IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 4211 OF 2024

CHANDRA MOHAN GHOSH

VS.

DIPSHIKHA GHOSH @ ROY

For the Petitioners	**:**	**Mr. Arindam Jana, Adv.**
		Mr. Uttam Basak, Adv.
		Mr. Saikat Guin, Adv.
For the Opposite Party	**:**	**Mr. Aniket Mitra, Adv.**
		Ms. Richa Pramanik, Adv.
Heard On	**:**	**18.09.2026**
Judgement on	**:**	**25.11.2026**
Uploaded on	**:**	**25.11.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. The revisional application was filed under Section 482 and Section 397 of the Code of Criminal Procedure, 1973, presently under Section 528 and Section 438 of BNSS, 2023 against an order dated 30th March 2024 passed

by Learned Judicial Magistrate, 9th Court, Alipore, South 24 Parganas in connection with A.C.M 251 of 2022.

Factual matrix

2. A proceeding was initiated on the basis of an application filed under Section 125 Cr.P.C, 1973 by the opposite party /wife against the present petitioner. He entered appearance to contest the proceeding .The Opposite party filed her Affidavit of Assets and Liabilities on 5th April, 2022 after serving the copy to the petitioner. On receiving the same, he found that the opposite party did not disclose the bank statement and Income Tax return, and accordingly filed an application on 21.9.2022 before the Court asking for the missing details of the opposite party herein.

3. On the basis of such application, direction was given to the opposite party to supply all the documents and fixed on 16.12.2022 for the same purpose. Thereafter by an order dated 1.2.2023, the Court found the application filed by the husband defective and the matter was fixed on 3.3.2023 for scrutiny and order. Again after that by an order dated 28.7.2023, the learned Court observed that the application dated 21.9.2022 filed by the petitioner is devoid of proper verification and fixed on 16th January, 2024 for taking proper steps by the husband/petitioners herein . On 16.1.2024, an extensive hearing took place regarding supply of bank statement and income tax return along with other relevant documents by the opposite party and the Learned Judge reserved the matter for passing order. Since thereafter on several occasions, the learned advocate conducting the case before the learned Trial Court inspected the cause list for the next date but did not find any date.

4. It is the further case of the petitioner that the opposite party prior to filing of the application under Section 125 of Cr.P.C ,filed an application under Section 23 of PWDV Act which was transferred before the Learned 5th Court of Judicial Magistrate at Sealdah and the direction was given to the petitioner to pay an amount of ₹20,000 per month to the wife /opposite party herein. Both the parties filed two criminal appeals assailing such order and both the matters were heard analogously by the Learned Additional Sessions Judge, Fast Track, 2nd Court, Sealdah and by an order dated 20.5.2023, dismissed the appeal and rejected the prayer of the wife/opposite party for maintenance but allowed the prayer of the petitioner and the order passed on 18.5.2022 was set aside.

5. The opposite party moved one Criminal Revisional Application before the High Court at Calcutta, which was registered as C.R.R No. 3164 of 2023. on 28.8.2023, the matter was heard by the learned Single Judge and vide an interim order passed on 20.5.2023 directed the husband /petitioner to comply the order dated 18.5.2022. The said revisional application when finally came up for hearing on 13.5.2024, it was intimated by the opposite party that the learned Judicial Magistrate, 9th Court had passed the interim order in connection with the 125 Cr.P.C proceeding awarding a sum of ₹45, 000/- per month with effect from 5.4.2022, and accordingly the High Court disposed of the Criminal Revisional Application without interfering into the order passed by the learned Appellate Court.

6. According to the petitioner, immediately after being apprised of the said order, he inspected the record and came to learn that on 30.3.2024, the said order was passed when throughout the entire period the Cause list of the

said court was inspected and no date was there for passing order. It was reflected from the order sheet that behind the back of the petitioner the next date was fixed on 30.3.2024 as there was interpolation in the page.

7. The petitioner was deprived of an opportunity to file objection and instead of passing the order to supply of bank statement and income tax return for last three year as asked for ,such an exorbitant amount of ₹45,000/- was directed to be paid by the husband without hearing the petitioner .Being aggrieved thereby the instant revisional application has been filed.

