IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-
HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 5060 OF 2024

NIVEDITA GOSWAMI (DHOL)
VS
SRI DEBARGHYA DHOL

For the Petitioner	**:**	**Mr. Ranjan Kali,Adv.** **Ms. Payel Nath, Adv.** **Ms. Mohul Nandi, Adv.**
For the respondent	**:**	**Mr. Sanjoy Chakraborty, Adv.** **Ms. Shaswati Bhattacharjee, Adv.**
Reserved On	**:**	**25.09.2026**
Judgement on	**:**	**29.09.2026**
Uploaded on	**:**	**29.09.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. This is an application filed by the petitioner/wife against an order dated August 20, 2024 whereby the Learned Judicial Magistrate, 2nd Court, Barrackpore has passed a judgment in connection with Maintenance Case no. 352 of 2022 filed under Section 125 Cr.P.C. whereby refused the prayer of the petitioner after setting aside the order of interim maintenance granted in her favour by the Learned Magistrate.

Brief Facts

2. The case of the petitioner in brief is that she is the legally married wife of the present Opposite Party and their marriage was solemnized on February 5, 2017 under the Hindu Rites and Customs. Since after the marriage both parties lived as husband and wife however there were disputes and differences between the parties because of demand of the present Opposite Party and his family members of gold ornaments, furniture, utensil etc. The marital discord started from the very night of Reception and increased day by day and the mal treatment and physical torture increased to such an extent that life threats were given to her and she had to lock herself in her room and finally on February 25, 2021 she compelled to leave the matrimonial house and took shelter at her father's house and lodged a complaint before the Dum Dum Police Station on February 26, 2021 against the respondent and other in-laws.

3. Further case of the petitioner is that the petitioner tried to join a service as Assistant teacher for an amount of Rs.6,000/- per month but she was not allowed to join after marriage and hence she had no income of her own to sustain. She has her ailing father who is medically unfit and has his own expenses. Hence she filed a petition under Section 125 Cr.P.C before Court of Additional Chief Judicial Magistrate at Barrackpore which was transferred to 5th Judicial Magistrate at Barrackpore on April 3, 2021.Due to Covid situation and serious mental condition of her father she could not follow up case and it was dismissed for default.

4. It is further case of the petitioner that the Opposite Party is a web designer and earns Rs. 45,000/- per month and also has other earnings from his

fixed deposit, amounting to Rs.10, 500/- per month. His father is a retired Government Employee and is a pension holder and thus the opposite Party has no one to maintain except the petitioner but despite having sufficient means he only paid Rs. 2000/- per month which the present petitioner refused to accept. She being a destitute and deserted lady having severe financial crisis needed an amount of Rs. 20,000/- per month as maintenance allowances and hence filed the second application under Section 125 Cr.P.C. before the Learned Court of Additional Chief Judicial Magistrate at Barrackpore in the year 2022. The Opposite Party after entering appearance filed written objection and also filed an application under Section 340 Cr.P.C alleging she has made false statement on Affidavit.

5. The Learned Magistrate considering the materials on record and that it was at the stage of interim maintenance and Affidavits of Assets and liabilities was filed by the petitioner when Opposite Party did not file the same, passed an order of interim maintenance of Rs. 5000/- per month to be paid to the wife from the date of filing of the petition. The said order was challenged before the Court of Additional Sessions Judge, Fast Tack 3rd Court, Barackpore, North 24 Parganas by the present petitioner for enhancement and vide an order dated March 6, 2024 the revisional application was allowed and the order of the Learned Magistrate dated November 19, 2022 was modified. The interim order was enhanced to Rs. 7000/- per month to be paid from date of passing the said order and in terms of the said order the Opposite Party was paying the said amount.

