

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 3485 of 2022

**Mamta Singh
Vs.
Sri Ajoy Singh**

For the petitioner : Mr. Arindam Sen
Mr. Sourav Basu

For the opposite party : Mr. Pawan Kumar Gupta
Ms. Sofia Nesar
Mr. Santanu Sett
Mr. Sankha Subhra Chaky

Heard on : 08.08.2025

Judgment on : 18.11.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Challenging the legality and impropriety of the order dated 27th July, 2022 passed by learned Judicial Magistrate 3rd Court Hooghly, in connection with M. Ex. Case No. 132 of 2016 (arising out of MC case no. 167/2002) the petitioner has preferred the instant application.

2. Petitioners counsel Mr. Sen submits that the marriage between the petitioner and the opposite party was solemnised on 02.05.1995 and they are blessed with a female child namely Araika Singh who was born on 20th April, 1997. Petitioners further case is that thereafter she was subjected to physical and mental torture and was driven out from the house of the opposite party herein in the month of May 2000 and her further allegation is opposite party wilfully refused to maintain both the petitioner and her minor daughter Araika Singh and for which she initiated aforesaid proceeding being MC case no. 167 of 2002.

3. Learned Trial Magistrate by an order dated 26th April, 2004 directed the opposite party to pay a sum of Rs. 1500/- for the petitioner and Rs. 1500/- for the minor daughter totalling a sum of Rs. 3,000/- per month w.e.f. date of filing of the maintenance application i.e. 19.09.2002.

4. Being aggrieved by the said order, the opposite party herein filed a Revisional Application being Criminal Motion no. 110 of 2004 and the Revisional Court disposed of the said Criminal Motion no. 110 of 2004 by reducing the maintenance amount for the daughter to the extent of Rs. 1200/- per month and directed the opposite party to continue to pay such revised maintenance amount w.e.f. 26th April, 2004.

5. Thereafter the petitioner herein filed an application under section 127 of the Code of criminal Procedure for enhancement of the quantum of maintenance which gave rise to Misc. Case no. 2 of 2009. The Trial Court by an order dated 25th August, 2025 disposed of the said Misc. Case no. 2 of 2009, directing the opposite party herein to pay a sum of Rs. 2,500/- each per month to the petitioner and her the then minor daughter Araika Singh

from the date of the passing of the said order i.e. 25.08.2015. The said order dated 25.08.2015 was assailed before the Revisional Court who by a judgment and order dated 10.03.2016 was pleased to enhance the quantum of maintenance to Rs. 7,000/- per month for each of the petitioner and for her the then minor daughter and the order of enhancement was given effect from the date of filing of the petition under section 127 of the Code.

6. Thereafter the opposite party herein filed a Revisional Application before this High Court challenging the legality and validity of the said order dated 10th March, 2016 passed by the Revisional Court but said Revisional Application stood dismissed as not pressed by an order dated 3rd December, 2019. Thereafter the petitioner herein filed application under section 128 of the Cr.P.C vide instant MC Execution Case no. 132 of 2016 so as to put the arrear amount in execution calculating on and from 31.03.2009 to 28.02.2015 in terms of the order dated 10.03.2016 which is still pending for final adjudication, claiming *interalia* for realization of total arrear amount of maintenance to the tune of Rs. 8,23,600/- in respect of the petitioner and her daughter and in connection with the execution case time to time the opposite party herein paid altogether a sum of Rs. 4,92,500/- against the total arrear amount of Rs. 8,23,600/-

7. However on 24.08.2022 the opposite party herein filed an application before the executing court praying *interalia* for refund/adjustment of the purported excess amount paid and to stay the realization of arrear amount of maintenance in respect of the said daughter since she had attained majority. Learned court below by the impugned order stayed the process of realization of arrear maintenance in respect of the daughter until the matter

in question regarding the date of attainment majority of said daughter Araika Singh is decided by a proper forum.

8. Being aggrieved by the said order learned Counsel for the petitioner submits that the said minor daughter Araika Singh was born on 20.04.1997 and as such she attained majority on 20.04.2015 and in the instant execution case the arrear amount was asked to be realized from the opposite parties for both the petitioner and her said daughter for a period on and from 31.03.2009 to 28.02.2015, during which period admittedly said Araika Singh was a minor and was very much entitled to get maintenance from the opposite party herein, being her father and the court below made a grave mistake by staying the execution case so far as the execution of the arrear maintenance qua the daughter Araika Singh is concerned on an erroneous ground of her attaining majority without considering her date of birth.

9. Her further case is that the certified copy of date of birth certificate of said Araika Singh is admissible in evidence and is of unimpeachable in nature and can be taken into consideration while adjudicating the issue. Her further contention is the stay order passed by the court below in connection with the said daughter is beyond the scope of his authority and not in conformity with the applicable legal principles and therefore is liable to be interfered with by this High Court.