8. During pendency of the revisional application, the petitioner filed the supplementary affidavit on 27.2.2025 intimating certain other facts which were missed out by the petitioner in his original revisional application. It is mentioned that the opposite party filed a criminal case against petitioner and his family members under Section 498A/323/406/34 IPC along with 3 & 4 of the PWDV Act and they had to obtain an order of bail. It was also disclosed that the opposite party was a working lady having an income of about ₹1,30,000 per month at the time of filing of the maintenance case under Section 125 Cr.P.C but in the Affidavit of Assets and Liabilities, she kept the relevant column blank regarding her income and bank accounts and hence by suppressing the truth she tried to mislead the Court .

9. The objection to that extent was raised on behalf of the petitioner and direction was given to the wife to serve the copy, but without disposing of the application filed by the petitioner on 21.9.2022, the learned Court passed the interim order which is not sustainable in the eye of law. It is his further case that the allegation was levelled upon the petitioner of hacking the account of the opposite party wife, when from the cyber PS case no.

22/2023, which was lodged against the petitioner, the investigating agency found that her bank accounts, email ID and social media account, laptop mobile were not hacked by anyone rather it was accessed by the wife/complainant and it was declared as mistake of fact under section 66 read with Section 43 of Information Technology Act, 2000 and the said case was dropped. During pendency of this revisional application, the petitioner filed CRAN No. 3 of 2025 with a prayer for modification of the order dated 10.1.2025 passed by Justice Suvra Ghosh, where it was observed that the petitioner would undertake to pay ₹20,000 per month to the opposite party as maintenance and directed him to continue with the same but such undertaking was given by his advocate behind his back.

Submissions

10. It is submitted by the Learned Advocate of the petitioner that the revisional application was filed by the petitioner not only for assailing the order dated 30.3.2024, but also to quash the entire preceding since the petition under Section 125 Cr.P.C itself is not maintainable being initiated on the basis of suppression of material facts . The opposite party was a working lady having sufficient means to maintain herself which she suppressed. In addition, it is now apparent that the petitioner earns less than the opposite party and hence he is not liable to pay the maintenance .

11. It is further submitted that the petitioner is working for gain at Cognizant Technology Solution and his net income is near about 1,07,000/- per month and he has huge liabilities to pay the loan amount per month which had to be incurred during the subsisting of their marriage to fulfil the demand of the opposite party . On behalf of petitioner, it is further submitted that

the Learned Advocate then representing the petitioner at the time of hearing of the extension of the stay application on 10.1.2025 gave the undertaking to pay ₹20, 000 per month to his wife without taking any instruction in this regard . It is further submitted that since the order was passed without consent of the petitioner, it has caused serious financial difficulties to the petitioner who had huge expenses to meet up from his income of ₹1,07,000 . In addition for the purpose of complying with the order of the Court, the petitioner had to obtain loan for their survival. The petitioner further submitted that the opposite party has instituted two execution cases on the same cause of action, both of which are pending before the Learned, 9th Judicial Magistrate, Alipore. In such circumstances and having no other efficacious alternative ,the petitioner was constrained to file an application before the Learned Executing Court bringing its notice that the petitioner had already paid certain amounts as maintenance to the opposite party in connection with the maintenance proceedings initiated by her .It is further contended that the said amounts having already been received and withdrawn by the opposite party from the competent Court ought to be duly accounted for and adjusted /deducted from the amount claimed in the pending execution proceedings ,so as to prevent any double recovery by her .It is pertinent to mention that the petitioner paid maintenance to the opposite party in different maintenance cases filed with the opposite party and presently paid ₹1, 20, 000 to the opposite party, although as per the order dated 10.1.2025, he was supposed to pay ₹60,000 to the opposite party till the month of March, 2025. His specific contention is that the petitioner agreed to the amount of ₹20,000 to be continued and hence this

application has been filed for modification of such order passed by this by the High Court.

