IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

CRR 5059 OF 2025

CRR 5066 OF 2025

ARKA MOLLICK
-VS-
BIPASA SAHA NEE MOLLICK

For the Petitioner : Mr. Moyukh Mukherjee
Ms. Sagnika Banerjee
Ms. Sanghamitra Middya

For the Opposite Party : Mr. Apalok Basu
Mr. Soumava Mukherjee
Mr. Rishav Deb Barman

Reserved on : 06.10.2026

Pronounced on : 08.10.2026

UDAY KUMAR, J.: –

1. These two revisional applications, being C.R.R. No. 5059 of 2025 and C.R.R. No. 5066 of 2025, are taken up together for analogous hearing and disposal, as they stem from an interconnected chain of matrimonial discord and statutory maintenance proceedings initiated between the same parties. By invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (corresponding to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023), the petitioner-husband seeks to assail the foundational *ex parte* interim order of maintenance dated February 17, 2023 passed by the learned

9th Judicial Magistrate at Alipore in A.C. Case No. 3115 of 2022 under the Protection of Women from Domestic Violence Act, 2005 (in short, the "PWDV Act"), and setting aside of the order dated October 09, 2025 passed in execution proceedings arising out of Misc. Execution Case No. 489 of 2023.

2. The factual matrix, as revealed from the materials on record and canvassed by the learned counsel representing the contesting parties, are; that the marriage between the petitioner, Sri Arka Mollick, and the opposite party, Smt. Bipasa Saha @ Mollick, as an outcome of a love affair, was solemnised on January 23, 2013 according to Hindu rites and customs and was duly registered under the Hindu Marriage Act, 1955. The wedlock was blessed with two minor daughters, Hrutvi Mollick, born on September 10, 2015, and Kiara Mollick, born on June 20, 2019. Unfortunately, marital harmony was short-lived, leading to deep-seated estrangement between the parties. Consequently, in April 2021, the petitioner-husband instituted a matrimonial suit for dissolution of marriage, registered as T.S. (Div) No. 266 of 2021, which was later transferred and re-numbered as Mat Suit No. 1248 of 2023 and is presently pending before the learned 7th Court of the learned Additional District Judge at Alipore. In the said matrimonial proceedings, upon an application filed by the wife/O.P. for maintenance *pendente* lite, registered as Civil Misc. Case No. 31 of 2022, the learned Additional Judge, Family Court, West Tripura, Agartala, upon taking note of an admitted monthly salary of approximately ₹80,000/- of the husband while recording that the wife had no independent source of

income, by an order dated April 25, 2022, directed the husband to pay a monthly sum of ₹18,000/- as alimony *pendente lite* under Section 24 of the Hindu Marriage Act, 1955 exclusively in favour of the wife.

3. Records further disclose that on June 16, 2022, the opposite party-wife was ousted from the matrimonial domicile along with the two minor daughters, after which she was constrained to take shelter at a rented accommodation in Kolkata. Subsequently, on November 4, 2022, she instituted a substantive proceeding under Section 12 of the PWDV Act, giving rise to A.C. Case No. 3115 of 2022, now pending before the 9th Court of the learned Judicial Magistrate at Alipore, levelling allegations of domestic violence, cruelty, and misappropriation of *stridhan* against the petitioner and his family members, claiming various monetary reliefs, compensation, and maintenance for herself and the two minor children. On January 4, 2023, the opposite party filed an application under Section 23(2) of the PWDV Act accompanied by her statutory affidavit of assets and liabilities, wherein she candidly disclosed the existence of the prior interim order of maintenance passed by Tripura Family Court on April 25, 2022.

4. The learned Magistrate, Alipore, taking note of the urgency and the educational requirements of the minor children, passed an ad interim *ex parte* order on February 17, 2023 granting total monetary relief of ₹24,000/- per month, comprising ₹12,000/- for the wife and ₹6,000/- each for the two minor daughters, while expressly stipulating that this relief was "in excess of and in addition to" the order of maintenance passed by the Family Court, Tripura dated April 25, 2022, thereby

creating an unadjusted cumulative monthly burden of ₹42,000/-(Rs. 18,000/- + Rs. 24,000/-) on the petitioner.