6. The husband did not adduce evidence and the trial witness action started. On conclusion of the evidence the judgement was delivered by the Learned Court of Magistrate where it was observed that the present petitioner had obtained the interim order by misrepresenting the fact and filing a false affidavit and used this provision as a tool to secure extravagant living at the cost of husband for the marriage which did not work out and thus rejected the petition filed under Section 125 Cr.P.C. The petitioner was further directed to return the maintenance amount paid by the husband in compliance with the interim order and as well as by the Learned Revisional Court. This revisional application has been filed challenging the said order.

Submissions

7. The Learned Advocate representing the petitioner submits that the learned court had a pre-conceived notion and thereby such caustic observation made against the petitioner without considering the basic object of incorporating provision of 125 Cr.P.C by the legislature. The order dated August 20, 2024 has been passed which de hors the provision of law and reflects a complete non application of mind causing utter miscarriage of justice. The Learned Court did not appreciate the situation of the petitioner/wife as a whole and failed to scrutinize effectively the evidence adduced and also that the Opposite Party throughout flouted the order of the Court ,did not file the Affidavit of Assets and Liabilities as mandated by the Hon'ble Apex Court in the case of ***Rajnesh Vs Neha & Anr***.[1]. It is further submitted that it is settled law that merely because of wife is possessing a higher degree of education or her parents are well established

[1] 2021 (2) SCC 324

will not absolve the petitioner from his liability to maintain his legally married wife who under compulsion left the matrimonial house.

8. The further submission made by the Learned Advocate that during evidence she stated that the amount which was found lying in her name was of her father and on the advice of the Learned Advocate she did not mention same in her Affidavit of Assets and Liabilities in the petition and hence the wrong advice of an conducting advocate cannot be the cause of refusing the maintenance. The Learned Advocate has relied upon the decision reported in Manish ***Jain vs. Akanksha Jain[2], Shailja vs Khobbanna dated 18th January 2017, Sunita Kachwaha and ors. Vs. Anil Kuchawa[3]*** and also the decision of ***Rajnesh vs. Neha & Ar.(Supra).***

9. On the contrary the Learned Advocate representing the Opposite Party/ husband submits that the Learned Magistrate after analyzing the evidences found the manner in which the present petitioner tried to suppress the material facts and portrayed herself being a destitute and in utter need of money. The Learned Magistrate on careful consideration of entire situation and considering that the petitioner did not come before the Court in clean hand passed such an order when interim order was allowed in her favour. The order being a very well-reasoned order is not required to be interfered with.

10. The Learned Advocate further drawn the attention of this court to the evidence adduced by the present petitioner in the proceeding under Section 125 Cr.P.C and submits that the application made under Section 125 Cr.PC itself is not maintainable since the petitioner admitted that she

[2] AIR 2017 SC 1640
[3] AIR 2015 Supreme Court 554

voluntarily left the matrimonial house and also that she filed all the application as a counter blast to the writ petition filed against her by the parents-in-law since she became traumatized and panicked and thought to do something against them.

11. It is further submitted that the writ petition was originally filed by the mother in law of the present petitioner against the police authorities for not taking appropriate action and thereafter the instant complaint was lodged**.** That apart on the date of filing of 125 Cr.P.C application few lakhs were lying in her accounts which she deliberately suppressed in her affidavit of Assets and liabilities. Hence prayed for dismissal of the instant revisional application.

Analysis

12. Heard the submission of both the Learned Advocates. The order assailed before this Court was passed by the Learned Judicial Magistrate, 2nd Court, Barrackpore, North 24 Parganans dated August 20, 2024 whereby the prayer for maintenance under Section 125 Cr.P.C has been dismissed. The factum of marriage in this case is not disputed. It is also not disputed that presently parties are not residing together and at the initial stage the interim order was passed by the Learned Magistrate on the basis of the application filed under Section 125 Cr.P.C and the affidavit of assets and liabilities filed by the petitioner. The Learned Judicial Magistrate at the time of pronouncing judgement has meticulously considered certain areas which would manifest that the present petitioner in order to impress the court averred certain facts and circumstances which were found later on,

absolutely misleading and also found in course of cross examination that the facts she relied upon by filing an affidavit were not correct statement.

