

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present: - HON'BLE MS. JUSTICE CHAITALI CHATTERJEE (DAS).

CRR 4005 of 2023
With
IA No. CRAN 5 of 2026
SHAMPA DAS
VS.
SUKHENDU NANDI

For the Petitioner : **Mr. Debasish Kar (via V.C.),**
Mr. Husen Mustafi, Adv.
Ms. Paramita Mukherjee, Adv.
Ms. Sahana Parvin, Adv.
Ms. Rimi Sil, Adv.

For the Opposite party : **Mr. Subhadeep Chatterjee, Adv.**
Ms Arpita Kundu, Adv.
Mr. Bithin Mandal, Adv.
Mr. Nilabha Roy, Adv.

Heard On : **07.05.2026**
Judgment on : **18.05.2026**
Uploaded on : **18.05.2026**

CHAITALI CHATTERJEE (DAS), J.

1. This revisional application has been filed against the order and judgment and order dated September 11, 2023 passed by the Additional Sessions Judge, Fast Track 1st Court at Barrackpore in Criminal Revision No.555 of 2022 arising out

of an order dated 24.2.2022 passed by the learned 4th Court, Judicial Magistrate, Barrackpore in M. case No. 914 of 2021, whereby the quantum of maintenance has been reduced to Rs.4, 000/- from Rs.8,000/-.

- 2.** It is the case of the petitioner being wife of the opposite party no.2 that she filed an application under Section 125 of the Code of Criminal Procedure claiming maintenance of Rs.15, 000/- per month for the child and the proceeding was initiated before the Court of learned Judicial Magistrate, 4th Court at Barrackpore.
- 3.** Before the learned Magistrate, the husband did not turn up despite receiving service and the learned Court of Magistrate considering the evidence adduced by the wife and considering the income as stated by the present petitioner passed the order of maintenance to the extent of Rs.8,000/-. The opposite party after that filed revisional application challenging the said ex parte order in respect of filing any application for setting aside such ex parte party and the learned revisional Court only considering the submission advanced by the learned advocate for the petitioner drastically reduced the amount to Rs.4,000/- from Rs.8,000/-.
- 4.** The learned counsel representing the petitioner submits that the revisional Court failed to consider that the learned Magistrate after being satisfied about the service of notice upon the opposite party/respondent passed such proceeding ex parte order and the revisional Court did not consider that aspect of the matter when the opposite party no.2 on affidavit stated before the revisional Court that he has not served with the notice.
- 5.** It is further submitted that the husband initially, did not suppress his income and, therefore, did not challenge any application for setting aside the ex parte order in respect of that directly challenge the ex parte order with the false and

fabricated case. Therefore, it is submitted that the order passed by the revisional Court is bad in law and without giving any scope to the petitioner to place her case passed the said order refusing the amount to Rs.4,000/-, which would otherwise cause serious prejudice to the petitioner.

- 6.** Per contra, the learned counsel representing the opposite party/husband submits that he did not serve any notice as there is no legal bar to challenge the ex parte order in revisional Court. Before the revisional Court, despite having full knowledge and initially though appeared, the petitioner chose not to turn up the learned Court, therefore, had to pass the order on the basis of the available materials before the learned Court. The petitioner herein did not file any document in respect of contention regarding the necessity of such huge amount of money is the claim of maintenance was only for the manner of torture.
- 7.** The present petitioner despite having full knowledge about of date of hearing did not turn up. The Opposite Party is not an engineer as portrayed but he is a mechanic and the income has been shown, which is absolutely inflated on the basis of which such payment of Rs.8,000/- was allowed and it causes severe hardship to the Opposite Party. Though, in view of the interim order continue to pay such amount and the Learned Divisional Court rightly reduced the amount, which was stayed by this Court. Accordingly prayed for dismissal of the revisional application.
- 8.** Heard the learned counsel on behalf of both the parties and on perusal of materials on record, it appears that under Section 125 proceeding was filed by the petitioner before the learned Magistrate only for the maintenance of her minor daughter. The marriage between the parties was solemnised on May 31, 2019 according the Hindu Rights and Customs and the child was born on July 21, 2020. The present petitioner filed a complaint under Section

498A/323/406/502/32 against the opposite party. It is categorically mentioned in the petition under Section 125 that the opposite party is an electrical engineer by profession and earns Rs.40, 000/- per month. The order of the trial court was passed solely on the statement made by the petitioner since the husband /opposite party did not appear before the Court .The Learned magistrate held that service was effected upon the husband and despite that he did not turn up while the opposite party specifically took the point before the revisional court that no notice was served upon him. It is quite astonishing that the learned Additional session Judge while considering the prayer did not make any observation regarding service of notice or how he make out his case when a court has held that service was effected . Before the Learned Additional Session Judge the present petitioner though appeared initially did not turn up and no such explanation can be found from the fore corner of her petition about her abandoning the proceeding. The learned Revisional Court while reducing the quantum of maintenance drastically to Rs 4000/- from Rs 8000/- did not assign any plausible explanation excepting that the wife is a salaried lady. Therefore before both the Learned Court of Magistrate as well as the Revisional court the income of the parties could not be ascertained due to their non-appearance before the respective court, therefore in order to determine the quantum of maintenance it is necessary to ascertain the income of both the parties. The petition is absolutely silent about the expenses incurred for the maintenance of the daughter. It is a settled proposition of law that the responsibilities of the child to maintain the child lies upon both the parents and the expenses also to be borne by the parents in qual share when both the parties are in service.

9. Since the court never had the occasion to determine the income of the parties it is necessary that the proceeding under Section 125 should be revived and the

Learned Magistrate must determine the actual income of the parties and to decide the quantum afresh but prior to that the opposite party must discharge his responsibilities as father.

10. In the application filed by the opposite party, he denied his avocation as Engineer and the income of Rs 40,000/- . It is submitted that the amount of Rs 8000/- is creating lot of pressure on him as it was granted considering his income as Rs 40,000/-.

11. On careful consideration of the entire facts this court is of the view that the order passed by the learned Revisional court reducing the amount to Rs 4000/- solely considering the version of the opposite party /husband without ascertaining the actual income of him, from Rs 8000/- is required to be set aside. At the same time the order passed by the Learned Magistrate was solely based on the version of the wife when the wife also did not divulge her income and hence the necessity to pay Rs 8000/- for a minor daughter was never ascertained. Therefore this court is of the view that the purpose would be subserved if the opposite party pays an amount of Rs. 6000/- for the present towards the current amount till the learned Court of Magistrate ascertained the income of the parties and the quantum required for maintenance of the child who is only aged about 6 years as of now.

12. Accordingly this revisional application stands allowed in part. The order passed by the Learned Additional Session Judge is hereby modified and the amount granted is hereby modified to the extent of Rs 6000/- to be paid with effect from this Month. However it is made clear that the said amount of Rs 6000/- to be paid only from this month and will continue to pay until further order is passed by the Learned Magistrate and whatever amount to be decided will not be adjusted with the amount already paid by the opposite party towards

maintenance of his minor child.

13. The order passed by the Learned Magistrate is hereby set aside with a direction to hear afresh after giving opportunity to the parties to file their respective affidavit of Asset and liabilities in terms of the decision of Hon'ble Supreme Court passed in ***Rajnish vs Neha and Anr. reported in (2021) 2 SCC 324***

14. The Learned Magistrate is directed to dispose of the proceeding at an earliest without giving any unnecessary adjournment to either of the parties and preferably within a period of 6 months.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(CHAITALI CHATTERJEE (DAS), J.)

