**IN THE HIGH COURT AT CALCUTTA**

**CRIMINAL REVISIONAL JURISDICTION**

**Appellate Side**

**Present:**

**The Hon'ble Justice Ajay Kumar Gupta**

**C.R.R. No. 2819 of 2024**

**Sahanawaz Tarafder**

**Versus**

**The State of West Bengal & Another**

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| **For the Petitioner** | : | Mr. Sekhar Pal, Adv.<br>Mr. Mobakshar Islam, Adv. |
| **Heard on** | : | 12.10.2026 |
| **Judgment on** | : | 26.11.2026 |
| **Uploaded on** | : | 26.11.2026 |

**Ajay Kumar Gupta, J.:-**

**1.** The instant Criminal Revisional application under Article 227 of the Constitution of India has been filed by the petitioner, who is the husband of the opposite party no. 2, challenging the judgment and order dated 10.06.2024 passed by the Learned Additional District and Sessions Judge, Fast Track, 3rd Court, Barasat, in connection with Criminal Appeal No. 03 of 2023.

**2.** By the said judgment, the learned Judge dismissed the appeal and affirmed the order passed by the Learned Chief Judicial

Magistrate, North 24 Parganas on 28.12.2002, whereby monetary relief was allowed in favour of the opposite party in a proceeding, namely, C. No. 1155/16, initiated under the Protection of Women from Domestic Violence Act, 2005 (In short, 'PWDV Act').

**3.** The facts of the case, in a nutshell, are that the petitioner herein got married to the opposite party no. 2 herein on 26.02.2010 as per Muslim Rites and Customs. Two daughters were born to them, namely, Mousam Tarafdar and Nusrat Tarafdar. Eventually, matrimonial discord and differences arose between them. The opposite party no. 2 left the matrimonial home of her own volition with their younger daughter, namely, Nusrat Tarafdar, and left the elder daughter, i.e., Mausam Tarafdar, with the petitioner herein.

**4.** Their marriage was dissolved by way of divorce before the Muslim Marriage Registrar, and the opposite party no. 2 remarried with one Rejaul Ali. However, even after the divorce, the opposite party no. 2 filed an application under Section 125 of the Code of Criminal Procedure, which was registered as M. Case No. 200 of 2017 before the Learned Chief Judicial Magistrate at Barasat, where an interim maintenance order was passed. However, subsequently, the said case was ultimately dismissed for default.

**5.** Before filing the application under Section 125 of the Code of Criminal Procedure, the opposite party no. 2 had filed an application under Section 12 of the PWDV Act before the learned Chief Judicial Magistrate at Barasat, being C. Case No. 1155 of 2016. By the final judgment and order dated 28.12.2022, passed

after taking evidence of both parties, the application was partly allowed; the petitioner was directed to pay maintenance of Rs. 3,500/- per month for his minor daughter, while the opposite party no. 2's own prayer for maintenance was rejected.

**6.** Being aggrieved by and dissatisfied with the aforesaid judgment and order dated 28.12.2022, the petitioner filed a Criminal Appeal before the Learned District and Sessions Judge at Barasat being Criminal Appeal No. 03 of 2023. However, the same was dismissed, affirming the judgment of the trial court. Hence, this revisional application.

**7.** Mr Sekhar Pal, learned counsel representing the petitioner, submitted that the Learned Chief Judicial Magistrate as well as the Learned District and Sessions Judge at Barasat erred in law in passing their Judgment and Order, ignoring the provisions of the Protection of Women from Domestic Violence Act, 2005 because the quantum of maintenance should be considered as per the financial capacity of the husband. The petitioner had filed an affidavit of assets in connection with C. Case No. 1155 of 2016 before the Learned Chief Judicial Magistrate at Barasat, where he declared that he is a cultivator and his monthly income was Rs. 3,000/- per month; however, the Learned Chief Judicial Magistrate as well as the Learned District and Sessions Judge at Barasat overlooked and did not consider the same for proper assessment of the maintenance amount in favour of the minor child.

**8.** Learned counsel further states that the Learned District and Sessions Judge at Barasat was pleased to pass the *ex-parte* impugned Judgment and Order dated 10.06.2024 in connection with Criminal Appeal No. 03 of 2023 without considering the materials on record and irregularities in the Judgment and Order passed by the Learned Chief Judicial Magistrate, Barasat in connection with C Case No. 1155 of 2016; as such, the same is liable to be set aside.

