

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 1513 OF 2022

ATOSI BHAD (MONDAL) @ ATASI BHAR (MONDAL)

VERSUS

STATE OF WEST BENGAL & ANR.

For the Petitioner : **Mr. Kallol Mondal, Sr. Adv.**
 Mr. Krishan Roy, Adv.
 Mr. Souvik Das, Adv.
 Mr. Anamitra Banerje, Adv.
 Mr. Sreyash Kumar Singh, Adv.
 Mr. Akbar Laskar, Adv.
 Ms. Moupiya Chakraborty, Adv.

For the Opposite
Party no. 2 : **Mr. Niladri Sekhar Ghosh, Adv.**
 Ms. Laboni Sikder, Adv.
 Mr. Souvik Dey, Adv.

For the State : **Mr. Arijit Ganguli, Adv.**
 Mr. Baishakhi Chatterjee, Adv.

Last heard on : **05.03.2026**

Judgement on : **10.06.2026**

Uploaded on : **10.06.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. This Revisional Application has been filed for setting aside the Judgement and order dated 30.3.2022 passed by the Learned Sessions Judge, Fast Track, 1st Court, Hooghly (Sadar) in Criminal Appeal No.9 of 2021 and Criminal Appeal No. 1 of 2022, both arising out of an order dated 29.7.2024 passed by the court of Learned Judicial Magistrate, 5th court, Hooghly in Misc. Case no. 126 of 2019, under Section 12/23 of the Protection of Women from Domestic Violence Act, 2005.

Brief Fact of the Case

2. The petitioner is the wife of opposite party no. 2 and filed an application for maintenance for their minor daughter and herself, and consequently the Learned Judicial Magistrate, 5th Court, Hooghly Sadar vide order dated 26.11.2021 directed the Opposite Party no. 2 to pay interim maintenance of Rs. 6,000 per month for his minor daughter. The said order was challenged and the Learned Appellate Court vide order dated 30.3.2022, reduced the maintenance to Rs. 4,500/- per month payable from the date of the order passed by the learned Magistrate. Being aggrieved thereby this revisional application was filed which was admitted on 25.11.2022 when the learned co-ordinate Bench directed that the judgement and order dated 30.3.2022 passed by the Learned Appellate Court to remain stayed. Subsequently, this Revisional application was taken up by another coordinate bench on 28.3.2023 when such interim order was extended till 11 June 2023.

Submissions.

- 3.** The learned Advocate representing the petitioner argued that the order passed by the learned Appellate Court reducing the quantum to Rs. 4500 to be paid from the date of the order of the learned Magistrate itself is contrary to the law and opposed to the settled principle in this regard. That apart the Hon'ble Court while admitting the Revisional application did not stay the proceeding or the original order passed by the Learned Magistrate dated 26.11.2021 passed in Misc. case no 126 of 2019 but only stayed the order impugned. The Opposite Party no. 2 ought to have complied with the order of learned Magistrate which he did not. The Opposite Party no. 2 is paying only Rs. 4500 per month and an application to that extent was filed before the Learned Magistrate on 1.8.2023 by the petitioner claiming based on the original order of Rs. 6000 per month.
- 4.** It is further argued that the Learned Magistrate could not pass any order on the ground that the Revisional application is pending before this Court and in fact effectively stayed the proceeding vide order dated 29.7.2024 depriving the present petitioner from having the monthly interim maintenance for the minor daughter and by completely misinterpreting the order passed by this court on 25.11.2022. Therefore, the present petitioner had to file the instant petition for passing an appropriate order considering the change of circumstances.
- 5.** Per Contra the learned Advocate representing the Opposite Party no. 2 raised vehement objection and submitted that the present petitioner initially prayed for maintenance for herself as well as for her daughter and that prayer was turned down by the Learned Magistrate and granted maintenance only in

favour of the minor daughter but without considering the income of the present Opposite Party no. 2. However the opposite party no 2 despite severe hardship is continuing with the payment in favour of minor daughter and the petitioner is not entitled to have any order of maintenance .

