

**HIGH COURT OF TRIPURA
AGARTALA**

Cri.Rev.P.No.23 of 2025

Smt. Tuhina Majumder (Debbarma)

Wife of Sri Amit Debbarma,
D/o. Late Nripendra Majumder,
Presently residing at Krishnanagar, Supari Bagan,
P/O- Agartala, P/S- West Agartala,
District- West Tripura.

....Petitioner(s).

Versus

Sri Amit Debbarma,

S/O. Late Sailesh Debbarma,
Senior Higher Grade Assistant, L.I.C. of India,
Presently residing in the residence of Mrs. Trishna Debbarma
Roy,
W/O. Mr. Utpal Roy, Krishna Nagar,
Supari Bagan, Near Ramkrishna Varieties,
P/O- Agartala, P/S- West Agartala,
District- West Tripura, PIN-799001

.....Respondent(s).

For Petitioner(s)	:	Mr. Saugat Datta, Adv.
For Respondent(s)	:	None.
Date of Hearing	:	30.03.2026
Date of delivery of Judgment and Order	:	06.04.2026
Whether fit for Reporting	:	YES/NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This petition under Section 19(4) of the Family Courts Act, 1984 and Section 397 read with Section 401 of Cr.P.C. corresponding to Section 438 and Section 442 of BNSS is filed

challenging the judgment dated 20.02.2025 passed by Learned Judge, Family Court, Agartala in Crl.Misc.463 of 2023.

02. Heard Learned Counsel for the petitioner, Mr. S. Datta but inspite of service of notice through Dasti service and paper publication, none appeared on behalf of the respondent-husband.

03. Taking part in the hearing, Learned Counsel for the petitioner drawn the attention of the Court that the petitioner filed one petition claiming maintenance against the O.P. with the assertion that her marriage was solemnized with the respondent-O.P., Amit Debbarma on 01.12.1986 as per Hindu marriage rites and customs in the parental house of the petitioner situated at Veluarchar, P.S. Bishalgarh, West Tripura now Sepahijala District in presence of their relatives, friends and well-wishers. At the time of marriage, there was no demand from the side of the O.P. but the parents of the petitioner gave valuable articles including gold ornaments. After the marriage, the petitioner went to her matrimonial home situated at Supari Bagan, Krishnanagar, Agartala and started residing therein as husband and wife for last 25 years and out of their wedlock two children were begotten to them and by this time, both the son and daughter of the petitioner got married and they are leading their conjugal life peacefully in their respective houses. But after 25 years of their marriage,

dispute cropped up between the parties due to the suspicious nature of the O.P. The O.P. always used to suspect his wife regarding extra marital relation with other person without any reason and the same started from the year 2011. The petitioner, according to Learned Counsel, tried her level best to maintain good relation with the O.P., but the O.P. continued to abuse her regarding her relation and finally, the O.P. withdrawn himself from the society of the petitioner since from the year 2015. After that the respondent-O.P. filed a divorce petition and after filing of the case, he himself withdrawn the case rather, according to the petitioner, the respondent-O.P. maintained illicit relation with one widow lady namely, Sefali Shabdakar of Kailashahar and as the petitioner was not in a position to maintain her expenditures. So, she filed the case stating the O.P. is a gazetted officer working in the capacity of Senior Higher Grade Assistant, in the office of the Life Insurance Corporation of India (LICI) and earning Rs.1,28,190/- per month. So, the petitioner, according to Learned Counsel, claimed Rs.40,000/- as per maintenance allowance.

The O.P. contested the proceeding denying the allegation. However, considering the evidence on record, Learned Court below allowed maintenance allowance at the rate of Rs.13,000/- per month in favour of the petitioner w.e.f. 01.03.2025. Learned Trial Court further directed the

respondent-O.P. to deposit the amount to the savings bank account of the petitioner.

Learned Counsel further drawn the attention of the Court that the Learned Trial Court at the time of delivery of judgment, in para No.26 mentioned that during cross-examination the O.P. admitted that he has drawn Rs.48,000/- per month as pension during the year 2024 and the O.P. also admitted during cross-examination as OPW1 that he has total fixed deposit amount of Rs.30,00,000/- and he is receiving interest on fixed deposit at the rate of Rs.17,000/- per month and he has presently balance amount of Rs.70,000/- per month in the State Bank of India account. But the Learned Trial Court at the time of delivery of judgment only awarded maintenance allowance at the rate of Rs.13,000/- per month even the judgment of Hon'ble Supreme Court of India in **Rajnish vs. Neha & Anr.** reported in **(2021) 2SCC 324** was also not followed.