**9.** The petitioner, however, has been paying maintenance to her minor daughter and filed an application under section 25 of the Guardians and Wards Act, 1890 before the Learned District and Sessions Judge, North-24-Parganas at Barasat for custody of his minor daughter from the custody of the opposite party no. 2 herein. The said application, being Act-VIII Miscellaneous Case No. 84 of 2023, is pending before the Learned District and Sessions Judge at Barasat.

**10.** Learned counsel further contended that the Learned Chief Judicial Magistrate at Barasat erred in law in passing his impugned Judgment and Order dated 28.12.2022 in connection with C. Case No. 1155 of 2016, allowing the application for maintenance under the Domestic Violence of the opposite party no. 2, which was partly allowed where the opposite party no. 2 failed to prove that the minor child was/is the aggrieved person and, as such, she was not entitled to get any maintenance in connection with the aforesaid case.

**11.** Learned counsel further submitted that the Learned District and Sessions Judge at Barasat failed to consider the irregularities committed by the Learned Magistrate. It was contended that the opposite party no. 2 failed to prove that she was an "aggrieved person" within the meaning of the PWDV Act, 2005, and that the monetary relief granted to the minor child was, therefore, in clear violation of the provisions of the said Act. The proper course would have been to file a petition under Section 125 of the Code of Criminal Procedure; as such, the impugned order as well as the order of the Learned Chief Judicial Magistrate at Barasat in connection with C. Case No. 1155 of 2016, are bad in law and liable to be set aside.

**12.** Learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Shalu Ojha v. Prashant Ojha***[1]***,*** and that of the Calcutta High Court in the case of ***Shyamal Dutta v. Sheli Dutta***[2] to fortify his aforesaid submission that the aggrieved person had stayed with the petitioner for a very limited period; therefore, the amount of maintenance could not be adjudicated in favour of the minor under the PWDV Act, 2005, and the proper course would be to file a petition under section 125 of the Cr.P.C. or as per Muslim personal law for seeking her maintenance.

**13.** On the other hand, none appeared on behalf of the opposite party no. 2 despite service of summons.

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[1] ***AIR 2018Supreme Court 3693***
[2] ***2020 (1) Crimes 567 (Cal)***

**14.** Having heard the learned counsel for the petitioner and upon perusal of the material available on record, this Court notices that there is no dispute between the petitioner and opposite party that they were husband and wife and their marriage took place on 26.02.2010 as per Muslim Rites and Customs, and that they parted ways even legally due to disputes and differences between them.

**15.** It is the petitioner's case that his marriage with the opposite party no. 2 was dissolved by divorce before the Muslim Marriage Registrar, and that she has since remarried. She filed a case under Section 12 of the PWDV Act, in which the learned trial court rejected her prayer for maintenance but allowed maintenance of Rs. 3,500/- per month for the minor daughter. The petitioner states that he is paying this amount regularly, and that his application for custody of the child under Section 25 of the Guardians and Wards Act, 1890 (Act VIII Misc. Case No. 84 of 2023) is pending before the learned District and Sessions Judge at Barasat. This Court is conscious that the subject matter of the present revisional application is not related to custody. The petitioner challenges the maintenance amount awarded in favour of his daughter, who resides with her mother, on two grounds: first, that both courts failed to consider his actual income and liabilities as disclosed in his affidavit of assets and liabilities; and second, that a minor child cannot claim maintenance through her mother under the PWDV Act in the absence of domestic violence

against her, and could, at best, have applied under Section 125 of the Cr.P.C. for her maintenance.

**16.** On the submissions advanced and the materials on record, two questions arise for determination:

**i.** Whether a minor child residing with her mother is entitled to monetary relief under Section 20 of the PWDV Act, 2005 on the mother's application under Section 12, or whether the remedy lies only under Section 125 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") or the personal law of the parties;

**ii.** Whether the quantum of Rs. 3,500/- per month calls for interference for want of consideration of the petitioner's affidavit of assets and liabilities.

