

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3878 of 2014

Sri Rajesh Ranjan Prasad

-Vs-

Smt. Jharna Prasad (Maity) & Anr.

For the Petitioner : Mr. Kushal Kumar Mukherjee

For the Opposite Party No.2 : Mr. S. Sarkar
Mr. Dhiman Banerjee

Heard on : 22.04.2024, 15.01.2025, 13.06.2025,
12.08.2025

Judgment on : 02.09.2025

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against an order dated 24.09.2014 passed by the Learned Chief Judicial Magistrate, Purba Medinipur in connection with Misc. Case No.427 of 2012, allowing the application for interim maintenance of Smt. Jharna Prasad (Maity) and her minor child viz. Rima Prasad and directing the petitioner to pay a sum of Rs.10,000/- only per month for Smt. Jharna Prasad (Maity) and to pay a sum of Rs.5000/-only to the minor children viz. Rima Prasad for their interim maintenance and the said amount would be paid as per English Calendar month within 15th day of each succeeding month and would go on

paying such amount until further order and the first payment would be made by 30th September, 2014.

2. The petitioner and the opposite party no.1 after marriage on 02.11.2007 lived as a married couple giving birth to a female child. In addition to dowry articles the petitioner demanded further dowry and being refused the opposite party no.1 was subjected to torture by the petitioner. The inebriated petitioner used to assault the opposite party no.1 which increased day by day. The petitioner on the pretext of involvement in an extramarital relationship drove the wife away from her matrimonial house, compelling the opposite party no.1 to seek refuge at her paternal home.
3. The petitioner contended the opposite party no.1 Smt. Jharna Prasad (Maity) filed an application under Section 12 of the Protection of Women from Domestic Violence Act against the petitioner and four others before the Learned Chief Judicial Magistrate, Purba Medinipur at Tamluk on 06.12.2012 wherein the nature of allegation of torture were different from the allegation cited against the petitioner in the case filed under Section 125 of the Code of Criminal Procedure.
4. The opposite party no.2 filed an application for interim maintenance before the Learned Chief Judicial Magistrate, Purba Medinipur. The Learned Magistrate after hearing both the parties was pleased to direct the petitioner to pay interim maintenance to the tune of Rs.10,000/- to the opposite party no.1, i.e., the wife and Rs.5000/- to the opposite party no.2, the minor daughter by order dated 24.09.2014.

5. Being highly aggrieved and dissatisfied, the petitioner had moved the present revisional application before this Hon'ble Court challenging the aforesaid interim order of maintenance passed by the Learned Chief Judicial Magistrate, Purba Medinipur, on 24th September 2014 directing the petitioner/Husband to pay Rs.10,000/- in favour of the wife, i.e., the Opposite Party No.1 and Rs.5,000/- for the daughter, i.e., the opposite party No.2.

6. Learned Advocate representing the petitioner submitted that –

- i. During pendency of the present criminal revisional application a Matrimonial Suit was filed before the Additional District Judge, Haldia, under Section 13 of Hindu Marriage Act, 1955 for divorce which was registered as Matrimonial Suit No.116/2014. The aforesaid Suit came up for hearing before the Learned Judge on 24.04.2023 and after hearing the Learned Advocates for the respective parties the Learned Judge was pleased to allow the prayer for divorce on the ground of “desertion” by order dated 29th April 2023.
- ii. Section 125(4) of Code of Criminal Procedure dealt with the exceptional circumstances where the wife could not claim for maintenance, it appeared from the language of the aforesaid Section that *“no wife shall be entitled to receive an allowance for the maintenance and interim maintenance and expenses of proceeding from her husband under this section if she is living in adultery, or if, without any sufficient reason, refuses to live with her husband, or if they are living separately by mutual consent.”* In the present case

opposite party No.1, the wife of the petitioner “without any sufficient reason, refuses to live with her husband” as it appeared from the order of divorce and therefore her claim for maintenance was absolutely not maintainable. However, so far, the minor daughter was concerned, the petitioner was willing to carry on her maintenance till she attained the age of majority.