Learned Counsel also submitted that as per the judgment of the Hon'ble Supreme Court of India as referred (supra), the Learned Trial Court ought to have granted maintenance from the date of filing application for maintenance but not from the date of order. But in the case at hand, the Learned Trial Court granted maintenance from the date of order i.e. w.e.f. 01.03.2025 contrary to the guideline issued by

the Hon'ble Supreme Court of India in the aforementioned case and urged before this Court to consider the same.

04. I have heard Learned Counsel for the petitioner at length and also perused the judgment rendered by Learned Trial Court. From the judgment of the Learned Trial Court it appears that the present respondent-O.P. did not dispute his marriage with the petitioner also admitted that out of their wedlock they have got one son and one daughter. The son is presently serving under ONGC and the daughter is married. It is also on record that for construction of house the respondent-O.P. gave some land of his share to the children and it is also the admitted position that the present petitioner is presently staying with her son and the O.P. is staying in a rented house. It is further the admitted position that the respondent O.P. is drawing monthly pension of Rs.48,000/- and apart from fixed certificate he is drawing interest of Rs.17,000/- per month. Thus, he has got monthly income of Rs.65,000/- per month. The respondent-O.P. by his objection raised certain allegation against the petitioner but by adducing evidence he could not substantiate his defence, rather from the evidence of the petitioner and her witnesses, it appears that the respondent-O.P. maintained some illicit relation with the lady probably which became the result for their marital discord and he failed to provide maintenance to his wife. It is also on record that both the parties are residing separately. Learned Trial Court in

the judgment referred so many citations of the Supreme Court and I have also gone through those judgments.

Hon'ble the Supreme Court in **Dr Kulbhusan Kumar v. Smt. Raj Kumari & Anr.** reported in **(1970) 3 SCC 129**, wherein in para Nos.7 and 21, Hon'ble the Apex Court observed as under:

"7. The High Court allowed the claim of the wife to a monthly maintenance of Rs 250 from the date of the institution of the suit subject to a limit i.e., that the husband would not be liable at any time to pay more than 25 per cent of the total income as accepted by the income-tax authority by way of maintenance. With regard to the daughter, the High Court fixed the amount of maintenance at Rs 150 per month subject to a similar limit as in the case of the wife, the quantum being directed not to exceed 15 per cent of the average monthly income of the father.

21. A sum of Rs 250 per month for the maintenance of the wife of a person occupying the position of the appellant cannot be said to err on the liberal side. The High Court, in our opinion, very rightly fixed that sum making it subject to the limit of 25 per cent of the income as found by the Income Tax authorities. We have no reason to take any different view. Subject to our observation as to the determination of the income of the appellant, the appeal against the wife is dismissed with costs."

Further in another case Hon'ble Supreme Court of India in **Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy** reported in **(2017) 14 SCC 200**, wherein in para No.15, Hon'ble the Apex Court observed as under:

"15. The review petition under Order 47 Rule 1 CPC came to be filed by the respondent wife pursuant to the liberty granted by this Court when the earlier order dated 2-2-2015 [Rita Dey Chaudhury v. Kalyan Dey Chowdhury, 2015 SCC OnLine Cal 10447] awarding a maintenance of Rs 16,000 to the respondent wife as well as to her minor son was under challenge before this Court. As pointed out by the High Court, in February 2015, the appellant husband was getting a net salary of Rs 63,842 after deduction of Rs 24,000 on account of GPF and Rs 12,000 towards income tax. In February 2016, the net salary of the appellant is stated to be Rs 95,527. Following **Kulbhusan Kumar v. Raj Kumari** [Kulbhusan Kumar v. Raj Kumari, (1970) 3

SCC 129] , in this case, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Since in February 2016, the net salary of the husband was Rs 95,000 per month, the High Court was justified in enhancing the maintenance amount. However, since the appellant has also got married second time and has a child from the second marriage, in the interest of justice, we think it proper to reduce the amount of maintenance of Rs 23,000 to Rs 20,000 per month as maintenance to the respondent wife and son."

From those judgments, it appears that 25% of the husband's salary would be just and fair to be awarded as maintenance to the petitioner-wife.

Thereafter, in another judgment in **Rajnish v. Neha & Anr.** reported in **(2021) 2 SCC 324**, wherein in para Nos.94, 95, 96, 97, 102 and 103 Hon'ble the Apex Court observed as under:

"94. There is no provision in the HMA with respect to the date from which an order of maintenance may be made effective. Similarly, Section 12 of the DV Act, does not provide the date from which the maintenance is to be awarded. Section 125(2) CrPC is the only statutory provision which provides that the Magistrate may award maintenance either from the date of the order, or from the date of application. [K. Sivaram v. K. Mangalamba, 1989 SCC OnLine AP 60 : (1989) 1 AP LJ 604]

95. In the absence of a uniform regime, there is a vast variance in the practice adopted by the Family Courts in the country, with respect to the date from which maintenance must be awarded. The divergent views taken by the Family Courts are : first, from the date on which the application for maintenance was filed; second, the date of the order granting maintenance; third, the date on which the summons was served upon the respondent.