12. On the other hand, the opposite party disputed and denied the contentions made by the learned advocate representing the petitioner and also raised objection on the point of maintainability of the application under section 125 Cr.P.C . It is his case that the opposite party is working for gain at Wipro in Bangalore and has to regularly come down to Kolkata for medical treatment of her old parents. She used to visit Kolkata for her cases which are pending before the learned Trial Courts. According to her, her salary for the month of June 2026, is ₹147, 782 and for the month of July 2026, is ₹151, 313 and for the month of August, 2026 is ₹175, 594. The Opposite party filed an affidavit along with the necessary documents, including the salary certificate issued by Wipro pursuant to a direction passed by this Court . She also said that due to miscommunication with her learned advocate in the Trial Court, a wrong submission was made at the time of initial hearing of the application under section 125 of the Cr.P.C that she was not earning anything. It was not intentional or deliberate and the incorrect submission was made by the learned advocate in the Trial Court was without proper instruction from her and for that reason, she has obtained 'no objection' from the said advocate and engaged a new advocate in his place. According to her since she is working for gain at Bangalore, she had to incur additional expenses for her lodging and travelling to Kolkata for treatment of her old and ailing mother.

Analysis

13. Heard the submissions and perused the materials on record. The sum and substance of the entire proceeding now can be gathered from the pleadings as well as the Affidavits furnished before this court coupled with the submissions advanced by both the learned advocates that the instant revisional application was filed with a specific prayer for setting aside the order impugned though in the supplementary Affidavit further prayer made also for quashing of the entire proceeding.

14. The record transpires that on account of marital discord several proceedings were filed between the parties including criminal cases initiated on behalf of the opposite party/wife against the petitioner and his family members. It is also a fact that before the interim maintenance order was passed in connection with the proceeding filed under PWDV Act vide and order dated 18.5.2022, the present petitioner was directed to pay an interim relief at the rate of ₹20, 000 per month, from the date of passing of the order. However, later on such order was set aside by the Appellate Court and relegated the matter before the learned Trial Court with certain directions. The revisional application was filed challenging the said order of the learned Appellate Court. Meantime in connection with the proceeding under section 125 of Cr.P.C, the concerned Court awarded an amount of ₹45,000 per month as interim maintenance which has given rise to filing of this revisional application on considering the fact that the opposite party is entitled to interim maintenance the learned Single Judge, refrained from dealing with the findings and observations passed in the order passed in

criminal appeal in connection with PWDV Act and directed the Court to proceed with the case with the observation that petitioner is entitled to receive interim maintenance in connection with the proceeding under section 125 Cr.P.C. The Court further made it clear that any amount which has been paid by the husband opposite party would be set off from the claim which is accruing from the proceeding in ACJM in 251 of 2022. As it appears from the record that in connection with PWDV Act the initial amount of ₹20,000 granted was turned down by the Appellate Court.

15. Pursuant to the direction passed by this Court both the parties filed their affidavit with regard to their current income. The petitioner disclose his income approximately ₹1,15,000/- per month and annexed the salary slip for the last month. The petitioner further stated about his total monthly EMI liability towards the loan amount is ₹40,349 per month, apart from his expenses towards necessary household, leaving other financial expenses. He also denied having any vehicles of his own but claimed the opposite party to be the owner of a vehicle having registration number WB08Q6546 since November 2023.

16. It is presently evident from the Affidavit filed by the Opposite Party that her salary for the month of August 2026, is now ₹175,594 including bonus and she also annexed the salary certificate issued by Wipro. On careful perusal of the said certificate for the month of August 2026 it transpires that her total salary is Rs. 2091,42/-.The salary for the month of July, 2026 was ₹176020/-. Though certain inconsistencies are found in furnishing the exact amount of her income the undisputed picture appears

that the opposite party/wife earns more than the husband. That apart she stated on oath about miscommunication between herself and her conducting advocate before the Trial Court, which resulted in grant of an amount of ₹45,000 per month towards maintenance to be paid by the petitioner to the opposite party/wife.

17. In paragraph 5 of the supplementary affidavit filed on behalf of the opposite party affirmed on 1st day of September 2026 before this Court pursuant to the direction of this court is reproduced here in below.