7. Learned Advocate representing the Opposite Party No.1 submitted that –

- i. Scheme and object of Section 125 of the Code of Criminal Procedure:-
 - a) The object of enactment of Section 125 of Cr.P.C., was to prevent dependent women from destituteness and vagrancy due to willful neglect by her husband.
 - b) Chapter IX of the Criminal Procedure Code, 1973, was titled “Order for Maintenance of Wives, Children and Parents”. Section 125(1) Cr. P.C., provided to the effect that, if any person having sufficient means neglects or refused to maintain his wife or his legitimate or illegitimate children, falling in the prescribed categories, or his parents, who were all unable to maintain themselves, a Magistrate of the first class might, upon proof of such neglect or refusal, order such person to pay a monthly allowance, as though fit, for their maintenance.
 - c) Section 125 Cr.P.C. was analogous to and in continuance of Section 488 of the erstwhile Code of Criminal Procedure, 1898. In its 41st Report submitted on 24th September, 1969, the Law Commission of India, while advertng to Section 488 of the Code

of Criminal Procedure, 1898, observed that the primary justification for placing provisions relating to maintenance of wives and children, which being a civil matter, in the Criminal Procedure Code was that a remedy, speedier and more economical than that available in the Civil Courts, is provided to them.

- d) The Law Commission noted that the provision was aimed at preventing starvation and vagrancy, leading to commission of crime.
- e) The Hon'ble Apex Court in the case of *Chaturbhuj v. Sita Bai* (2008) 2 SCC 316, Court observed that the object of maintenance proceedings was to prevent the vagrancy and destitution of a deserted wife, by providing her food, clothing and shelter by a speedy remedy.
- f) Section 125 Cr.P.C. was a measure of social justice, especially enacted to protect women and children, falling within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. Thus, the objective of the provision was to alleviate the financial plight of destitute wives, children and parents who were left to fend for themselves.
- g) The Hon'ble Apex Court in *Badshah v. Urmila Badshah Godse* (2014) 1 SCC 188, held that the provision of maintenance aims at empowering the destitute and achieving social justice or equality and dignity of the individual and while dealing with

cases thereunder, the drift in the approach from adversarial litigation to social context adjudication is the need of the hour.

- h) In *Rajnesh v. Neha* (2021) 2 SCC 324, the Hon'ble Supreme Court emphasized that maintenance laws were enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.
- i) In the instant case applying the scheme as aforesaid the Learned Trial Court had granted an order of maintenance in favour of the OP1 to prevent her and her daughter from destituteness and vagrancy. As such the said order is justified and this Hon'ble Court should not interfere with the same in the application.
- ii. Prima facie case made out that petitioner was able bodied person and as such he must maintain the opposite party no.1 and their daughter to the same status as she was in her matrimonial house:-
 - a) For interim maintenance prima facie establishment of case on the part of the petitioner is sufficient.
 - b) In *Shamima Farooqui v. Shahid Khan* (2015) 5 SCC 705, the Hon'ble Apex Court noted that the inherent and fundamental principle behind Section 125 Cr.P.C. is the amelioration of the financial state of affairs as well as the mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home.

- c) The woman/wife as per law, was entitled to lead life in a similar manner as she would have lived in the house of her husband and as long as she was held entitled to grant of maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate so that she can live with dignity.
- d) The plea advanced by the husband that he did not have the means to pay as he did not have a job or his business was not doing well, were only bald excuses and, in fact, they have no acceptability in law as a husband, who was healthy, able-bodied and in a position to support himself was under a legal obligation to support his wife and her right to receive maintenance under Section 125 Cr.P.C., unless disqualified, was an absolute right.
- e) From the documents filed in connection with the instant proceeding it is evident that the petitioner was an able bodied person having a yearly income of more than 5,50,000/-. The Indian Income Tax Return Acknowledgement of the petitioner for the year 2022-23 reflects that the petitioner had total yearly income of Rs.5,58,770/-. As such his claim of earning only Rs.2,000/- per month stood contradicted with the document.
- f) Since the petitioner has failed to put forth any legitimate grounds for setting aside the impugned order, this Hon'ble Court should not exercise its powers under Section 482 of the Code.

iii. Even a divorced wife was entitled to get maintenance under Section 125 of Cr.P.C.: -

- a) Grant of a Decree of Divorce thereby dissolving the marriage between the parties was not an absolute bar for payment of maintenance to the wife.
- b) In *Babita v. Munna Lal* 2022 SCC Online Del 4933, the Delhi High Court opined that even a divorced wife was entitled to maintenance under Section 125 Cr.P.C. and it would be improper and unfair to deny maintenance to a wife merely because she refused to cohabit with the husband, despite having sufficient grounds therefore.
- c) The Hon'ble Apex Court in *Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal* (1978) 4 SCC 70, noted that it was valid to assert that a final determination of a civil right by a Civil Court would prevail against a like decision by a Criminal Court but held that this principle would be inapplicable when it came to maintenance granted under Section 24 of the Hindu Marriage Act, 1955, as opposed to maintenance granted under Section 125 Cr.P.C. It was noted that the latter provision was a measure of social justice specially enacted to protect women and children falling within the constitutional sweep of Article 15(3) reinforced by Article 39.
- d) In *Rohtash Singh v. Ramendri (Smt.)* (2000) 3 SCC 180, this Court clarified that a wife, who suffered a decree of divorce on

the ground of deserting her husband, would not be entitled to maintenance under Section 125 Cr. P.C. as long as the marriage subsisted, but she would be entitled to such maintenance once she attained the status of a divorced wife, in the light of the definition of a 'wife' in Explanation (b) to Section 125(1) Cr. P.C.

