

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

C.R.R. No. 4527 of 2024

Saikat Das

Versus

The State of West Bengal & Anr.

Mr. Satadru Lahiri

Mr. Yusuf Hossain

Mr. Safdar Azam

Mr. Syed Wasim Faruque

Mr. Jyotirmoy Talukder

.....For the petitioner.

Mr. Anniruddha Bhattacharya

Ms. Rajyashree Mukherjee

Ms. Swagata Samanta

.....For the Opposite Party No. 2.

Hearing Concluded On : 20.03.2025

Judgment on : 27.03.2025

Krishna Rao, J.:

1. The petitioner has filed the present revisional application under Section 482 of the Code of Criminal Procedure, 1973 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 challenging the judgment and order dated 6th September, 2024 passed by the Learned Additional Principal Judge, Family Court, Calcutta in connection with Misc Case No. 29 of 2016 under Section 125 of the Code of Criminal Procedure, 1973 wherein the Learned Judge directed the petitioner to pay monthly maintenance of Rs. 7000/- per month to the respondent wife and Rs. 8000/- per month to the son in total Rs. 15,000/- month by month within 10th day of each month with effect from the month of September, 2024 and also directed the petitioner to pay Rs. 10,000/- being cost of the proceeding to the respondent wife.
2. Before filing of an application under Section 125 of the Code of Criminal Procedure, 1973 for grant of maintenance for herself and her son, the respondent no.2 wife had filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the Learned Metropolitan Magistrate, 20th Court, Calcutta being Misc Case No. 43 of 2015. The said application was duly contested by the petitioner husband and on 11th March, 2020, the application filed by the respondent wife was dismissed.
3. Being aggrieved and dissatisfied with the judgment dated 11th March, 2020, the respondent wife has preferred an appeal before the Learned

Additional District and Sessions Judge, 2nd Fast Track Court being Criminal Appeal No. 110 of 2021 and the said appeal was dismissed on 22nd November, 2023.

4. In the Domestic Violence case, the respondent wife had also filed an application for praying for an interim order under Section 20(d) of the said Act and the Learned Magistrate by an order dated 3rd March, 2016, directed the petitioner to pay a sum of Rs. 5,000/- to the wife and Rs. 5000/- to the minor son total in Rs. 10,000/- per month.
5. In the maintenance case also, the respondent wife has filed an application for grant of interim maintenance. When the application for grant of interim maintenance was taken up for hearing on 30th November, 2021 by that time, the application filed by the respondent wife under the Protection of Women from Domestic Violence Act, 2005 was dismissed and accordingly, the Learned Magistrate by an order dated 30th November, 2021, directed the petitioner to pay interim maintenance of Rs. 4000/- to the wife and Rs. 3000/- to the minor son in total Rs. 7000/- per month till the disposal of the case.
6. Mr. Satadru Lahiri, learned Advocate representing the petitioner submits that in the maintenance proceeding, the respondent wife has filed her affidavit of assets and liabilities suppressed the information about her income, assets and other material information which were relevant for determining her entitlement of maintenance and quantum of maintenance.

- 7.** Mr. Lahiri submits that before filing an application for grant of maintenance, the respondent wife has filed an application under the Domestic Violence Act, 2005 and also obtains an interim order but the said fact was not disclosed in the application under Section 125 of the Code of Criminal Procedure, 1973. He submits that on oath, the respondent wife stated that “no such proceeding is pending between the parties”.
- 8.** Mr. Lahiri submits that in the Domestic Violence proceedings, the respondent wife and her mother adduced their evidence and during the evidence, they made several admissions which show that the respondent wife was never subjected to torture or driven out her matrimonial home on 31st January, 2015.
- 9.** Mr. Lahiri submits that the respondent wife is working as Commission Agent of National Insurance Company Ltd. and her name is duly registered. The petitioner has proved the said documents by examining the officials of the Insurance Company and the documents were also exhibited but the Learned Judge has not considered the said documents.
- 10.** Mr. Lahiri submits that the petitioner has also proved that the respondent wife is having landed property and the respondent wife has admitted the same and the documents were exhibited to establish that the respondent wife is also having landed property but the Learned Judge has also not considered the said documents.