13. The age old maxim "*he who comes to equity must come with clean hands*" mandates that a litigant who is seeking relief from a Court must not represent the facts incorrectly or suppressed any material facts and her claim should be free from any taint of fraud. The rationale behind this doctrine was to protect integrity and sanctity of the judicial process and also to prevent the abuse of court procedure by unscrupulous litigants. In plethora of Judicial pronouncements, the Hon'ble Supreme Court has reiterated that if this doctrine is not followed and if the complete disclosure is not made before the Court while the Hon'ble Supreme Court and High Court exercises their inherent jurisdiction and found that fraud and suppression was there in making misleading statement, there can be consequential action which can go up to dismissal of the prayer, imposition of exemplary cost or denial of equitable relief. Even a contempt proceeding can be initiated in such egregious cases. It is also settled law that any order obtained by fraud from a Court of law can be set aside at any stage to be considered as null and void.

14. In the touch stone of the above principle of law let it be ascertained that how far the present petitioner being a lady is entitled for getting maintenance in terms of section 125 Cr.P.C . In the petition filed before the Learned Court of Magistrate by the petitioner under Section 125 Cr.P.C she mentioned that she did not have any source of income and is living on the charity of her ailing father. She alleged the behavior and cruelty meted out to her by the opposite Party who also neglected and refused to maintain the

petitioner and also did not allow her to get a job in Academy of Intellectual in the post of Assistant Teacher for a compensation of Rs.6,000/- per month and lastly under compelling circumstances she had to leave the matrimonial house on 25th February, 2021.

15. From her application for maintenance it is evident that previously an application was filed in the year 2021 but could not be followed up and was dismissed for default. The instant Misc. case was filed in the year 2022 where she claimed herself to be deserted and destitute lady living in financial distress and specifically averred that she filed the previous application because she was facing acute starvation and she had no other source of income to sustain normal livelihood.

16. The Learned Magistrate considered the said fact and passed the interim order of maintenance in the month of November 2022, despite raising objection by the Opposite Party and an application filed under Section 340 Cr.P.C on that ground stated therein. In course of evidence during cross examination when the Learned Advocate of the opposite party placed a photocopy of a statement of SBI Bank Account in the name of the present petitioner being the 1st holder, the petitioner admitted such fact and stated that all the pass books and cheque books of such joint accounts are in her possession. The Learned Court on perusal of the statement of such bank account found that balance of such account on October 7, 2020 was Rs. 8,06,193/-, on March 17, 2021 was Rs.7,10,057/- and on January 24, 2022 was Rs. 6,40,084/- which means when the application under Section 125 Cr.P.C was filed claiming to be a destitute lady and on the verge of

starvation she had an amount of Rs.6,40,084/- in a joint account of which she was the first holder.

17. She admitted that she did not disclose this account in her Affidavit of Assets and liabilities but did as per the direction of her advocate. It has further come out from her cross-examination that she left the matrimonial home and her husband paid her Rs. 2,000/- per month since March 2021 to October 2022. She stated on oath before the Court that the husband is impotent and her marriage was not consummated. According to her version her father gave the money on the joint account with her husband of which she is the first holder but she did not mention in her petition or in her Affidavit of Assets and Liabilities that her father gave the said money. It was further detected in course of cross-examination she failed to say whether she mentioned about 8 Lakh, 20 Lakh NSC and 3.9 Lakh MTS or not but further in her Affidavit she did not mention. She did not mention in her petition or her Affidavit of Assets and liabilities that such money was given by her father and she does not earn any interest from NSC and MTS. She even could not say whether any interest accrues from Post Office deposit. She further mentioned that her father has not gifted the money to her but further stated after maturity of the aforesaid deposits her father has taken money. That apart the Learned Court further found from her cross-examination the specific averment which she made before the court that on January 22, 2021 after receiving the copy of the writ petition through Postal Department, filed by her parents-in-law she became traumatized and panicked and thought that she will have to do something against them as

counter blast to the writ petition for which she has filed all the subsequent proceedings.

