

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 1163 OF 2024

BONOSHREE HAZRA @ MOLLAH

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Amitabha Ghosh, Adv.
Ms. Arpita Paul Biswas, Adv.

For the Opposite Party : Mr. Saibal Kr. Mandal, Adv.
Ms. Sonali Ghosh, Adv.
Mr. Arpayan Mukherjee, Adv.

Last heard on : 07.05.2026

Judgement on : 18.05.2026

Uploaded on : 18.05.2026

CHAITALI CHATTERJEE DAS, J. :-

1. The petitioner has assailed by filing this application under Section 397/401 read with Section 482 Cr.P.C, an order dated 12.2.2024 passed by the Learned Additional Sessions Judge, 3rd Court, Asansol, Paschim Bardhaman, in criminal revisional application reversing an order of ad interim maintenance, granted by the Learned Magistrate.

Fact of the case

2. The petitioner was a Hindu Lady, and got married with the Opposite party with whom she had a love affair according to the Muslim Rites and Customs being converted to Islam. The said Marriage was registered before Muslim Marriage Registrar and Kazi at Asansol on 12.8.2016 at the City Residency at N.H 2, G.T Road ,Ningha ,Post office Ningha ,Police Station Jamuria ,District Paschim Bardhaman and a delmohar was also fixed . A male child was born out of the said wedlock on 20.1.2017 namely Akhsay Mollah at Central Nursing Home, Apcar Garden, Asansol. After solemnization of the marriage they used to reside at the quarter of Opposite Party at MMC Colony.
3. It is the further case of the petitioner that she was subjected to torture by the opposite party and also threatened her to be implicated in a false case if any complaint is lodged by her against him. On 13.2.2018 all of a sudden the opposite party left the home and never returned back and on asking from his superior officer she came to learn that he was on leave for three days. After that he refused to leave with her and deserted them.
4. The petitioner was informed by the concerned authority on 8.9.2023 that the current income of the opposite party is more than Rs. 75,000/- per month and he is working as Sub-Inspector but the petitioner or her child was not paid any maintenance. Having no other alternative she filed an application claiming maintenance under Section 125 Cr.P.C before the Additional Chief Judicial Magistrate ,Asansol which was transferred to the Learned Judicial Magistrate, 2nd Court ,Asansol .The Opposite Party no. 2 appeared on 23.7.2019

challenging the marriage itself and also the paternity of the child however he never filed his Affidavit of Asset and liability .The petitioner filed a writ petition being WPA 16128 of 2022 where direction was given to the Superintendent of police, Hooghly to constitute a team for investigation.

5. The petitioner had to file another writ petition after receiving threat, being WPA 22479 of 2022 and on 2.5.2023 liberty was given to her to file appropriate complaint with the Arambag Police Station. The learned Judicial Magistrate 2nd Court Asansol, Paschim Bardhaman on 14.3.2023 allowed the interim maintenance to the tune of Rs. 5000/- per month for herself and Rs. 4000/- for the minor son. The Opposite Party being aggrieved thereby filed the revisional application and by the order impugned the order of maintenance was set aside directing the matter to be heard afresh.

Submission

6. The Learned Advocate representing the petitioner submits that the petitioner filed the marriage certificate and the birth certificate which bears the name of the Opposite Party. That apart she lodged the complaint against him under Section 498A /323/406/506 IPC and after investigation the charge sheet was submitted against him which prima facie proves that she is the married wife of the Opposite Party no. 2 and the learned Judicial Magistrate rightly passed the order granting interim maintenance which has been set aside by the Learned Revisional Court merely on the basis of the submission made by the Opposite Party no. 2 that there was no marriage. It is further submitted that initially no suit for declaration was filed by the Opposite party for declaring the marriage as null and void but after the point was raised by the petitioner he filed the

suit .Therefore the petitioner established her prima facie case on the basis of which the Learned Magistrate passed the interim order which was set aside by the revisional court without adhering to the law laid down in this regard and accordingly prayed for dismissal of the order passed by the learned Revisional Court. It is further argued that the Learned Magistrate rightly passed the interim maintenance pending the report of DNA test which has been reversed. The Learned Advocate relied upon the decision of the Hon'ble Supreme Court in ***Sukhdev Singh vs Sukhbir Kaur***¹ .