**17.** The Hon'ble Supreme Court in the case of ***Shaurabh Kumar Tripathi v. Vidhi Rawal***[3] has held that proceedings on an application under Section 12 of the PWDV Act, though governed by the Cr.P.C. by virtue of Section 28(1), are predominantly civil in nature, and that the Act is a welfare legislation. That decision arose from a prayer to quash a Section 12 application under Section 482 Cr.P.C., and holds that the High Court's power extends to orders passed under Sections 18 to 23 of the Act, but must be exercised with caution and circumspection, only in a case of gross illegality or gross abuse of the process of law. The restraint so enjoined applies with equal force where, as here, concurrent orders under the Act are assailed after an unsuccessful statutory

[3] ***2025 INSC 734***

appeal. This Court does not re-appreciate evidence; it examines whether the orders suffer from illegality, perversity or jurisdictional error.

**18.** The PWDV Act was enacted to provide effective protection for the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family. The provisions material to the controversy are the following. Section 2(a) defines an "aggrieved person" as any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Section 2(f) defines "domestic relationship" as a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption, or are family members living together as a joint family. Section 3 defines domestic violence in wide terms, and Explanation I(iv)(a) thereto includes within "economic abuse" the deprivation of economic or financial resources to which the aggrieved person is entitled under any law or custom, or which she requires out of necessity, including household necessities for the aggrieved person and her children, and maintenance. Section 12(1) enables an aggrieved person to apply to the Magistrate for one or more reliefs under the Act. Section 20(1) empowers the Magistrate to direct the respondent to pay monetary relief "to meet the expenses incurred and losses suffered by the aggrieved person and

any child of the aggrieved person as a result of the domestic violence", and clause (d) expressly includes the maintenance of the aggrieved person "as well as her children", whether by an order under or in addition to an order of maintenance under Section 125 Cr.P.C. or any other law for the time being in force. Relief, under Section 20(2), must be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

**19.** It is undisputed that the petitioner and the opposite party no. 2 were married on 26.02.2010 according to Muslim Rites and Customs and lived together as husband and wife. The opposite party no. 2 is, therefore, a woman who has been in a domestic relationship with the petitioner. The subsequent dissolution of the marriage before the Muslim Marriage Registrar does not efface that status. Reliance in this regard is placed on the decision in ***Juveria Abdul Majid Patni v. Atif Iqbal Mansoori***[4], where the Hon'ble Supreme Court held that an act of domestic violence, once committed, is not absolved by a subsequent decree of divorce, and that the aggrieved person is not thereby denied the benefit of the Act. Further, in ***Prabha Tyagi v. Kamlesh Devi***[5], the Hon'ble Supreme Court held that the aggrieved person need not be residing with the respondent in a shared household at the time of filing the application under Section 12; it is sufficient to establish

[4] ***(2014) 10 SCC 736***
[5] ***(2022) 8 SCC 90***

that she has at some point of time lived with him, or had the right to live, and has been subjected to domestic violence, or is later subjected to it on account of the domestic relationship. In the said case, the Court further described the Act as a piece of civil code applicable to every woman in India irrespective of her religious affiliation. The fact that the parties were married under Muslim Rites, and the marriage stands dissolved and that the opposite party no. 2 has since remarried with one Rejaul Ali does not, therefore, render the application under Section 12 incompetent.

**20.** The petitioner's principal contention is that the minor child is not an "aggrieved person", so that relief in her favour was beyond the Act. The contention overlooks the scheme of the Act. The opposite party no. 2, an aggrieved person, filed the application under Section 12(1). Section 20(1) provides for monetary relief to the aggrieved person and to "any child of the aggrieved person", and clause (d) expressly covers the maintenance of "her children". The child's entitlement is thus relief available on the mother's application. It does not depend on the child having been herself subjected to violence or having filed a separate application. Where the child lives with the mother after she left the matrimonial home, the father's failure to maintain the child amounts to economic abuse under Explanation I(iv)(a) to Section 3.

**21.** A father's statutory and moral obligation to maintain his minor child does not depend on the subsistence of the marriage or on

personal law. The petitioner does not dispute it and says he has been paying the amount regularly.

**22.** The submission that the proper course was a petition under Section 125 Cr.P.C. is untenable. Section 20(1)(d) contemplates an order "under or in addition to" an order under Section 125 of Cr.P.C. Sections 26 and 36 preserve the remedies side by side, and nothing in the Act makes Section 125 exclusive or a condition precedent to relief under Section 20.