- 11.** Mr. Lahiri further submits that the petitioner has also proved that the respondent wife is working as private teaching and to prove the same, the petitioner has exhibited the Registration Form for admission of her son wherein she has mentioned her occupation as Private Teaching.
- 12.** Mr. Lahiri further submits that the petitioner has also filed an application before the Learned Principal Judge, Family Court at Calcutta being Case No. 3 of 2015 under Section 25 of the Guardians and Wards Act, 1890 in which the respondent wife has filed an objection wherein the respondent wife has admitted that “she went to her parent’s house accompanied by her minor son on 31st January, 2015”. He further submits that in the said objection, the respondent wife has also stated that for the treatment of her minor son, the respondent wife is capable to maintain her minor son with regard to such disease.
- 13.** Mr. Lahiri further submits that the petitioner has adduced evidence by calling the officials of the National Insurance Company Limited wherein it is proved that the respondent wife was appointed as Agent of the National Insurance Company Limited and she is working as Agent in the said Insurance Company. He further submits that the respondent wife has filed the affidavit of assets but has not disclosed regarding the details of her ancestral property, bank details and her employment as such the respondent wife has filed false affidavit of assets. He submits that during her cross-examination, she has admitted that she used to work as a private tutor before and after marriage. He submits that in

the cross-examination, she has also admitted in the Registration Form of her son, it is recorded that she is working as Private Teaching and she has also admitted that her name has been recorded as Agent in the National Insurance Company Limited. He further submits that during the cross-examination, she has also admitted that she is the co-owner of a dwelling house with her brother and mother.

14. Mr. Lahiri further submits that during the cross-examination of P.W.2 i.e. the mother of the respondent wife in the Domestic Violence case, has categorically stated that she used to go to the house of her son-in-law and they also used to come at their house and she has given several things to her daughter on her reception but not on demand. She has further stated that after her marriage, no demand of dowry was made.
15. Mr. Lahiri has relied upon the Judgment in the case of ***Deb Narayan Halder vs. Anushree Halder*** reposed in ***(2003) 11 SCC 303*** and submitted that the enquiry by the court is restricted to the evidence on record and the case pleaded by the parties. It is not permissible to the court to conjecture and surmise and make out a third case not pleaded by the parties. He submits that in the present case, the Learned Judge without considering the evidence available on record has passed judgment making out third case.
16. Mr. Lahiri has relied upon the Judgment in the case of ***Rajnish vs. Neha & Anr.*** reported in ***(2021) 2 SCC 324*** wherein the Hon'ble

Supreme Court held that there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income, thus it is become necessary to lay down the procedure to streamline the proceedings, since a dependent wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

17. *Per contra*, Mr. Aniruddha Bhattacharya representing the respondent no. 2 wife submits that in the application filed under Section 125 of the Cr.P.C., the respondent wife has categorically stated that her husband has started such systematic torture upon her without any rhymes and reasons as such due to unbearable torture, the respondent wife was compelled to leave her matrimonial home. He submits that on 31st January, 2015, the husband and his parents drove out the respondent wife and her minor son from her matrimonial house and since then the respondent wife is residing at her father's house.

18. Mr. Bhattacharyya submits that the petitioner husband in his written objection has admitted that he employed in HDFC Bank. He submits that in the affidavit of assets, the petitioner has stated that he is B.Com (Hons.) and Post Graduate in Information Technology. He submits that in the affidavit of assets, the petitioner has stated that the general monthly expenses is Rs. 22,000/- and the mother and father are dependents upon him and medical expenses is Rs. 5,000/- per month.

In the affidavit of assets, he has stated that his monthly income is Rs. 7,000/- but he is paying the car loan of Rs. 6917/- and monthly expenses is Rs. 22,000/- which is not believable. He submits that the petitioner declared his monthly income as Rs. 7000/- but he has shown the expenditure of Rs. 28,917/-.

