

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CRR NO.1386 of 2020

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IA NO:CRAN/1/2020

**SWAPAN KUMAR MALLICK
VS.
SMT. BHABANI MALLICK & ANR.**

**For the Petitioner : Mr. Sandipan Ganguly, Sr. Adv.,
Mr. Biswajit Manna, Adv.**

For the O.Ps. : Mrs. Rituparna De Ghosh, Adv.

Last heard on : 08.04.2026

Judgement on : 08.04.2026

Uploaded on : 10.04.2026

CHAITALI CHATTERJEE (DAS), J. :-

1. This is an application filed under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973, against the judgment and order dated February 19, 2020 passed by the learned Additional Sessions Judge, Fast Track Court, Suri, Birbhum, in connection with the Criminal Revision No.06 of 2017, thereby setting aside the order of the learned Judicial Magistrate, 2nd Court, Suri, Birbhum, passed in Criminal Misc. Case No.187 of 2013 under Section 127 of the Code of Criminal Procedure.

- 2.** The case of the petitioner in brief is that the marriage of the petitioner with the opposite party no.1 was held on February 12, 1996 according to the Hindu rites and customs and thereafter they lived together and led conjugal life and a female child was born from their wedlock. On July 20, 1997, she left her matrimonial home alleging torture upon her by the petitioner and her in-laws and lodged a complaint under Section 498A of the Indian Penal Code and an order of acquittal was passed by virtue of a judgment and order dated December 13, 2000. In the year 1988, the opposite party no.1 filed the first application under Section 125 of the Code of Criminal Procedure praying for maintenance and initially an interim maintenance was granted which got dismissed subsequently, with the observation that the case made out is absolutely false. After that, again in the month of July, 2001, she along with the opposite party no.2 being the daughter filed a second proceeding under Section 125 of the Code of Criminal Procedure.
- 3.** The records reveal a long standing matrimonial discord giving rise to numerous litigation between the parties specially in connection with a proceeding under Section 125 Cr.P.C. Several revisional applications were filed before this Court against almost each and every order passed by the Learned Magistrate and the quantum of maintenance was modified on several occasions and lastly in the year 2008, after remand from this Court, the learned Magistrate passed an order directing the petitioner to pay each of t
- 4.** Another revisional application was filed being CRR 3436 of 2009 whereby the learned coordinate Bench modified the amount to the tune of Rs.1200/- per

month to be paid to the opposite party no.1 and Rs.800/- per month to the opposite party no.2 with effect from February 10, 2005.

5. During pendency of that revisional application, opposite party no.2 filed an application under Section 127 of the Code of Criminal Procedure praying for enhancement of the amount of maintenance to Rs.5000/- per month to each of the opposite parties and such prayer was initially rejected by the learned Magistrate on August 30, 2016 with the observation that as the order of High Court was passed in the year 2016 affirming the quantum of maintenance as Rs.1200/- plus Rs.800/- per month, in order to avoid confusion of judicial indiscipline no enhancement order to be passed.
6. Challenging that, the opposite party filed a revisional application before the learned Sessions Court on February 03, 2017. The revisional court also issued summons for production of pension records of the petitioner. Accordingly, such documents were placed and the revisional court further issued summons to the Branch Manager, Allahabad Bank, Palashpuly Branch. The present petitioner being aggrieved filed a revisional application which was disposed of on September 20, 2019 directing the revisional court to dispose of the motion on merits after setting aside the order passed by the revisional court. The said criminal revisional application being Criminal Motion (Revision) No.06 of 2017 was disposed of on February 19, 2020 directing the petitioner to pay each of the opposite parties a sum of Rs.4000/- per month as maintenance.
7. Being aggrieved thereby, this revisional application has been filed.

8. Learned Senior Advocate Mr. Sandipan Ganguly representing the petitioner, strenuously contended that the learned revisional court without assigning appropriate reason passed such order arbitrarily without applying his judicial mind, despite being aware the petitioner is a retired person and a pension holder and no further development in the income of the present petitioner could be shown by the opposite party no 2. The further contention is that the maintenance was granted in favour of the daughter of the parties when she attained majority in the year 2014. The application under Section 127 of the Code was filed in March, 2013 and the order of maintenance was affirmed by the High Court the year 2016 which was also included the maintenance towards the minor. Therefore, the amount paid after November, 2014 is in excess since the daughter attained majority and is not entitled to any maintenance under Section 127 of the Code. Accordingly prayed for setting aside such order.

9. The learned advocate representing the opposite party no.2 has been engaged by the Calcutta High Court Legal Services Committee since none appeared on behalf of the opposite party no.2 despite receiving notices served upon her. It is submitted by the learned advocate for the opposite party no.2 that under the scheme under Section 125 of the Code which is a beneficial legislation an unmarried major daughter is entitled to maintenance. That apart, the order of maintenance of Rs.1200/- plus Rs.800/- totaling Rs.2000/- was granted by the court way back in the year 2008 and during this long passage of time, considering the surrounding circumstances and market values, the amount of

Rs.2000/- was enhanced to Rs.8000/- to the opposite party no 2 and her daughter which was just and proper. In this context, she has relied upon the case of ***Abhilasha Vs. Parkash & Ors.***¹.