- e) The Scheme of the Chapter IX of 1973 Act protects the right to life and liberty of the wife and the said provision is enacted so that a wife who has been compelled to leave company of her husband can survive.
- f) The opposite party no.1 was suffering from financial stringency and as such she could not contest day to day proceeding in the divorce proceeding being Mat Suit No. 116 of 2014. Had it been a case where the wife could participate in day to day proceeding in the divorce preceding the results of the said proceeding might be different.
- g) The Judgment and Order dated 29.04.2023 passed in Mat Suit 116 of 2014 dissolving the marital tie between the parties by a Decree of Divorce had been challenged before this Hon'ble Court and the same was pending adjudication. As such at present the Judgment and Order dated 29.04.2023 had not attained its finality.
- h) It was a settled position of law that, an appeal was a continuation of the proceedings of the original court. Ordinarily,

the appellate jurisdiction involved a re-hearing on law as well as on fact and was invoked by an aggrieved person. The first appeal was a valuable right of the appellant and therein all questions of fact and law decided by the trial court was open for re-consideration.

- i) In the instant case if all factors were taken cumulatively then it will be clear that the opposite party no.1 had sufficient reasons to live away from the society of the petitioner and as such in consequence the disqualification under Section 125(4) of the Code of Criminal Procedure also did not get attracted in the present case. The opposite party no.1 relied upon the decision of the Hon'ble Apex Court in the case of *Rina Kumari alias Rina Devi alias Reena versus Dinesh Kumar Mahto alias Dinesh Kumar Mahato and Another reported in 2025 SCC OnLine SC 72* in support of her contentions.

- iv. Sufficient Cause under Section 125(4) Cr.P.C., must be proved during Trial and not at prima facie stage:-

- a) "Section 125 (4) - No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."

- b) This Sub-Section clarifies regarding the parameters where orders of maintenance ought not to have been passed. But in all these parameters are subjective and are matters which can only be substantiated by way of cogent evidence.
- c) In this case the Learned Judge has carefully scrutinise all the relevant materials and has been established and prima facie held that the opposite party is entitled to have maintenance. This Hon'ble Court under its revisional jurisdiction enshrined under Section 401 cannot conduct a mini trial and/or go beyond prima facie case.
- d) In *KavungalKooppakkattu Zeenath v. Mundakkattu Sulfiker Ali* 2008 SCC OnLine Ker 78, the Kerala High Court noted that the expression used in Section 125(4) Cr.P.C. is 'refusal' and not 'failure' to live with the husband and that there is evidently some difference between the two. It was held that 'failure' would mean not doing something that one is expected to do but 'refusal' would mean saying or showing that one would not do or accept something which is offered. In effect, if a husband says he is willing to do something for the wife but she states or shows that she does not want or accept that something which is offered to her, then only there was refusal.
- e) In the present case the opposite party no.1 was tortured tremendously by the petitioner on the pretext of bringing more dowry. The opposite party no.1/wife was forcibly driven out

from her matrimonial house by the petitioner. As such the grounds as enunciated in Section 125(4) of the Code of Criminal Procedure, 1973 was not attracted in the present case. Moreover, from the pleadings and the documents filed in connection with the instant case, the petitioner had failed to make out any ground to attract Section 125(4) of the Code.

- f) For the reasons aforesaid no abuse of process of law in continuation of the impugned order has been set forth by the petitioner. It was humbly submitted by the opposite party no.1 that this was not a fit case where this Hon'ble Court should exercise its power under Section 482 of the Code of Criminal Procedure and the instant case was liable to be dismissed with exemplary cost and with direction to pay due arrear by the petitioner.

8. The Hon'ble Supreme Court in ***Dr. Swapan Kumar Banerjee Vs. The State of West Bengal & Anr.***¹, held the following:-

“The short question raised in these appeals is whether a wife, who has been divorced by the husband, on the ground that the wife has deserted him, is entitled to claim maintenance under Section 125 of the Code of Criminal Procedure, 1973 (“CrPC”).

