

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

**BEFORE:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 3494 of 2022

**Amit Kumar Singh
Vs.
Pushpa Singh & Anr.**

For the Petitioner : Mr. Asis Bhattacharyya

For the Opposite Parties : Mr. Atis Kumar Biswas
Mr. Amit Singh

Hearing Concluded on : August 29, 2025

Judgment on : September 12, 2025

UDAY KUMAR, J.: –

1. This Court, in its exercise of revisional jurisdiction under Sections 401 and 482 of the Code of Criminal Procedure, 1973, has been called upon to examine the legality and propriety of the order dated 18.06.2022, passed by the Learned FTC-I Judge, City Sessions Court, Kolkata. The said order, arising from Criminal Appeal No. 108 of 2020, set aside an *ex-parte* order of the Learned Metropolitan Magistrate in a proceeding under the Protection of Women from Domestic Violence Act, 2005 (D.V. Act).
2. The petitioner, the husband, challenges the order of the Appellate Court on the ground that it erroneously set aside the Magistrate's order and remanded the matter for a fresh trial, thereby causing him prejudice and ignoring his factual defences.

3. The matrimonial relationship between the petitioner, Amit Kumar Singh, and the opposite party no. 1, Pushpa Singh, is admitted. They were married on 11.04.2016 and have a male child from the wedlock.
4. It is an undisputed fact that the petitioner and the opposite party No. 1 were married on 11.04.2016 and have a male child. The wife-initiated proceedings under Section 12 of the D.V. Act, seeking various reliefs, including monetary relief, residence orders, and the return of her stridhan. The Learned Magistrate, however, in his *ex-parte* order dated 16.09.2020, only granted maintenance of Rs.10,000/- and compensation of Rs.50,000/-, without addressing the other prayers.
5. The wife, being aggrieved, preferred an appeal under Section 29 of the D.V. Act. The appellate court, without entering into the merits, passed the impugned order, setting aside the Magistrate's order and remanding the case. This remand was based on two grounds: first, the Magistrate's failure to direct the parties to file an Affidavit of Disclosure of Assets and Liabilities, as mandated by the Hon'ble Supreme Court in *Rajnesh v. Neha* [(2021) 2 SCC 324], and second, the failure to address all the prayers sought by the wife.
6. Mr. Asis Bhattacharyya, learned counsel for the petitioner, has vehemently argued that the remand order is legally untenable. He has contended that the wife voluntarily abandoned the matrimonial home and is, therefore, not entitled to maintenance.
7. Mr. Bhattacharyya has further submitted that the quantum of maintenance was arbitrarily fixed without considering his financial

constraints, as his net monthly salary is only Rs.24,500/-, and he has an aged mother to support.

- 8.** Mr. Asis Bhattacharyya finally contended that the appellate court ought to have decided the maintenance order instead of remanding the matter.
- 9.** In rebuttal, Mr. Atis Kumar Biswas, the learned counsel for the opposite party No. 1 has submitted that the impugned order is just and proper. He highlighted that the petitioner has repeatedly failed to comply with court orders, using multiple revisional applications to evade his financial obligations. Mr. Biswas further submitted that the appellate court, in its wisdom, rightly exercised its discretion to ensure a fair and comprehensive determination of all reliefs, consistent with the dictum of the Hon'ble Supreme Court.
- 10.** This Court is seized of the question as to whether the Learned Appellate Court committed any material illegality or jurisdictional error in passing the order of remand.
- 11.** The scope of this Court's power under Section 401 Cr.P.C. is narrow, limited to correcting a manifest error of law or jurisdiction. It is not an appellate power to re-appreciate evidence. The inherent power under Section 482 Cr.P.C. is to be exercised sparingly to prevent an abuse of the process of law or to secure the ends of justice.
- 12.** The impugned order is not a final order on the merits; it is a procedural order of remand. An Appellate Court's power to remand a case for a fresh decision is well within its jurisdiction under the D.V. Act, read with the Cr.P.C.

- 13.** The core reason for the remand is fundamental. The Appellate Court correctly found that the Trial Court's order suffered from a foundational legal infirmity, namely, the failure to secure the mandatory affidavits as per the binding precedent in *Rajnesh v. Neha (supra)*. The Hon'ble Supreme Court explicitly held that the Affidavit of Disclosure of Assets and Liabilities "*shall be filed by both parties in all maintenance proceedings, including pending proceedings.*" The Learned Magistrate's failure to secure these affidavits was a fundamental legal flaw. The Appellate Court's decision to remand the matter to cure this defect was therefore not only justified but necessary to ensure a fair and lawful adjudication.
- 14.** A further flaw was the Trial Court's omission to address the wife's prayers for residence and the return of her stridhan. A remand to cure these defects is not only justified but necessary to ensure a fair and lawful adjudication.
- 15.** Regarding the factual defences raised by the petitioner—concerning the wife's character and her alleged voluntary departure—these are contentious issues that require evidence and cross-examination. These matters are to be determined by the trial court. The remand, in fact, provides the petitioner with a full and fair opportunity to present his evidence and cross-examine the opposite party on his very allegations.
- 16.** This Court is, therefore, of the view that an Appellate Court's order remanding a case to ensure compliance with a mandatory procedural law, as laid down by the Hon'ble Supreme Court, is a valid exercise of its

jurisdiction. To interfere with such an order would be a misapplication of revisional powers. The petitioner's arguments appear to be an attempt to use the legal process for attrition and to delay his financial obligations. The Appellate Court's decision was legally sound and served the highest interests of justice.

17. In conclusion, this Court finds no merit in the criminal revision petition.

The Appellate Court exercised its discretion judiciously and in accordance with the law, and there is no perversity or illegality in the impugned order. The revisionist has failed to make out a case for interference.

18. Consequently, the following order is passed:

- i) The Criminal Revision Petition (CRR 3494 of 2022) is dismissed.
- ii) The impugned order dated 18.06.2022 passed by the Learned FTC-I Judge, City Sessions Court, Kolkata, in Criminal Appeal No. 108 of 2020, is hereby affirmed.
- iii) The petitioner is directed to appear before the Learned Metropolitan Magistrate, 12th Court, Calcutta, on the next date of hearing and participate proactively in the fresh inquiry in Misc. Case No. 7 of 2019. He shall file his Affidavit of Assets and Liabilities as required under the law.
- iv) The Learned Trial Court is requested to endeavor to conclude the fresh inquiry and pass a reasoned order on all prayers, expeditiously and preferably within the timeframe stipulated in the remand order.

- 19.** Interim order/orders, if any, stand vacated.
- 20.** There shall be no order as to the cost.
- 21.** All connected applications, if any, are disposed of.
- 22.** The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.
- 23.** Case Diary, if any, be returned forthwith.
- 24.** Let a copy of this judgment be forthwith transmitted to the concerned Trial Court for information and necessary action.
- 25.** Parties are to act on the server copy of this order.
- 26.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)