5. As a natural consequence of non-compliance, the opposite party-wife initiated execution proceedings being Misc. Execution Case No. 489 of 2023 on July 19, 2023. The execution Court witnessed intense contest, culminating in the order dated March 06, 2024 computing maintenance arrears amounting to ₹2,56,000/- as on March, 2024 and the eventual issuance of a warrant of arrest against the petitioner on October 04, 2024. The petitioner although challenged the warrant of arrest by filing Criminal Appeal No. 265 of 2024 before the Sessions Court; and ultimately secured a stay order (which is operating till date) and the said appeal was disposed of on November 19, 2025, he did not prefer any statutory appeal under Section 29 of the PWDV Act against the core interim order of February 17, 2023 within the prescribed period of limitation. Instead, on November 14, 2025, the petitioner filed an application under Section 25(2) of the PWDV Act seeking modification or revocation of the maintenance order on the ground of changed circumstances, specifically pleading that he had been rendered unemployed since April 2025 due to acute mental health issues, depression, and severe loan liabilities running up to ₹1,80,00,000/-, alongside residing in rented premises. It is imperative to note that in the execution proceedings (Misc. Ex. Case No. 489 of 2023), the executing Court, by the order dated October 09, 2025 had directed the petitioner to pay a lumpsum amount of Rs. 50,000/- to the O.P.

6. This was followed by the institution of the present criminal revisions on November 20, 2025, after a lapse of nearly two years and nine months from the foundational *ex parte* interim order of maintenance dated February 17, 2023. It is also pertinent to note that subsequent to these filings, the trial court passed an order on November 24, 2025 (in stark contrast to the executing Court's order dated October 09, 2025) recording that no dues or outstanding amounts remained payable by the petitioner for the specific period under review.

7. Mr. Moyukh Mukherjee, learned Counsel appearing for the petitioner-husband has vehemently argued that the foundational interim order dated February 17, 2023 passed in the DV proceedings is a nullity in the eye of law and suffers from a grave jurisdictional error because the learned Magistrate stacked obligation to pay an additional excess amount of maintenance to the tune of ₹24,000/- on top of the pre-existing order of maintenance to the tune of ₹18,000/- passed by the Family Court, Tripura order without framing any working mechanism for set-off or adjustment, thereby visiting the petitioner with an oppressive double-recovery regime. Placing reliance on the landmark pronouncements of the Hon'ble Supreme Court in *Rajnesh v. Neha & Anr., [(2021) 2 SCC 324]* and *Kiran Jyot Maini v. Anish Pramod Patel, [[2024] 13 SCC 66]*, the petitioner contends that simultaneous execution of overlapping maintenance awards without reconciliation is completely impermissible. Learned Counsel further invokes the classical doctrine of '*sublato fundamento cadit opus*', drawing support from *State of Punjab v. Davinder Pal Singh Bhullar & Ors. [(2011) 14 SCC 770]* and *Naresh*

Kavarchand Khatri v. State of Gujarat & Anr. [(2008) 8 SCC 300] to urge that once the foundational order is tainted by non-application of mind, all consequential execution proceedings, warrants, and subsequent orders must collapse automatically. Additionally, citing *Mamta Jaiswal v. Rajesh Jaiswal [2000 (3) MPLJ 100]*, it is argued that the opposite party is a well-qualified person who cannot be permitted to sit idle as an "army of idlers" when the husband himself is burdened with financial collapse and unemployment. To overcome the bar of alternative remedy, learned counsel relies upon *Shaurabh Kumar Tripathi v. Vidhi Rawal* [2025 SCC OnLine SC 1158] and *V. Krishnamma & Ors. v. Garima Bais [2025 SCC OnLine SC 2935]*, to submit that where a gross abuse of process or perversity is writ large, the petition under Section 482 of the Cr.P.C. challenging the proceedings emanating from Section 12(1) of the PWDV Act, instead of resorting to the appeal under Section 29 of the PWDV Act, is maintainable.

8. *Per contra*, Mr. Apalok Basu, learned counsel appearing for the opposite party-wife has stoutly resisted the maintainability of these revisional applications. It is submitted that the petitions are nothing but a thinly veiled attempt to circumvent the statutory appellate forum provided under Section 29 of the PWDV Act, suffering from an inordinate, unexplained delay of nearly three years. The learned counsel points out that the petitioner has actively participated in the execution proceedings, made part-payments, and more importantly, consciously invoked a parallel statutory remedy by filing an application under Section 25(2) of the PWDV Act on November 14, 2025 seeking