10. After hearing the rival contentions and on careful perusal of the entire facts and circumstances of the case, it is found that there is a chequered history of litigations between the parties against each other starting from the year 1998. Initially an application was filed under Section 125 of the Code by the opposite party no 2 for an order of maintenance was turned down. The second application was filed in the year 2001 and the Hon'ble Court while modifying the amount kept open the issue of maintainability of the second petition under Section 125 of the Code of Criminal Procedure, which was never decided. However, the amount of maintenance as granted by the learned Magistrate has been complied with. According to him, he has paid Rs.2.2 lakh in excess of the total amount and he made application for adjustment of such amount in the execution petition which has not been entertained.

11. It further transpires that the point raised by the learned Senior Advocate questioning the legality of the order passed by the revisional court pertaining to enhancement on the ground that the order was passed by the High Court just before few months prior to that order and accordingly rightly refused to pass further enhancement but this court differs from such approach in view of the fact that the said revisional application was filed challenging the order passed in October 2008 whereby the petitioner was directed to pay Rs.1500/-

¹ 2020 Supreme (SC) 541

per month to each of the parties and the order of the learned Co-ordinate Bench was passed in the year 2016 ,modifying the quantum of maintenance to Rs.1200/- per month plus Rs.800/- per month with effect from February 10, 2005. It is clear from the records that the order passed in March, 2013 in connection with the 127 CrPC proceeding was not the subject matter before the revisional court or before the High Court. Therefore, the observation by the learned Magistrate not to enhance the amount in order to maintain the judicial discipline was probably not the correct observation and therefore the intervention by the learned revisional court warrant no further interference in this regard. At the same time, it is seen that present petitioner retired from service in the year 2004 and is a pension holder since 2004. The order of revisional court glaringly manifest that the learned court could not arrive at the conclusion regarding the exact income of the present petitioner since he did not produce the relevant documents in this regard but nothing could be placed by any of the parties that the status of the petitioner is no longer confined to a pension holder and he has other source of income.

12. The learned revisional court enhanced the amount from Rs.2000/- to Rs.8000/- without assessing the income or without arriving at a just and logical conclusion as to what prompted him to enhance such an amount to that extent in absence of any materials to suggest the increase of income of the petitioner. This court further cannot be oblivious to the fact that the amount of maintenance was of Rs 1200 /- is really a meager amount and in the present market condition is difficult for sustenance . Hence in such circumstances

this Court is also of the view that the order passed by the revisional court warrant interference.

- 13.** With regard to the point raised regarding the entitlement of the daughter to claim maintenance after attaining majority, the judgment of the Hon'ble Supreme Court passed in ***Abhilasa vs Prakash (supra)*** as relied upon by the opposite party no.2 be look into. The Hon'ble Supreme court also discussed the scheme of 125 Cr.P.C as well as the Hindu Adoption and Maintenance Act and held that the scope of the scheme under the Hindu Adoption and Maintenance Act is wider than the scope of 125 Cr.P.C. Therefore, an unmarried major daughter is not entitled to claim the maintenance in a proceeding filed under Section 125 of the Code.
- 14.** Hence the issue is set at rest that a major and unmarried daughter is not entitled to ask for maintenance in a proceeding under Section 125 Cr.P.C . Therefore considering the entire facts and circumstances this Court is of the view that in order to assess the exact amount to be enhanced, the income of the husband must be assessed on the basis of the document to be furnished by him before the learned Magistrate. The purpose of granting maintenance is not to penalize the husband but to make arrangement to the wife for her sustenance with dignity and status very similar to the status of the husband. The petitioner is an ex-serviceman a pension holder since 2004. However no pension paper was produced by him before the learned Magistrate which otherwise draws an adverse inference against his bona fide to maintain his

family and hence a further opportunity is given to the petitioner to produce the relevant document to show his current income.

15. Therefore this court after giving an anxious consideration is of the view that the amount of rs 1200/- is required to be to be enhanced but not to the extent of Rs 8000/- and hence the order passed by the learned Revisional court is to be modified.

16. Accordingly this criminal revisional application stands allowed .The order passed by the revisional court is set aside so far the amount of maintenance granted in favour of the daughter and the order is modified so far the amount granted in favour of the wife to Rs 2500/- from Rs 4000/-.

17. The learned Magistrate is directed to assess the quantum of maintenance afresh considering the income of both the parties after giving them an opportunity of hearing.

18. The petitioner is directed to pay an amount of Rs.2500/- per month to the wife per month in the interregnum period till such assessment is made and such amount will be paid with effect from February 19, 2020. No further amount is required to be paid towards the maintenance of daughter who has attained majority in the year 2004.The arrear amount accumulated if any to be paid in 6 equal instalments from this date .The current amount should be paid within 7th of each month and in default of payment of such amount the wife shall proceed with the execution case.

19. It is further made clear that there will be no adjustment to the amount already paid by the petitioner towards the maintenance of his daughter

pursuant to the direction of the co-ordinate Bench till February 19, 2020 and the petitioner will clear the amount if any accumulated towards maintenance of the daughter pursuant to the direction passed by the co-ordinate Bench till February 19, 2020.

- 20.** Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]