Analysis

6. Heard the rival contentions. The marriage between the parties was solemnised on 7.12.2013 and the minor child was born on 16.11.2015. Subsequently, the marital discord cropped up and because of continuous physical and mental torture and abuse as alleged by the petitioner who had to file the proceeding under section 12/23 of the PWDV Act, 2005 before the Learned Chief Judicial Magistrate, Hooghly at Chinsurah and prayed for interim maintenance .a The Learned Magistrate passed the interim order of maintenance in favour of the minor child, directing the Opposite Party no. 2 to pay an amount of Rs. 6000/- from the date of the said order. Against the said order, both the parties preferred appeals before the learned District and Sessions Judge, Hooghly. The Learned Appellate Court after hearing the parties vide this judgement and order dated 30.3.2022, modified the order passed by the Learned Magistrate, directing the Opposite Party no. 2 to keep paying an amount of Rs. 4500/- per month to the petitioner for maintenance of their minor daughter from the date of the order passed by Learned Magistrate. The stand taken by the learned advocate representing the petitioner that the learned Court did not consider that the house building loan for residential flat where the minor daughter is also residing was a joint property and Opposite Party no. 2 was the joint owner, but the entire burden of repayment of the said loan amounting to

monthly instalment of Rs. 9000 has to be borne by the petitioner by herself alongside the cost for maintenance of her child. The other contention is that the maintenance was allowed from the date of the order which would cause insurmountable suffering for the petitioner as the application for maintenance was filed on 17.8.2019 and the order was passed on 26.11.2021, that is after passing more than two years from the date of filing such application, which was not considered by the Learned Court. It is further argued that the cost of maintenance of the child is somewhere around Rs. 16,000 to 20,000 per month, which includes school expenses, tuition, expenses, and other expenses and it is difficult to maintain the child after meeting the amount towards repayment of housing loan by the petitioner.

7. The issue boils up for adjudication is whether the Learned Appellate Court or the Learned Court of Magistrate rightly passed the order granting maintenance from the date of the order. This issue has been set at rest by the decision passed by the Hon'ble Supreme Court in **Rajnish versus Neha**¹, where after discussing the divergent opinion of various High Courts regarding the date of implementation of the grant of interim maintenance as well as the maintenance either from the date of filing of application or from the date of order, it was held that it should be from the date of filing application. In view of such rationale, the observation of the Learned Appellate Court refusing to interfere with the order giving effect from the date of order that since the matter emanated from the PWDV Act, 2005 and an interim order there remain scope for further determination, appears to be not in consonance with the observation of the Hon'ble Supreme Court. That apart the maintenance

¹ (2021) 2 SCC 324

granted in favour of the minor child and that too long back in the year 2019. It is not in dispute that while granting the interim maintenance there was no occasion to determine the exact income of the parties however prima facie the income of the wife was found more than the husband as discussed by the Learned Appellate Court but that itself cannot absolve the liability of the Opposite Party no. 2 to maintain his own child. Therefore, this court is of the view that the order passed by the Learned Court needs to be modified to that extent that the amount decided by the learned Appellate Court is to be paid from the date of the filing of the application instead from the date of the order. It is pertinent to mention herein at the time of final determination of the quantum, if any found to be paid in excess by the Opposite Party, no. 2, the amount will be adjusted.

Conclusion

- 8.** Therefore the instant Revisional application stands allowed in part.
- 9.** The order passed by the Learned Fast Track Court, Hooghly Sadar in Criminal Appeal no. 9/2021 is hereby modified to the extent that the amount as allowed to be paid by the husband to be made payable in three instalments with effect from June, 2026 other part of the order shall remain same.
- 10.** The learned Magistrate is directed to make all endeavour to dispose of the proceeding at an earliest without granting any unnecessary adjournment to either of the parties.
- 11.** Hence, this Revisional Application stands allowed in part.

12. Urgent certified copy to be provided if applied for after following all required formalities.

[CHAITALI CHATTERJEE (DAS), J.]

