

**CRR 3403 of 2017**

**Subrata Kumar Mallick  
Vs.  
The State of West Bengal & Anr.**

1. When the matter is called on for hearing, there is no appearance on behalf of the petitioner.
2. This revisional application, challenging the appellate judgment and order of the learned Sessions Judge (Fast Track 1<sup>st</sup> Court, Alipore) dated 26<sup>th</sup> July, 2017, has been pending before this Court for nearly nine years.
3. Despite sufficient time and repeated opportunities afforded to the petitioner to prosecute this matter, he has remained persistently absent. Given the vintage of this litigation and the consistent failure of the petitioner to represent his case, I find it neither feasible nor in the interest of justice to keep this matter pending any longer. Accordingly, I proceed to dispose of this matter on its merits based on the materials available on record.
4. The petitioner (husband) challenged the judgment of the learned ACJM, Alipore, dated 30<sup>th</sup> January, 2016, passed in Case No. ACM-34 of 2009 under section 125 of the Code of Criminal Procedure, which awarded maintenance to the wife and two children. The learned Sessions Judge in Criminal Motion No. 67 of 2016 modified the ACJM's order by enhancing the wife's maintenance to Rs.7,000/- per month, maintaining the daughter's maintenance at Rs. 3,500/- per month and discontinuing the maintenance for the son on the ground that he had attained majority.

5. The petitioner's primary grievances are that the district court failed to consider the wife's alleged independent income and that there exists a prior alimony order under section 24 of the Hindu Marriage Act, 1955 which purportedly renders the section 125 Cr.P.C. proceedings redundant.
6. I have meticulously reviewed the record. The law regarding the interplay between the Hindu Marriage Act and the Cr.P.C. is well-settled. While any amount paid as *alimony pendente lite* in civil proceedings must be adjusted against the maintenance awarded under Section 125 Cr.P.C., the statutory right to maintenance under the Cr.P.C. is a distinct social welfare measure that is not extinguished by concurrent civil proceedings. The Learned Magistrate and the Learned Sessions Judge correctly assessed the financial capacity of the husband and the dependency of the wife and minor unmarried daughter.
7. Furthermore, the Learned Sessions Judge correctly applied the law regarding the maintenance of the son. Under Section 125 of the Cr.P.C., a son who has attained the age of majority is not entitled to maintenance unless he suffers from physical or mental incapacity. The Learned Sessions Judge rightly exercised revisional jurisdiction to rectify the trial court's order in this regard while upholding the maintenance for the wife and the minor daughter.
8. The petitioner's contention is rejected. Both the Courts have passed order by analyzing the salary certificates and noted the absence of any credible proof regarding the wife's alleged independent business income. It is a settled principle of law that

the burden of proving that a wife has sufficient means to maintain herself rests upon the husband, a burden the petitioner has failed to discharge.

9. In view of the aforesaid discussions, the instant revisional application, being C.R.R. No. 3403 of 2017, is hereby dismissed.
10. The appellate judgment and order dated 26<sup>th</sup> July, 2017 passed by the learned Sessions Judge, Fast Track, 1<sup>st</sup> Court, Alipore in Criminal Motion No. 67 of 2016 is sustained.
11. Any arrears of maintenance accumulated during the pendency of this revision shall be cleared by the petitioner within three months from the date of this order.
12. Interim order, if subsisting, stands vacated.
13. Photostat copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(Uday Kumar, J.)**