**23.** The opposite party no. 2 invoked the PWDV Act first, in C. Case No. 1155 of 2016. Her later application under Section 125 of Cr.P.C., in M. Case No. 200 of 2017, in which interim maintenance had been ordered, was dismissed for default and without adjudication on merits. Neither its pendency nor its dismissal bars relief under the Act. For the same reason, the contention that the claim should have been made "as per Muslim personal law" does not assist the petitioner; the Act applies irrespective of religious affiliation.

**24.** The petitioner relied on ***Shalu Ojha v. Prashant Ojha (Supra)***, where a wife's claim in which interim maintenance of Rs. 2,50,000/- per month, reduced in appeal to Rs. 50,000/-, rested on sharply conflicting affidavits about the husband's assets and the wife's means, the parties having cohabited for only about four months. The Hon'ble Supreme Court observed that such disputed material could be assessed only after evidence tested by cross-examination, and granted the wife liberty to apply under the Hindu

Adoptions and Maintenance Act, 1956 or Section 125 Cr.P.C., with Rs. 50,000/- per month continuing as the minimum. The decision does not hold that a minor child cannot be granted monetary relief under the Act, nor that short cohabitation disentitles the aggrieved person or her child. The present case differs. The application was decided after evidence from both parties; the sum awarded is modest, and the petitioner's own case is that he is a cultivator earning Rs. 3,000/- per month, so no conflict comparable to ***Shalu Ojha (Supra)*** arises. The decision does not assist the petitioner.

**25.** The second ground is that the Courts below did not consider the petitioner's affidavit of assets and liabilities, describing him as a cultivator with a monthly income of Rs. 3,000/-. Section 20(2) requires monetary relief to be adequate, fair and reasonable, and consistent with the standard of living to which the aggrieved person is accustomed. The decision in the case of ***Rajnesh v. Neha***[6] lays down the criteria for determining maintenance and directs disclosure by affidavit of assets and liabilities, including in PWDV Act proceedings. The affidavit is, however, a disclosure to be tested against the evidence, not a conclusive determination of income. Both Courts concurrently fixed maintenance at Rs. 3,500/- per month for the child. A bare declaration of income of Rs. 3,000/- per month cannot measure a father's obligation, particularly when the sum awarded for one child itself exceeds

[6]***(2021) 2 SCC 324***

that figure. The amount is modest, and no perversity or error of law in its assessment has been shown.

**26.** The petitioner also refers to his pending application under Section 25 of the Guardians and Wards Act, 1890 (Act VIII Misc. Case No. 84 of 2023) for custody of the daughter, who presently lives with her mother. Custody is not the subject matter of this revision and this Court expresses no opinion on it. Its pendency does not suspend the petitioner's obligation to maintain the child. If custody is altered or his circumstances materially change, the remedy lies in an application before the learned Magistrate under Section 25 of the PWDV Act for alteration, modification or revocation of the order.

**27.** This Court is also impressed with the view of the concurrent finding with regard to maintenance in favour of the minor child to the tune of Rs. 3500/-, considering the status maintained by the petitioner and his income from different sources. Furthermore, the prayer of the wife was only rejected as she admitted she has been divorced from the petitioner and remarried. She did not challenge the said finding of the Trial Court; as such, the same is final. However, with regard to the minor, she is entitled to monetary relief from her father, even though there is no specific allegation of domestic violence from the side of the petitioner, as the provisions of the Domestic Violence Act are enacted based on a piece of social welfare legislation for quick and immediate relief to the minor child of the aggrieved person.

**28.** For the reasons aforesaid, this Court finds no illegality, perversity or jurisdictional error in the judgment and order dated 10.06.2024 passed in Criminal Appeal No. 03 of 2023, or in the order dated 28.12.2022 passed in C. Case No. 1155 of 2016.

**29.** Accordingly, **CRR No. 2819 of 2024** is, thus, **dismissed**. Connected application, if any, stands disposed of.

**30.** Let a copy of this Judgment be sent to the Learned Court below for information.

**31.** Interim order, if any, stands vacated.

**32.** All parties will act on the server copies of this Judgment duly downloadedfrom the official *website* of this Hon'ble High Court.

**33.** Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal and necessary formalities.

**(Ajay Kumar Gupta, J.)**

**(P.A.)**