modification of the said foundational *ex parte* order of maintenance dated February 17, 2023. Learned counsel contended that a litigant cannot be permitted to approbate and reprobate simultaneously by prosecuting a modification application under Section 25(2) PWDV Act while simultaneously maintaining a petition under Section 482 to quash the very same order, invoking the bar illustrated in *R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683]*. On merits, it is argued that the order of maintenance passed by the Tripura Family Court was granted solely to the wife in a separate matrimonial proceeding initiated under the Hindu Marriage Act, 1955 whereas the foundational interim order under the PWDV Act independently addresses the welfare, schooling, and educational expenses of two growing minor children studying at a premier institution like South Point School in Kolkata. Relying upon the authoritative pronouncements of the Hon'ble Supreme Court in *Juveria Abdul Majid Patni v. Atif Iqbal Mansoori & Anr. [(2014) 10 SCC 736]* and *Prabha Tyagi v. Kamlesh Devi [(2022) 8 SCC 90],* the opposite party contends that a Magistrate is fully empowered under Section 23(2) of the PWDV Act to grant ex parte interim monetary relief based on affidavits to prevent destitution, and such welfare orders cannot be lightly interfered with under the revisional jurisdiction of the High Court.

9. I have given my anxious and thoughtful consideration to the submissions advanced across the bar, perused the pleadings, notes of arguments, and carefully examined the judicial precedents cited and relied on by both parties. The primary question that falls for

determination is whether the *ex parte* interim order dated February 17, 2023 and the subsequent execution proceedings warrant interference or quashing under the inherent jurisdiction of this Court, or whether the equities of the case are better subserved by harmonizing the parallel proceedings through the established parameters of judicial set-off and statutory modification.

10. However, before embarking on the said discussion, the objection of the O.P. as to the maintainability of the present petitions under Section 482 CrPC / Section 528 BNSS in the face of an alternative statutory remedy under Section 29 of the PWDV Act must be examined. I am mindful of the principles enunciated by the Supreme Court in *Shaurabh Kumar Tripathi (supra).* While the Apex Court has reiterated that the availability of a statutory provision of appeal does not completely oust the jurisdiction of the High Court under Section 482 of the Cr.P.C., the Hon'ble Supreme Court has concurrently emphasized that High Courts must exercise extreme circumspection and adopt a hands-off approach unless a patent jurisdictional error, absolute nullity, or manifest abuse of the process of court is clearly made out.

11. In the instant case, the foundational order dated February 17, 2023 was passed by the learned Magistrate in PWDV proceedings upon a proper consideration of the Affidavit of Assets disclosing the order of maintenance *pendente lite* passed in Tripura Family Court proceedings initiated under Hindu Marriage Act, 1955. It (PWDV proceeding) was not a proceeding initiated without jurisdiction or in defiance of mandatory procedural prerequisites. Furthermore, the petitioner slept

over his appellate rights for nearly three years, actively participating in execution, suffering warrants, and subsequently filing an application under Section 25(2) of the PWDV Act. To now permit him to invoke Section 482 Cr.P.C. simultaneously to wholesale quash a proceeding instituted for the sustenance of minor children, after having elected to seek modification under Section 25(2) PWDV Act, would run counter to the orderly administration of justice. The reliance placed by the petitioner on the doctrine of '*sublato fundamento cadit opus*' is misplaced, as the foundational order cannot be categorized as a nullity *ab initio* so as to invalidate the entire structural superstructure of execution.

12. However, the grievance of the petitioner regarding the stacking of maintenance amounts without a mechanism for reconciliation touches upon a vital principle of substantive fairness. Both parties have rightly invoked the seminal guidelines laid down by the Supreme Court in *Rajnesh v. Neha (supra)* and reiterated in *Kiran Jyot Maini (supra).* In *Rajnesh v. Neha (supra)*, the Hon'ble Apex Court categorically mandated that where successive claims for maintenance are made under different statutes, the applicant must make a full disclosure of prior proceedings, and the court passing the subsequent order must consider an adjustment or set-off of the amounts awarded in the previous proceedings to avoid oppressive double recovery. The relevant excerpts from *Rajnesh v. Neha*, at paragraph 128 of the report, worth bearing in mind, are reproduced below:

> ***"128.*** *To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:*
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> *(i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.*
>
> *(ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.*
>
> *(iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding.***"**

13. In the present case, while the opposite party-wife discharged her initial obligation of disclosing the prior existence of an order of maintenance *pendente lite* passed by the Tripura Family Court, the learned Magistrate, while granting the interim relief of ₹24,000/-, loosely designated it as "in excess of and in addition to" the Tripura award without spelling out an operational formula for credit and set-off. This lacuna naturally generated friction at the execution stage in Misc. Execution Case No. 489 of 2023. But as clarified by the Hon'ble

Supreme Court, the remedy against such overlapping execution is not the wholesale quashing of the welfare proceeding under Section 482 Cr.P.C., but rather the strict judicial enforcement of adjustment and set-off for any overlapping periods. The executing court cannot be permitted to execute duplicate or double claims for identical months where payments have already been tendered under the prior matrimonial proceeding.