7. Per contra the learned Advocate of the opposite party strenuously argued that there was no marriage with the petitioner and the conversion as stated by her is out and out a false statement. It is further submitted that since the Opposite Party denied the paternity of the child he prayed for DNA test and on consent of the parties such prayer was allowed and the test was done but no report is received as yet. The opposite party filed an application for vacating the interim order before this court which is to be treated as the affidavit in opposition to the petition filed by the petitioner. The learned Advocate relied upon the decision of ***Smt. Sarla Mudgal, President, Kalyani and Ors vs Union of India & ors.***² where the Hon'ble Supreme Court discussed void marriage. Accordingly prayed for dismissal of the revisional application.

Analysis

8. Heard the Submission. The dispute emanated from the order passed by the learned Revisional Court where by the interim maintenance order as passed by

¹ 2025 INSC 197

² AIR 1995 Supreme Court 1531

the learned Magistrate is set aside. The proceeding was initiated by the petitioner claiming to be the wife of the opposite party who is claimed to be the father of the minor child. The Learned Revisional court considered that the petitioner preferred to represent herself as Banashree Hazra in the cause title and the petitioner did not pray for an amendment and held she is not a Muslim Lady. Considering this gross discrepancy the Learned Court doubted the case made out by the petitioner since the marital relation and the paternity of the child is denied and accordingly set aside such order of maintenance. So for a moment it is considered that the lady did not convert herself but entered into a marriage tie with a Muslim person which is not a valid marriage in the eye of law. In such situation whether the lady would get the maintenance under section 125 CrPC or not? Therefore it is necessary to see the law laid down in this regard .In the case of **Chand Patel vs Bismilla Begum**³ the petitioner sought for maintenance for herself and her minor daughter under Section 125 Cr.P.C and the marriage was disputed by the husband asserting that no such union occurred and the marriage with the appellant's first wife's sister which results in a case of unlawful conjunction. The Hon'ble Supreme Court upheld the decision passed by the learned court below with the observation that unlawful marriage would still subsist and the Muslim man is liable to pay maintenance to his wife until his marriage is declared void by a competent court .It was held that-

“10. While referring to various decisions of different High Court, the revisional court relied to a large extent on a decision of this court Nanak

³ (2008) 4 SCC 774

Chand v. Chandra Kishore Aggarwal in which it was, *inter Alia*, held that section 488 of the old Code which corresponds to section 125 of the new Code is applicable to all persons belonging to all religions and has no relationship to the personal laws of the parties.

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23. The answer to the question, which we are called upon to answer in this case, will depend on the legal status of the union effected by the appellant with respondent 1. Though the factum of marriage between them was denied by the appellant, the courts below negated the appellant's case and proceeded on the basis that a marriage had been performed between them. If the marriage which was said to have been performed between the appellant and respondent 1 is held to be void then, in such event, respondent 1 will not be entitled to maintenance from the appellant under section 125 CrPC. If, on the other hand, the marriage is held to be irregular, then the marriage, will subsist for all purpose, unless declared to be void by a competent court. Till such a declaration is made, along with the respondent 2, respondent 1 also will also be entitled to maintenance under section 125 Cr.PC.

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32. The answer to the question raised at the very outset, therefore, is that the bar of unlawful

conjunction renders a marriage irregular and not void. Consequently, under the Hanafi law as far as Muslims in India are concerned, and irregular marriage continues to subsist till terminated in accordance with law and the wife and the children of such marriage would be entitled to maintenance under the provisions of section 125 of the Code of Criminal Procedure.”

9. In the case of **Mohammed Salim (d) through lrs. & ors. vs Shamsudeen (d) through Lrs. & Ors.**⁴ it was held that under Muslim Law, there are three types of marriage valid, irregular and void. A marriage between Muslim man and a Hindu lady is only irregular (fasid) and not void (batil). Children born from such marriage are legitimate and entitled to share in the father's property. It was held in the said case that ‘the Birth Register extract of the Plaintiff maintained by the statutory authorities indicates that the plaintiff is the son and the entry made in such Register, which is a public document, itself is relevant to resolve the dispute in hand.’ It was further held that-

“27. In Syed Ameer Ali's Mohamedan Law also, the same principle has been enunciated. The learned author, while dealing with the issue of the legitimacy of the children, observed at page 203 of Vol. II, 5th Edn.:

The subject of invalid marriages, unions that are merely invalid (fasid) but not void (batil) ab initio under the Sunni Law, will be dealt with later in detail, but it may be stated here that the issue of

⁴ (2019) 4 SCC 130

invalid marriage is without question legitimate according to all the sects.

For example, if a man were to marry a non-scriptural woman, the marriage would only be invalid, for she might at any time adopt Islam or any other revealed faith, and thus remove the cause of invalidity. The children of such marriage, therefore, would be legitimate.