> *"5. I say that due to miscommunication with my learned advocate in the trial court, a wrong submission was made at the time of initial hearing of the application under section 125 Cr.P.C that I am not earning anything. The same was neither intentional or deliberate and incorrect submission was made by the learned advocate in the trial court of his own without proper instructions from me for which I have already obtained 'no objection' from the said advocate and has engaged a new advocate in his place. I say that since I am working for gain at Bangalore, I have to be …additional expenses for my lodging and travelling to Kolkata for treatment of my old and ailing mother.*
>
> *6. I say that instant supplementary affidavit may be treated as part of the instant application.*
>
> *7. That the statement made in aforesaid due to my knowledge."*

18. This Court when found prima facie there is an abuse of the process of law or there appears to be malice in filing the proceeding, owes a duty to be more cautious and to look into the surrounding circumstances. In the instant case on perusal of the entire record, this Court found certain circumstances which are required to be unveiled in order to show how the laws made for beneficial purposes are being misused which are as follows:

i) The opposite party filed a proceeding under section 125 CrP.C on 05.04.2022 before the Learned Court where she described how she was tortured in her matrimonial house immediately after solemnization of marriage on demand of dowry and was driven out from her matrimonial house on 8.10.2019. She lodged a complaint against the petitioner and his family members on 21.1.2021 under section 498A/323/406/34 IPC along with Section 3 & 4 of DP Act.

ii) She also stated that she filed a proceeding under PWDV Act on 24.08.2021 and was pending for interim order.

iii) She claimed that the petitioner is an employee of Cognizant since 2010 and earns more than Rs. 90,000/-per month and further has the income from business but did not provide any penny to her .She claimed an amount of Rs 1,80,000/- per month as maintenance .The said petition was supported with an Affidavit where she stated to be a Housewife and further that she had no income to maintain herself to lead life similar to the status of her husband and is majorly dependant upon her aged parents .

iv) She filed an Affidavit of Assets and Liabilities before the Court of Learned Magistrate where in column F, Details of income of Deponent stated N/A. This column includes the details of the name of Employer designation and the monthly income. The copy of such Affidavit was served upon the husband who filed an application on 21.9.2022 for supply the documents .Meantime on 18.5.2022 an interim order directing the husband to pay an amount of Rs 20,000/- was passed in the PWDV proceeding .

v) On 28.7.2023 the record was taken up for scrutiny and the Ld. Court directed the husband to take appropriate steps fixing 16.1.2024 to take proper steps. On 16.1.24 the hearing took place in respect of supply of documents filed by the wife and Court fixed 7.2.2024 for passing order. On 7.2.2024 the next date was given on 30.3.2024 for passing order.

vi) On 30.3.2024 the interim maintenance order was passed directing the husband to pay an amount of Rs. 45000/- fully relying on her Affidavit of Assets and Liabilities and further non filling of any Affidavit of Assets and Liabilities till such date .In the order it is mentioned that on 7.2.24 the opposite party took the plea that she could not furnish her bank statement ,income tax details since her account has been hacked by the petitioner and she lodged a complaint against him being Cyber PS case no. 22/23 .

So till 7.2.2024 the opposite party sticked to her claim of having no income and could not furnish the document as asked by the petitioner

to produce alleging hacking of her account. On completion of investigation it was learnt that the allegation was false since the two mail IDs had been accessed by only her and submitted the report to record as mistake of fact under Section 66 read with 43 of IT Act 2000.

vii) On 18.5.2024 order passed in respect of supply of documents by the wife and the husband raised an objection on 21.8.2024 stating that the opposite party has suppressed her actual income and he further gave the details of the accounts in various banks and prayed for a direction upon her to file petition denying the facts assailed by the husband.

viii) 17.9.2026 She claimed that there was a miscommunication with her Advocate and a wrong submission was made before the Learned Trial Court that she was not earning.

In the aforesaid facts and circumstances this Court is unable to accept that there was only a misunderstanding to take all the steps and it was not deliberate or intentional.

19. The Learned Magistrate also failed to act judiciously and ignored the objections raised by the husband and instead of disposing of the application filed by the husband suddenly passed the order of interim maintenance on 30.3.2024 without hearing the parties and solely considering the Affidavit of Assets and Liabilities so filed by the opposite party .