2. *We may refer to the relevant portion of Section 125 of the Code of Criminal Procedure:*

“125. Order for maintenance of wives, children and parents.— (1)

If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

¹ AIR (2019) SC 4748

* * *

Explanation.— For the purposes of this Chapter—

* * *

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) * **

(3) * **

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

3. *It is the contention of Mr Debal Banerjee that in terms of sub-section (4), no wife, who has deserted her husband can claim maintenance under Section 125 CrPC. His further submission is that since in terms of the explanation wife includes a divorced woman, therefore, even a wife who has been divorced on the ground of desertion would not be entitled to maintenance in view of sub-section (4). Mr Debal Banerjee has very candidly placed before us three judgments of this Court which take a view contrary to the one being canvassed by Mr Banerjee before us.*

...

7. *No doubt, as urged by Mr Debal Banerjee, Explanation II to Section 125 CrPC by deeming fiction includes a divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 CrPC. The question is how we should read the provisions of sub-section (4) in this regard, especially when we deal with those women, against whom a decree for divorce has been obtained on the ground that they have deserted their husband. Once the relationship of marriage comes to an end, the woman obviously*

is not under any obligation to live with her former husband. The deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that the divorced wife is under a compulsion to live with the ex-husband. The husband cannot urge that he can divorce his wife on the ground that she has deserted him and then deny maintenance which should otherwise be payable to her on the ground that even after divorce she is not willing to live with him. Therefore, we find no merit in the contention of Mr Debal Banerjee.

8. *Coming to the merits of the case, the matrimonial dispute started with the husband filing a petition of judicial separation in 1992, though, it was alleged that since 1987 the wife had deserted him. In 1997 a petition for divorce was filed and the divorce was granted in 2000. During this period from 1987 to 2000 when the wife was living separately from her husband she did not file any petition for grant of maintenance. Even during the divorce proceedings though an application under Section 24 of the Hindu Marriage Act, 1955 was filed but it seems that the same was either dismissed for non-prosecution or was not pressed. It was not decided on merits in any event.*

9. *After the divorce was granted, according to the appellant he got remarried after a year and it was only thereafter that the wife filed a petition for grant of maintenance. That, according to us, will make no difference because it is for the wife to decide when she wants to file a petition for maintenance. She may have felt comfortable with whatever earnings she had up to that time or may be she did not want to precipitate matters till she was contesting the divorce petition by filing a claim for maintenance. Whatever be the reason, the mere fact that the wife did not file a petition for grant of maintenance during the pendency of the matrimonial proceedings, is no ground to hold that she is not entitled to file such a petition later on.*

10. *The next issue raised was that the wife being a qualified architect from a reputed university i.e. Jadavpur University, Calcutta would be*

presumed to have sufficient income. It is pertinent to mention that as far as the husband is concerned, his income through taxable returns has been brought on record which shows that he was earning a substantial amount of Rs 13,16,585 per year and on that basis Rs 10,000 per month has been awarded as monthly maintenance to the wife. No evidence has been led to show what is the income of the wife or where the wife is working. It was for the husband to lead such evidence. In the absence of any such evidence no presumption can be raised that the wife is earning sufficient amount to support herself.

11. *In this view of the matter, we find no merit in the appeals, which are accordingly dismissed. Pending application(s), if any, stands disposed of.”*

9. The claim of the petitioner of cessation of marital relationship with the opposite party/wife on the basis of obtaining a decree of divorce on the ground of desertion vide order dated 29th April, 2023 as aforesaid precluded him from payment of maintenance towards the wife.
10. The petitioner having obtained a decree of divorce as aforesaid predominantly recognized the opposite party/wife to be in a marital relationship through cohabitation giving birth to a child. The status of the opposite party to have been a wife of the petitioner prior to the dissolution of their marriage had been indisputable.
11. The petitioner could not prove the opposite party/wife to have been employed with a distinct source of income to sustain her livelihood commensurate to the status enjoyed by the petitioner in the society with regard to his income.
12. The petitioner even failed to prove through evidence on record the opposite party/wife to have re-married after decree of divorce had been pronounced against her.

13. In view of the observation of the Hon'ble Supreme Court in ***Dr. Swapan Kumar Banerjee (Supra)***, the opposite party/wife is entitled to maintenance as granted by the Learned Trial Court. The petitioner is to comply with order dated 24.09.2014 in Misc. Case No. 427 of 2012 passed by the Learned Chief Judicial Magistrate, Purba Medinipur. The arrear of maintenance, if any, is to be deposited at the Office of the Learned Trial Court as aforesaid in ten instalments within a span of three years from the date of this order.
14. In view of the above discussions, the instant criminal revisional application being CRR 3878 of 2014 is dismissed.
15. There is no order as to costs.
16. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
17. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)