opposed the prayer and submitted that she is not at all entitled to any maintenance amount. She herself left the matrimonial house without any rhyme or reason. The Opposite party/husband still wants to lead a conjugal life with her. An interim maintenance was allowed by the learned Magistrate to the tune of Rs. 2,000/- for herself and Rs. 1,000/- for the child on 25<sup>th</sup> February, 2003. Rs. 3000/- was allowed by the Learned judge in a Matrimonial Suit. He is paying the said maintenance amount to her without fail.
14. The learned Court below rightly considered that the minor child has now become an adult, and the income of the husband was less at the time of filing the application, but at the time of final disposal of the application, the Trial Court, however, awarded the same and similar maintenance amount Rs. 8000/- per month from the very beginning i.e. the date of filing application till date, without applying judicial mind. Furthermore, the petitioner/wife did not disclose the actual fact that she had her own income to maintain herself. She is an educated lady and could earn income to maintain herself.

15. Learned counsel further submitted that the petitioner/wife has not come up before this Court with clean hands and further suppressed the material facts of another child having a different name and date of birth. She did not disclose the actual facts regarding her income and liabilities in her affidavit of assets and liabilities; she suppressed everything. Only on such suppression of fact, she is not entitled to get any maintenance amount. Therefore, the impugned order under challenge is illegal, arbitrary and completely non-application of a judicious mind on the facts and circumstances of the present case; therefore, the same is liable to be interfered with by this Court.
16. Having heard the submissions on both sides and on perusal of the materials available on the case record, as well as the judgment passed by the Learned Trial Court, this Court finds that the petitioner/wife and her child are residing separately in her parental home. It is also not disputed that a divorce suit is pending between the parties. So, there is less scope of leading their conjugal life as desired by the Opposite party, although he wanted to reside with her. It is a totally independent decision of the Petitioner/wife; no one can force her. Admittedly, she has been residing separately since 20.03.1999, and almost 26 years have elapsed.
17. It appears from the materials available on the record that their marriage was not disputed by the opposite party/husband. It is also

admitted facts that the male baby was born at B.R. Singh Hospital, Sealdah, on 07.10.1999 from the said wedlock, and now he is residing with her wife.

18. From the evidence, it also transpires that she was allowed maintenance to the tune of Rs. 3000/- for herself and her child in a matrimonial suit, and further Rs. 2000/- for herself and Rs. 1000/- per month for her child as interim maintenance in the proceeding pending under Section 125 of the Cr.P.C vide order dated 25<sup>th</sup> January, 2003.
19. It also appears from the record that the father of the opposite party/husband, is no more. However, his mother is alive. She is receiving a widow's pension as his father was an employee of a railway.
20. It has also come on record that the opposite party/husband is an employee of Eastern Railway in Store Department as a Chief Office Superintendent and from the affidavit of assets and liability filed by him dated 2<sup>nd</sup> February, 2022, indicates his total income is shown as Rs. 40,172/- though he claimed that there are 4 persons, who are dependent upon him without disclosing any reasons. They are Smt. Namita Pakhira (Sister), Miss Priyanka Pakhira (Neice), Smt. Rekha Bera (Widow Aunt) and Smt. Shasti Bej (Parental Aunt).

21. It is also not disputed between the parties that their child became a major long back, and the Trial Court finally allowed maintenance allowance to the tune of Rs. 8,000/- per month in favour of the petitioner/wife only as aforesaid.
22. The Learned Trial Court also directed that the amount already paid by the opposite party/husband towards interim maintenance and other proceedings shall be adjusted with the subsequent payments. The amount of Rs. 8,000/- per month is the final amount of maintenance from the date of filing of the application for maintenance, including the maintenance amount allowed in the Matrimonial suit.
23. In the present case, the question of residing together as husband and wife does not arise since there have been matrimonial discords between the two parties for a long period, and a matrimonial suit is also pending between them for divorce. The opposite party failed to satisfy the Trial Court that she has her own income to maintain herself, and as such, she is not entitled to get any maintenance. She has been residing separately since 20.03.1999. It has not come on record that she has her own income to maintain herself.
24. The Learned Trial Court has discussed regarding her entitlement to maintenance in detail in the aforesaid judgement and order. This Court does not prefer to repeat the same as there is no dispute that

she is residing separately and she is no her own income to maintain herself. She has also disclosed in her assets and liabilities supported by an affidavit. Now the question arises as to what should be the actual maintenance allowance.

25. From the affidavit of assets filed by the opposite party/husband, it clearly transpires that his income was Rs. 40,172/- in the year 2022. He has claimed that his income was Rs. 14,000/- in the year 2001. During examination and cross-examination, the petitioner/wife herself deposed that her husband's salary was Rs. 17,000/- per month at the time of filing the application. It is contended that the Petitioner earns Rs. 26,622/- per month and she has claimed Rs. 8,000/- for herself and Rs. 7,000/- for her child per month, considering the price of the commodities, the status and standard of living of her husband. The husband has failed to prove any income of the petitioner/wife.
26. On the other hand, on scrutiny of the affidavit of assets and liabilities filed by the Opposite party, it reveals that he earned Rs. 40,172/- per month. Initially, he was an employee of Eastern Railway but, subsequently, he superannuated from his service, and at present, his earning is Rs. 34,360/- as pension after retirement, including other income Rs. 6,052/-, it comes to a total earning of Rs. 40,172/- per month. It is true that there is no straight-jacket formula to calculate

the maintenance amount. However, there should be a reasonable maintenance allowance considering the present condition of the market prices of the commodities, the total income of the husband, the standard of living maintained by the husband, etc.

27. The opposite party is stated to have other dependents upon him as aforesaid. However, this court is not convinced by the contention of the opposite party that there are others dependent on his income, as they never come within the definition 'family'. Even his mother gets family pension as a widow after the death of her husband. There are no other liabilities upon the husband, save and except his wife at present.
28. Considering the above facts and circumstances and the settled position of law that the maintenance amount must be reasonable and realistic considering the financial capacity, actual income, standard of living and reasonable expenses for his over maintenance and other liabilities vis-a-vis the sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.
29. Considering the situation of the parties and the earlier and present income of the Opposite party, it would be appropriate to fix the maintenance amount to the tune of Rs. 5,000/- per month for the wife from the date of filing application till January, 2022 and Rs. 3000/= per month for minor son from the date of filing application till

attaining his majority and thereafter Rs. 12,000/- per month including the amount already awarded in the Matrimonial suit. The said amount would be adjusted with the maintenance allowance awarded during the pendency of the application and the matrimonial suit, which has already been paid. The amount of maintenance as aforesaid awarded by this Court would be just and reasonable at this stage.

30. Accordingly, **CRR 673 of 2022** and **CRR 2572 of 2023** are disposed of with the aforesaid modifications. Connected applications, if any, are also, thus, disposed of.
31. Let a copy of this Judgment be sent to the Learned Court below for information.
32. Interim order, if any, stands vacated.
33. Parties shall act on the server copies of this Judgment uploaded on the website of this Court.
34. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

**(Ajay Kumar Gupta, J)**