

16.02.2026
Item No.95
Ct. No. 34
nb

CRR 2199 of 2023

In the matter of: **Smt. Bulti De(Das).**

..... petitioner.

Mr. Gobinda Chandra Baidya,
Mr. Bobinda Baidya,
Mr. Probhas Mondal,
....For the Petitioner

1. This revisional application has been filed for setting aside the judgment and order dated March 17, 2023 passed by the Judicial Magistrate, 6th Court, Paschim Medinipur in Misc. Case No. MR 206/2021 under Section 125 of the Code of Criminal Procedure.
2. The petitioner is the legally married wife of the opposite party no.2, which was solemnized on March 13, 2019 according Hindu Rights and Customs and they started to lead conjugal life as husband and wife and the said marriage was consummated. Subsequently, on account of marital discord the relations turned sour. A number of proceeding initiated between the parties against each other. In connection with the proceeding under Section 125 of the Code of Criminal Procedure filed by the wife an amount Rs.40, 000/- was claimed by the present petitioner/wife as maintenance and the learned Court of Magistrate by passing the impugned order refused such prayer

with the observation that the Court is not in a position to conclude as to whether the petitioner left matrimonial home and whether the opposite party/husband failed and neglected to maintain his wife.

3. It is submitted by the learned counsel for the petitioner that the opposite party no.2 admitted to be an employee of TCS in his written objection and his monthly earning was mentioned as of earning Rs.32,000/- but despite repeated direction passed by the learned Magistrate, he did not file his affidavit of asset and liability. The present petitioner disclosed by way of filing affidavit of asset that she is a home maker having no income. The husband initially filed a suit for restitution of conjugal right and after the same being dismissed for default, filed a suit for declaration that the marriage is null and void.

4. It is submitted by the learned advocate that being aggrieved by the order passed by the learned Magistrate refusing to pay any maintenance this revisional application was filed and she is not getting any amount as maintenance as on that. The further hearing of the said proceeding is also pending on account of pendency of this revisional application.

5. None appears on behalf of the opposite party no.2 and from the record; it transpires that on December 10, 2025 an advocate claiming to be authorized to appear on behalf of the opposite party no.2 prayed for time on the ground of filing

vokalatnama within the week. Subsequently did not turn and no fresh vakalatnama can be found from the record.

6. Having heard learned counsel for the petitioner and careful perusal of the materials on record, prima facie, it appears that the marriage was not challenged before the court of learned Magistrate while considering the application under Section 125 of the Code of Criminal Procedure .Admittedly, an application for restitution of conjugal right was filed by the husband against the present petitioner which further admit the factum of marriage. The subsequent suit was filed under Section 12(1)(b)(c)(d) of the Hindu Marriage Act, 1955 on the ground of nullity of marriage after the previous suit got dismiss for default . This contradictory stand taken by the opposite party no. 2/husband, prima facie, reflects that the husband is trying to avoid his responsibility to maintain his wife. There are numerous proceeding pending between the parties that does not, prima facie, takes away the responsibility of the opposite party/husband to maintain his wife if she is unable to maintain herself according to the status of the husband. Nothing has been reflected from the order passed by the learned Magistrate as to why the mandatory direction passed by the Hon'ble Supreme Court in the case ***Rajnesh Vs. Neha (AIR 2021 SUPREME COURT 569)*** has not been complied with by the husband when the husband/opposite party himself admitted in his affidavit-in-opposition claiming to be an employee of TCS. This conduct on

the part of the husband is a glaring example to suppress the truth from the Court i.e. his real and actual income. Whether the present petitioner being the wife voluntarily left matrimonial home or was driven out by the opposite party/husband can be decided in course of trial at time of adducing evidence and the learned Magistrate could not ascertain such fact, which is very much apparent from his opinion passed in the order impugned.

7. Despite that the learned Magistrate considered the income of the husband as Rs.32,000/- and the income of the present wife as Rs.52,000/- only on the basis of the submission made by the husband. Learned Magistrate further considered that Rs.2,000/- only is being paid to the present petitioner by the husband since 2021 but failed to consider that no account was provided by the husband to which he was paying the same.

8. In the decision of *Rajnish vs Neha* the Hon'ble Supreme court took note that *Justice Krishna Iyer in his judgment in Captain Ramesh Chander Kaushal v Mrs. Veena Kaushal & Ors.1* held that the object of maintenance laws is :

“9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation

if it has to have social relevance. So viewed, it is (1978) 4 SCC 70.

9. Learned Magistrate should have considered that the the object and purpose to introduce this provision in Code of Criminal Procedure was to prevent vagrancy and destitution .It is not a charity or whims and caprice of the husband to pay the maintenance to the wife and is statutory obligation upon the husband to pay such amount.

10. Therefore, this Court is of the view that the observation made by the Learned Magistrate having not in consonance with the intend and purpose of the provision enumerated therein and is liable to be set aside.

11. The learned Magistrate is, therefore directed to hear the petition afresh after giving opportunity of hearing to both the parties. The learned court must ensure the affidavit of asset and liabilities to be submitted by the husband in terms of mandatory direction of the Hon'ble Supreme Court.

12. Till such time, the husband/opposite party is directed to pay amount of Rs.10,000/-as interim maintenance with effect from this date to be paid within seventh of each month until further orders from the learned court ascertaining the maintenance .However such amount will be adjusted with the order to be passed by the learned Magistrate after hearing afresh giving opportunity of hearing to both the parties .It is made clear the Learned court will pass the order without being influenced by any of the observation made herein.

13. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(CHAITALI CHATTERJEE (DAS), J.)