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29. A.A.A Fyzee at p. 76 of his book Outlines of Muhammadan Law (5th Edn.) reiterates by citing Mulla that the Nikah of a Muslim Man with an idolater or fire worshipper is only irregular and not void .He also refers to Ameer Ali's proposition that such marriage would not reflect the legitimacy of the offspring, and the polytheistic woman at any time adapt Islam, which would at once remove the bar and validate the marriage."

10. In the given case the petitioner filed the marriage certificate where both the parties signed ,a photograph of both the parties were affixed and the date of marriage shown as 12.8.2016.The opposite party in his show cause application stated that one day when he came to Asansol (SOUTH) P.P and by dint of her ability tried her level best to acquainted herself with the opposite party .At that time she was informed that the Opposite Party no. 2 is a married man having a daughter .Therefore primary acquaintance with the lady is admitted which can only be further enquired at the time of evidence. In the decision of

Savitaben Somabhai Bhatiya vs State of Gujarat and Ors.⁵ it was held that even where the parents' marriage is void the child born out of such union is entitled to maintenance from the father .The right of child to maintenance from his father is not affected by the legitimacy arising from a void marriage. Welfare of the child is of paramount consideration.

11. The decision relied upon by the Learned Advocate deals with Bigamy as Hindu married male after his conversion to Islam married a Muslim Lady which was held to be in violation of Rules of a natural Justice and hence is distinguishable factually with this case.

12. The Opposite Party since appeared before the Learned Magistrate despite knowing the fact that petitioner is claiming to be the wife did not challenge the marriage by filing suit immediately but filed it long after. He did not challenge the signature appearing in the certificate. In terms of Section 125 Cr.P.C a legally married wife even after divorce and till she is remarried is entitled to claim maintenance. It is an admitted fact that the petitioner in the cause title did not put her name after conversion to Islam but before this court she affirmed the Affidavit as Bonashree Hazre alias Bonoshree Hazra Molla .The order of the learned Magistrate was an interim order which was set aside by the revisional court only on the pretext that she did not put her name after conversion . The dispute raised by the opposite party can only be decided at the time of evidence and also by the outcome of the civil suit filed by the opposite party but prior to that depriving a woman or the minor child from the

⁵ (2005) 3 SCC 636

order of maintenance when prima facie proof of marriage and the fact of the opposite part being the father was shown by the petitioner, is gross illegality.

13. In the case of ***Dwarika Prasad Satpathy vs Bidyut Parava Dixit and Anr***⁶ the Hon'ble Court observed-

"In our view validity of the marriage for the purpose of summary proceeding under section 125 Cr.P.C is to be determined on the basis of the evidence brought on record by the parties .The standard of proof of marriage in such proceeding is not as strict as required in a trial of offence under section 494 of the I.P.C .If the claimant in proceedings under section 125 Cr.P.C succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses, and in such situation, the party who denies the marital status can rebut the presumption."

14. Therefore when prima facie the wife could show a marriage registration certificate and the birth certificate of the child and as of now the opposite party could not rebut the same by producing any cogent evidence excepting mere denial, there is no room left to discard the same at the preliminary stage and therefore the Learned Magistrate rightly passed the order of maintenance. It is pertinent mention that on the basis of a complaint lodged by the petitioner against the Opposite Party under Section 498A IPC the I.O. submitted the

⁶ (1999) 7 SCC 675

charge sheet after completion of investigation, where no dispute can be found regarding the marriage.

Conclusion

- 15.** Hence in summation of supra this Court is of considered view that the learned revisional court failed to apply his judicial mind and did not consider the law laid down regarding maintenance and only on mere technicalities passed such order which practically frustrate the object of enacting the provision for social justice specially to women and children and therefore is liable to be set aside.
- 16.** Accordingly this CRR no. 1163 of 2024 is hereby allowed.
- 17.** The order passed by the Learned Additional Session Judge 3rd court, Asansol, Paschim Bardhaman passed on 12.2.2024 is hereby set aside .All connected application stands disposed of.
- 18.** The order of interim maintenance as passed by the Learned Magistrate is hereby affirmed .The Opposite Party no 2 is directed to pay the amount of interim maintenance in accordance with the direction passed by the Learned Magistrate and is further directed to expediate the hearing.
- 19.** The criminal Department is directed to forward the copy of this order to the concerned court for information and necessary action.
- 20.** No order as to costs.

21. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]