14. As regards the petitioner's reliance on *Rajesh Jaiswal (supra)* to contend that the wife is sitting idle, the said principle is clearly distinguishable on facts. In *Rajesh Jaiswal (supra)*, the wife was independently qualified and deliberately chose not to work solely to burden the husband. Here, the opposite party is an estranged mother who has the actual physical custody and day-to-day responsibility of nurturing two minor daughters who are growing up and attending school in Kolkata. The educational and sustenance needs of minor children stand on a completely different pedestal from mere spousal maintenance, and the welfare of the children must remain the paramount consideration of the court, overriding technical objections.

15. Furthermore, the petitioner has himself invoked the statutory mechanism under Section 25(2) of the PWDV Act on November 14, 2025, seeking a modification of the maintenance order on the ground of subsequent changes in circumstances, citing his alleged recent unemployment and financial distress since April 2025. It is a well-settled principle that when a statute provides a specific and efficacious remedy for modification of an interim or final order in light of altered

circumstances, the party must pursue that remedy before the original forum rather than bypassing it through belated quashing petitions. The trial court's subsequent recording on November 24, 2025 that no arrears remained outstanding for the relevant tranche further demonstrates that the executing court is fully equipped to handle calculations of set-off and payment compliance.

16. In light of the aforesaid detailed discussion, balancing the paramount welfare of the minor children against the imperative need to prevent double recovery and ensure financial fairness, I am of the considered view that the prayers for quashing the main PWDV proceeding, setting aside of the foundational interim order dated February 17, 2023 as well as the order of the Execution Court dated October 09, 2025 cannot be sustained. However, the mechanics of execution and the operation of the interim order must be structured in strict compliance with the mandate of *Rajnesh v. Neha (supra)*.

17. Accordingly, **C.R.R. No. 5059 of 2025** and **C.R.R. No. 5066 of 2025** are disposed of with the following specific directions:

I. The ex parte ad interim maintenance order dated February 17, 2023 passed in A.C. Case No. 3115 of 2022 shall remain operative, but its implementation shall be strictly subject to the principle of adjustment and set-off as laid down by the Hon'ble Supreme Court in *Rajnesh v. Neha (supra)*.

II. Any amount paid, deposited, or remitted by the petitioner-husband pursuant to the maintenance orders passed by the

Family Court or competent court in Tripura (under Section 24 of the Hindu Marriage Act) for the corresponding overlapping period shall be given full credit and set off against the total monthly maintenance awarded under the PWDV Act. The opposite party-wife shall not be permitted to execute duplicate or double recovery for identical months.

III. The learned Executing Court shall re-verify and re-calculate the computation of arrears in Misc. Execution Case No. 489 of 2023 in light of the aforesaid adjustments and recent trial court records (including the order dated November 24, 2025), and any genuine, reconciled arrears shall be cleared by the petitioner in structured, manageable instalments as may be fixed by the Executing Court.

IV. The petitioner's pending application filed under Section 25(2) of the PWDV Act on November 14, 2025, seeking modification or revocation of the maintenance order on the ground of subsequent unemployment and financial hardship, shall be taken up, considered, and adjudicated upon by the learned Magistrate independently on its own merits, uninfluenced by any observations made herein, within a period of eight weeks from the date of communication of this order.

V. The 9th Court of learned Judicial Magistrate, at Alipore, is requested to expedite the final hearing and disposal of A.C. Case No. 3115 of 2022 as expeditiously as possible, without granting unnecessary adjournments to either parties.

18. Connected pending application(s), if any, also stand disposed of accordingly.

19. There shall be no order as to costs.

20. Let a copy of this judgment along with the Trial Court Records (T.C.R.) be transmitted down to the learned Trial Court forthwith for necessary compliance and execution.

21. Case diary, be returned to the Learned Counsel for the State.

22. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)