20. The purpose of incorporating the provision under section 125 Cr.P.C was to prevent vagrancy and destitution of the deserted spouse, who has no

means to maintain herself. The Hon'ble Supreme Court in the case of ***Rajnesh vs Neha & Ors.***[1] made it mandatory for the parties to file the Affidavit of Assets and Liabilities only to assist the court to arrive at a logical conclusion regarding the entitlement and to determine the quantum of maintenance specially at the interim stage when usually the Court is to pass the order only on the basis of the statement made on Affidavit. The opposite party/ wife while filing such application on affidavit stated that she had no income of her own, and she was subjected to economic violence, which prompted the learned Magistrate to expedite the proceeding to that extent that even without going through the materials and the objection raised by the husband passed the order in mechanical manner.

21. It is now pertinent to say that her educational qualification mentioned as B.Tech and MCA so it can never be believed that she did not know the content of her Affidavit filed before a Court of law and this Court has no other options than to observe that practically she intended to suppress the truth only to obtain an order of maintenance despite having sufficient income . From the further document annexed with ACM 251/2022, it transpires that the opposite party /husband on the other hand after receiving Affidavit of Assets and Liabilities and on scrutiny of the detailed description furnished for last three years which was mandatory as per direction given by Hon'ble Apex Court in ***Rajnesh versus Neha (Supra),*** detected the inconsistencies and accordingly gave a detailed descriptions of her account in various banks with the account number. He also mentioned that she was the Senior Project Engineer at Wipro Technologies, full-time

[1] MANU/SC/0833/2020

employee and the take home Salary was not less than ₹1, 30,000 per month and accordingly prayed for a direction upon her to provide the last three years bank statement of the accounts mentioned by him. With this regard, the court become silent for the reason's best known to him even after hearing and instead of passing any specific order awarded the interim maintenance of Rs 45,000, without any rhyme or reasons. The record further supports the contention of the petitioner that no hearing on the point of interim maintenance was made but the order was passed in haste on 30.3.2024.

22. Therefore, the plea of the present opposite party that it was a mere miscommunication with her advocate cannot be accepted and the entire fact and circumstances manifest that deliberately she tried to mislead the court by supressing the actual fact and also misused the purpose of furnishing Affidavit of Assets and Liabilities before the court and to that extent, she also invalidated the dictum of the Hon'ble Supreme Court. She has only obtained a 'no objection' from her advocate in order to substantiate her plea of miscommunication and this Court is unable to accept the said contention.

23. In view of the disclosure made before this Court, their remains no room left to allow the proceeding under section 125 Cr.P.C filed by her to continue further as it is evident that she is earning much more than that of the earning of the husband and she has accepted the same

24. The instant application has been filed under Section 482 along with Section 397 of Code of Criminal Procedure and the purpose of exercising

inherent power is to prevent the abuse of the process of law and in order to secure the ends of justice. When it is glaringly visible that the provision has been used as a tool only for the sake of personal vengeance against the petitioner, frustrating the purpose of incorporating the very provision, wasting the valuable and precious judicial hour from the date of filing of the application for maintenance since 2022, this Court do not find it necessary to allow the said proceeding to continue further which would otherwise be a gross abuse of the process of law. The Court is also of the opinion that because of the conduct of the opposite party/ wife, a cost to be imposed on her which is to be paid to the juvenile justice committee within a period of 10 days from the date of this order.

Conclusions

25. Accordingly, the entire proceeding pending before the learned Court of 9th Magistrate, Alipore, South 24 Parganas in connection with A.C.M 251 of 2022 is hereby quashed alongwith the order passed on 30.3.2024 is hereby quashed.

26. The opposite party /wife is directed to pay the cost of Rs 20,000/- to be deposited in the Juvenile Justice Fund maintained by State Legal Services Authority, West Bengal within 10 days from the date of uploading of this order in the website of High Court and to furnish the receipt to the Learned Registrar General , High Court ,Calcutta .

27. All other connected applications, if any, hereby stand disposed of.

28. 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.]

High Court
सत्यमेव जयते
Calcutta