- 19.** Mr. Bhattacharyya submits that the petitioner to prove the income of the respondent wife has examined the two officials of the National Insurance Company Limited but none of the witnesses have stated anything with regard to the income of the respondent wife. He submits that the petitioner failed to prove that the respondent wife is having any income.
- 20.** Mr. Bhattacharyya submits that the respondent wife during her cross-examination has categorically stated that she had been driven away from her matrimonial home on 31st January, 2015. He submits that during the examination of the petitioner husband, he has categorically stated that he used to work previously in HDFC Bank and has left job by giving his resignation on 4th May, 2019. He also admitted that his monthly salary was Rs. 31,750/- but at present he was engaged in a private tuition and he is earning only Rs. 9,500/-.
- 21.** Mr. Bhattacharyya submits that from the evidence of the petitioner husband, it reveals that only to avoid to pay the maintenance has resigned the service from the HDFC Bank where he has getting handsome salary and has started private tuition only for a sum of Rs.

9,500/-. He further submits that if the evidence of the petitioner husband is taken into consideration, it is clear that the affidavit of assets declared by the petitioner is totally false. He submits that in the affidavit of assets, he has stated that the general expenses is Rs. 22,000/- and he is also paying monthly installments for the car loan for Rs. 6,917/- which is much higher than his monthly income of Rs. 9,500/-.

- 22.** Mr. Bhattacharyya submits that the Learned Additional Principal Judge, Family Court at Calcutta by considering all the evidences and the materials on record has rightly passed an order by directing the petitioner to pay the maintenance amount of Rs. 15,000/- per month i.e. Rs. 8,000/- for his son and Rs. 7,000/- to the respondent no. 2 wife and thus the impugned order is not required to be interfered with.
- 23.** Heard the Learned Counsel for the respective parties, perused the materials on record and the judgments relied by the petitioner. The petitioner has mainly raised the issue that initially the respondent wife has filed an application under the Protection of Women from Domestic Violence Act, 2005 which was dismissed and in the said application, the respondent wife has admitted that she has left her matrimonial house with her minor son voluntarily on 31st January, 2015 and started residing with her parents.
- 24.** During the cross-examination of the respondent wife in the Domestic Violence case, the respondent wife has stated that *"On 31st January,*

2015, I left matrimonial home and came to my parental home". In the application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, the respondent wife made out a case that on 3rd February, 2015, her husband and her in-laws have brutally tortured upon her. The Learned Magistrate as well as the Learned Appellate Court finds that as per the case of the wife, she left her matrimonial house on 31st January, 2015 and she never came back to her matrimonial home, how the petitioner and his parents cause torture upon the respondent wife.

- 25.** Section 125(4) of the Code of Criminal Procedure, 1973 reads as follows:

"125. Order for maintenance of wives, children and parents.- (4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expense of proceeding, as the case may be,] from her husband under this section if she is live with her husband, or if they are living separately by mutual consent."

- 26.** 'Sufficiency of reasons' as contemplated under Sub-Section (4) of Section 125 of the Cr.P.C. is a question of fact. Every reason or pretext put forth on behalf of the wife cannot be accepted for fulfilling such requirement. The cause shown must be reasonable one in relation to her health, safety, unhealthy atmosphere prevailing in the in-law's house to lead decent life. If the wife is subjected to cruelty and harassment in the hands of the husband and in-laws family members and there is unnecessary character assassination of her for which she

leaves the matrimonial home and lives separately, it cannot be said to be willful desertion on the part of the wife and on that counter claim for maintenance cannot be rejected. In the present case in paragraphs 5, 6, 7 and 8 of the application filed by the respondent wife has mentioned about torture and cruelty caused upon her by the husband and her in-laws after the birth of male child who is suffering from “Speech Therapy”. In paragraph 8 of the application under Section 125 of the Cr.P.C., it is stated that on 31st January, 2015, the husband and her in-laws drove out the respondent wife and her minor child from her matrimonial house and since then the wife and her son are residing at her father’s house.