10. Mr. Pawan Kumar Gupta learned Counsel appearing on behalf of the opposite party submits that the parties have only one daughter whose name is Mita Singh @ Silky who was born on 19th April, 1996 but the petitioner herein is claiming that the name of the daughter is Araika Singh who was

allegedly born on 20.04.1997. His further contention is that the entire amount of arrear maintenance has been paid and on the contrary due to manipulation of date of birth shown by wife in a different name in the birth certificate extra maintenance for one year has been realised. In support of his claim in respect of the name and date of birth of their daughter which is Mita Singh @ Silky who was born on 19th April, 1996 Mr. Gupta relied upon

- (i) FIR/written complaint filed by wife petitioner on 11.01.2001 where it has been mentioned that their daughter Mita @ Silky was 4 ½ years at that point of time which indicates that she was born in 1996.
- (ii) In the interim maintenance application dated 19th September, 2002, the petitioner /wife stated that the name of the daughter is Silky Singh @ Mita Singh and her age is 6 years plus at para 5 of the said Application which also indicates that the daughter was born in the year 1996.
- (iii) In her execution application filed on 02.06.2004, she has mentioned that the name of the daughter is Silky @ Mita Singh.

11. Accordingly Mr. Gupta argues that from the petitioners own documents which has been made part of her instant application, the name of their daughter and her age is clearly manifested. Therefore the birth certificate relied by the petitioner disclosing their daughter's name as Araika Singh alleged born on 20.04.1997 is not trustworthy. Moreover the said certificate was obtained in the year 2014 from Bandel Gram Panchayat, though the maintenance case was filed in the year 2002 and as such there is every reason to believe that said birth certificate has been obtained by the

petitioner later on in a manipulated way without disclosing Hospital details in the birth certificate. He further submits that original birth certificate of Mita Singh @ silky issued by Adisaptagram Panchayet has been seized by the police during investigation. Therefore, since their said daughter has attained majority in the year 2014/2015, Revisional Application filed on behalf of major daughter by the mother/petitioner is also not maintainable. Accordingly Mr. Gupta prayed for dismissal of the instant application.

12. Having heard learned counsel for both the parties, there appears to be no dispute that they are blessed with a girl child. Only dispute is about the name and date of birth of that girl child. While husband/opposite party claims her name and date of birth as Mita Singh@ Silky who was born on 19.04.1996, on the other hand wife petitioner's claim is their daughter namely Araika Singh was born on 20.04.1997. Therefore according to opposite party/husband/father their daughter attained majority on 20.04.2014, therefore he has paid excess amount of maintenance to his daughter which is either refundable on adjustable with future maintenance against which wife /petitioner has raised serious objection.

13. Section 125 of Cr.P.C. provides for maintenance to the wife and legitimate or illegitimate minor children, as well as his legitimate or illegitimate child (not being married daughter) who though has attained majority but by reason of any physical or mental abnormality or injury unable to maintain itself. In the instant proceeding it is nobody's case that child concerned is suffering from any physical or mental abnormality, even after attaining majority. Therefore, there is nothing perverse in the Trial Courts finding that the daughter would get maintenance, so long she does

not attain majority. Now the conflict between the parties is whether that female child is entitled for maintenance from her father/opposite party under section 125 Cr.P.C. till 20.04.2014 or till 21.04.2015.

14. In this context trial court has rightly come to a finding that such forum is not appropriate to deal with the issue as to which birth certificate of said female child is genuine. Section 20(3) of the Hindu adoption and maintenance Act provides that an unmarried daughter unable to maintain herself out of her own earning or property is entitled for maintenance from her father irrespective of her age. However, section 125 Cr.P.C does not provide for maintenance to a major daughter, even if she is unmarried.

15. In this context it is also needs to be mentioned that referring section 29 of Hindu Marriage Act and section 20(3) of Hindu Adoption & Maintenance Act, A Division Bench of Himachal Pradesh High Court while disposing ***Cr. Revision (FC) No. 49 of 2024 (Rishita Kapur & another Vs. Vijay Kapur & Another)*** recently held on 12.09.2025 that in case father has paid maintenance to child even after attaining the age of majority, even then, father shall not be entitled to recover the same or adjust it against maintenance payable to either of child or of wife, because a moral obligation and duty as a father is to ensure maintenance to his children, particularly when they are at the verge of completing their education as any order to refund the amount paid in excess to the children would hamper the future prospect of the children.

16. However in the instant case opposite party/father's specific contention is his daughter Mita Singh @ Silky is employed and having income of her own at present. Having considered the facts and circumstances of the case

and also considering the fact that primarily mother is the best person to say about the date of birth of her child, so the date of birth supplied by the mother i.e. 20.04.1997 shall be taken as correct for the time being for the purposes for determination, adjudication and realization of maintenance amount or for adjudicating any other dispute under chapter IX of Cr.P.C., keeping open the controversy about daughter's actual date of birth for adjudication by an appropriate Bench in an appropriate proceeding. If it could be proved that daughters date of birth is 19.04.1996 or any previous date to 20.04.1997 and thereby any excess amount is found to be paid by the opposite party/father towards maintenance, he will be at liberty to realise said amount from said daughter and not from petitioner/mother, if she is found to have sufficient means to repay.

17. CRR 3485 of 2022 thus stands disposed of.

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.)