(a) From date of application

96. The view that maintenance ought to be granted from the date when the application was made, is based

on the rationale that the primary object of maintenance laws is to protect a deserted wife and dependent children from destitution and vagrancy. If maintenance is not paid from the date of application, the party seeking maintenance would be deprived of sustenance, owing to the time taken for disposal of the application, which often runs into several years.

97. The Orissa High Court in *Susmita Mohanty v. Rabindra Nath Sahu* [*Susmita Mohanty v. Rabindra Nath Sahu*, (1996) 1 OLR 361] held that the legislature intended to provide a summary, quick and comparatively inexpensive remedy to the neglected person. Where a litigation is prolonged, either on account of the conduct of the opposite party, or due to the heavy docket in courts, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to provide maintenance from the date of the order.

102. The second view that maintenance ought to be awarded from the date of order is based on the premise that the general rule is to award maintenance from the date of order, and grant of maintenance from the date of application must be the exception. The foundation of this view is based on the interpretation of Section 125(2) CrPC which provides:

"125. (2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be."

(emphasis supplied)

The words "or, if so ordered" in Section 125 have been interpreted to mean that where the court is awarding maintenance from the date of application, special reasons ought to be recorded. [*Bina Devi v. State of U.P.*, 2010 SCC OnLine All 236 : (2010) 69 ACC 19]

103. In *Bina Devi v. State of U.P.* [*Bina Devi v. State of U.P.*, 2010 SCC OnLine All 236 : (2010) 69 ACC 19] the Allahabad High Court on an interpretation of Section 125(2) CrPC held that when maintenance is directed to be paid from the date of application, the court must record reasons. If the order is silent, it will be effective from the date of the order, for which reasons need not be recorded. The Court held that Section 125(2) CrPC is prima facie clear that maintenance shall be payable from the date of the order."

On bare perusal of Sub-Section 2 of Section 125 of Cr.P.C. further it appears that any allowance for the maintenance or interim maintenance and expenses for

proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of the proceeding, as the case may be. The word "or if so ordered" in Section 125 have been interpreted to mean that where the Court is awarding maintenance from the date of application special reason ought to be recorded.

Further, in para No.113 Hon'ble the Apex Court clarified that "maintenance be awarded from the date on which the application was made before the Court concerned."

Here in the case at hand, Learned Counsel for the petitioner in course of hearing drawn the attention of the Court that Learned Trial Court has granted maintenance from the date of order not from the date of application which is inviolation of the judgment of the Hon'ble Supreme Court in **Rajnish Vs. Neha & Anr.**

In the aforesaid judgment regarding percentage of income to be deducted nothing is specifically mentioned. Each case has to be decided according to its own merit. In the present application in the grounds the petitioner has narrated all the facts that the Learned Trial Court instead of granting maintenance from the date of application granted the same from the date of the order which in my considered view was not proper. As already stated to challenge this petition, the respondent O.P. did not come forward before this Court to

substantiate his defence. It is also the admitted position that the O.P. was serving under LIC at the time of filing of application, probably by this time he has been retired from service since he himself admitted that he is drawing pension from his department and he also receiving interest from the fixed certificate. It is the settled position of law that any Court granting maintenance has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.

05. Thus, after ~~सुनाने~~ hearing Learned Counsel for the petitioner and also after going through the judgment rendered by the Learned Trial Court, it appears to this Court that Learned Trial Court did not consider the factual aspects at the time of awarding maintenance of Rs.13,000/- rather considering the facts and circumstances of the case and also the prima facie evidence on record, it appears to this Court that purpose of justice would suffice, if the respondent-husband is asked to pay maintenance of Rs.15,000/- in favour

of the petitioner from the month of July 2022 onwards. The said amount be paid by the respondent-O.P. to the account of the petitioner as ordered by Learned Trial Court within 1st week of the next following month in which monthly maintenance allowance shall become due to the petitioner. The arrear maintenance of Rs.6,75,000/- w.e.f. July 2022 to March 2026 shall be payable by the respondent-O.P. to the petitioner in 100 equal installments in addition to the normal monthly maintenance allowance which shall be payable from the month of April, 2026 onwards.

06. With this observation, the judgment and order of the Learned Trial Court is accordingly modified to the extent as stated above.

Send a copy of this order to Learned Judge, Family Court, Agartala, West Tripura for information and compliance. Supply a copy of this order to Learned Counsel for the petitioner for information.

सत्यमेव जयते

With this observation, this present revision petition stands disposed of on contest.

Pending application(s), if any, also stands disposed of.

JUDGE