- 27.** The petitioner has denied the said allegations of the respondent wife and alleged that the respondent wife left her matrimonial house without any reasons. The petitioner mainly relied upon the statements made during cross-examination, statement made in the written objection to the application under Section 25 of the Guardians and Wards Act, 1890 and the order of dismissal passed by the Learned Magistrate which was affirmed by the Appellate Court wherein the application filed by the respondent wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 was dismissed. As regard to the statement made during cross-examination and in the written objection, the respondent wife has stated that she left her matrimonial house along with her minor son on 31st January, 2015. As regard to the dismissal of the application filed by the wife under Section 12 of the Protection of

Women from Domestic Violence Act, 2005 in the said case during evidence, the mother of the respondent wife stated that there was no demand of dowry after marriage and even the things given by them on their daughter's marriage reception were not on demand. The Learned Magistrate and the Appellate Court also considered the evidence of the respondent wife in the Domestic Violence proceeding wherein the respondent wife has stated that the petitioner husband has caused brutal torture upon the respondent wife on 3rd February, 2015 but the fact remains that on 31st January, 2015, the respondent wife left the matrimonial house. In the case of Protection of Women from Domestic Violence Act, 2005, the respondent wife has not made out any case of torture and driven her out along with her son from matrimonial home on 31st January, 2015.

- 28.** In the case of Protection of Women from Domestic Violence Act, 2005 filed by the respondent wife, she has made a specific date of the alleged brutal torture i.e. on 3rd February, 2015 but as per the case made out by the respondent wife in an application under Section 125 of the Cr.P.C., the wife left matrimonial house on 31st January, 2015. In the Domestic Violence case, the Learned Magistrate held that :

“In In this case, there is no allegation of perpetrating domestic violence by the respondents which is one of the necessity to constitute and hold that petitioner was the victim of domestic violence. To determine domestic violence and its existence in this case, the overall facts and circumstances of this case must be taken into consideration. The evidence led by petitioner rather makes it clear that neither she was subjected to any mental or physical cruelty nor of any economic violence.

Petitioner has specified a date and alleged that she was subjected to brutal torture by the respondents on 03-02-2015 but it is already established and proved from evidence-on-record of PW1 and PW2 that petitioner was not living at her matrimonial home on alleged 03-02-2015 and she was living at her paternal home. Petitioner has tried to establish domestic violence upon her by the respondents but she failed.

Therefore, above findings lead to conclusion that the case of petitioner is false, concocted, baseless as not only petitioner failed to establish the contents of her application but it was proved incorrect and false.”

- 29.** This Court finds that the respondent wife in the Domestic Violence case made out the case of torture by the petitioner on 3rd February, 2015 and in the application filed under Section 125 of the Cr.P.C. made out a case by making a bald allegation of torture other than the case made out in an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. In the case of domestic violence, the respondent wife in support of her case had examined her mother as witness. The mother of the respondent wife in her statement has stated that “she came to depose as per direction of her daughter and her daughter asked her what to tell and her affidavit was prepared by her lawyer and she only put her signature”. She also stated that they provided with several things to her daughter on her reception but not on demand and after marriage there was no demand for dowry. The respondent wife cleverly not brings her mother as witness in the case filed under Section 125 of Cr.P.C.

- 30.** Husband is legally and morally bound to provide maintenance to his wife. The right of the wife to be maintained by the husband stems from the corresponding obligation to perform marital duty. Section 125 (1)(a) of Cr.PC (Section 144 (1) (a) of BNSS) provides maintenance to the wife who is unable to maintain herself. However, the right of the wife to claim maintenance from her husband, who has sufficient means, is not absolute. It is subject to sub-section (4) of Section 125 (Section 144 (4) of BNSS). A wife who chooses to live separately without sufficient reason is disentitled to maintenance under Section 125(4) of Cr.PC (Section 144 (4) of BNSS). It is crucial to assess whether the wife's decision to live separately is based on valid grounds. If valid grounds, such as cruelty or desertion, exist, she may still claim maintenance despite living apart. In cases where the wife refuses to live with the husband without any just cause and there is no evidence of ill-treatment by the husband, the wife is not entitled to maintenance.

In the case in hand, the respondent wife prior to filing of an application under Section 125 Cr.P.C. has filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 making allegation against the petitioner for cruelty and harassment. The case filed by the respondent wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 was dismissed on contest after adducing evidence by both the parties. The said order of dismissal was upheld by the Appellate Court.

During the cross-examination in the present case, the respondent wife admitted that she has stated at the time of evidence in the Domestic Violence case that *“on 31st January, 2015, I left matrimonial home and came to my paternal home”*. She further admitted that in written objection in the domestic violence case, she has stated that “she went to her parent’s house accompanied by her minor son on 31st January, 2015”.

In the present case only the respondent wife made a bald statement of torture but failed to establish her case and on the other hand as per the evidence brought on record by the petitioner which shows that the respondent wife living separately since 31st January, 2015 without any sufficient reasons.

- 31.** The second contention raised by the petitioner that the respondent wife is having sufficient income but the Learned Judge has not considered the said evidence. The petitioner has examined two witnesses i.e. D.W.2 and D.W.3 from the officials of the National Insurance Company to prove that the respondent wife was appointed as Commission Agent and is getting commission from the said Insurance Company. The Appointment-cum-Certificate of Registration and Agent Identity Card issued by the National Insurance Company Limited were exhibited. There is no evidence brought on record to say that how much amount the respondent wife is getting from the Insurance Company as agent. In the cross-examination, the wife has stated that she used to get some

commission for few months thereafter her agent code had been dropped and if required she will submit the paper to that effect.

- 32.** As regard to the landed property, the respondent wife has admitted that she is the co-owner of a dwelling house with her mother and brother. She has stated that after realizing rent by her mother from tenants some money is given to her by her mother for her son's maintenance because her mother looks after them. Though the respondent wife has admitted that the landed property is jointly recorded in her name and in the name of her mother and brother but the petitioner has not proved that the respondent wife is receiving rents.
- 33.** As regard to the affidavit of assets filed by both the parties, the petitioner has pointed out the affidavit of assets filed by the respondent wife wherein she has stated that she has no source of income, not furnished copies of statement of all bank accounts for three years, stated that no shares in ancestral property and not disclosed about her employment. He submits that the said statements are totally false and the respondent wife has suppressed her income and shares in the ancestral property.
- 34.** The Counsel for the respondent wife has pointed that that in the affidavit of assets and liabilities, the petitioner has shown general monthly liabilities as Rs. 22,000/- per month, medical expenses incurred on account of dependent is Rs. 5000/- per month, designation

as private tutor and monthly income is Rs. 7000/-, payment of EMI of the Car loan of Rs. 6,917/- and net income Rs. 7000/-.

- 35.** The petitioner was working as Assistant Manager in the HDFC Bank and was getting salary of Rs. 31,750/- but he resigned after filing of the application for grant of maintenance and working as private tutor and is getting Rs. 7000/- per month but the expenses shown by the petitioner is Rs. 22,000/- and Rs. 6,917/- EMI for car loan. The said statement is contradictory. If the income of the petitioner is only Rs. 7000/- per month how the petitioner bear the expenses of about Rs. 28,917/-. The respondent wife has stated that she is not having any source of income and not having any shares in ancestral properties. As regard to the income, though the petitioner tried to establish that the respondent wife was appointed as agent in the National Insurance Company but has not proved that she is getting any income from the National Insurance Company. The respondent wife has not disclosed her share in the ancestral property but during the cross, she has admitted that she is having share in the ancestral property along with her mother and brother.
- 36.** The affidavit of assets and liabilities filed by the parties, this Court finds that both the parties have not disclosed their affidavit of assets and liabilities correctly and thus one party cannot take the benefit of the wrong committed by the other party when the both the party have committed wrong.

37. This Court has already held that the respondent wife is living separately since 31st January, 2015 without any sufficient reasons and there is no evidence to show that she was ill-treated by the petitioner, thus the order passed by the Learned Additional Principal Judge, Family Court, Calcutta in Misc Case No. 29 of 2016 dated 6th September, 2024 is set aside with respect to grant of maintenance of Rs. 7,000/- per month for the respondent wife. As regard the maintenance of the minor, this Court has not interfered with.

38. Accordingly, **C.R.R. No. 4527 of 2024** is thus **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)