18. It further transpires that initially she made statement in the cross-examination that in the affidavit of assets she did not mention about the existence of SBI account as per instruction of her advocate but subsequently she said that she instructed her advocate to draft her petition of complaint two days before leaving her matrimonial home.

19. In terms of Section 125 (4) Cr.P.C no wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding as the case may be from her husband under this Section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband or if they are living separately by mutual consent.

20. In the instant case it is not disputed that she left the matrimonial home and certain circumstances has been narrated for which she had to leave. She was found to be traumatized and then filed the subsequent proceedings like filing of complaint under Section 498A or filing of application under Section 125 Cr.P.C on receiving the notice of the writ petition filed against her by her parents-in-law. Therefore the initiation of the proceeding not was from the side of the present petitioner but from the side of her in-laws. However she ought to have disclosed all the facts while praying for maintenance

21. The admission on her part regarding the exaggerated version of her vagrancy depicted in her petition for maintenance for immediate interim relief is proved to be absolutely misleading when it was found that right at that point she had in her account few lakhs of Rupees and also she

possessed all the documents like cheque book, passbook with her. Further she suppressed such entire facts from the court while filing her affidavit of assets and liability .Therefore the facts discussed above clearly manifest her intention to obtain an order of interim maintenance at the cost of suppression of facts from the Court hurriedly in order to give a blow to the husband and his family members. The question now falls for consideration that whether her overenthusiasm of getting amount immediately as a counterblast to the writ petition would disentitle her from getting maintenance when it is not in dispute that she has no personal income of her own.

22. It is a settled law that Section 125 of Cr.P.C. is a summary procedure and it is not necessary for the court to ascertain who was in fault and or the minute details of the matrimonial dispute. It is a fact that in ***Rajnesh vs. Neha (Supra***) the Hon'ble Supreme Court emphasized that the maintenance cost were enacted as a major of social justice to provide resource to dependent wife and children for their financial support so as to prevent them from falling into destitution and vagrancy. In the decision of ***Samima Faruki Vs. Sahid Khan*** [4]the Hon'ble Apex Court noted that- "*It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home".*

23. In order to have this order of maintenance in her favour certain factors are to be considered which were thoroughly discussed in the said decision

[4] 2015) 5 SCC 705

and it is an admitted fact that financial position of the parents of the applicant wife would not be material while determining the quantum of maintenance. In the case of ***Bhagwan Dutt vs. Kamla Devi***[5] which was taken note of by the Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha (Supra)*** where the Hon'ble Supreme Court held that under Section 125 Cr.P.C only a wife who is *"unable to maintain herself"* is entitled to seek maintenance. In this case the husband did not produce any document to show that she has her own income or she is an earning lady.

24. It is no more *res integra* that mere possession of higher degree does not disentitle the spouse from getting the maintenance on the contrary the liability to maintain the wife is on much higher pedestal.

25. The learned Court found from the conduct of the petitioner that how she obtained the interim maintenance but the Learned court should have focused that whether she has her own income which is most important factor to be considered and not that whether she has residential accommodation or her parents are having robust financial status.

26. Therefore the entire gamut of the matter portray the conduct of the petitioner which has make the case worst for her in getting any favourable order but this court cannot be oblivious of the fact at no point of time it was established that the petitioner have her own income or she earns. She clarified the position in her evidence that she was shocked after receiving the writ filed by her mother in law against her and lodged the subsequent steps. She has not yet filed any proceeding to declare the marriage as null and void on the ground of non-consummation of marriage.

[5] (1975) 2 SCC 386

27. It cannot be brush aside that despite specific direction of this court ,the opposite party failed to submit his Affidavit of Asset and liabilities as mandated by the Hon'ble Supreme Court, and also failed to appear before the court to establish his actual income or to controvert the allegations made against him .Consequently , in the absence of the requisite disclosure and supporting evidence ,the actual income of the husband could not be ascertained with certainty while determining the quantum of maintenance. Even though the petitioner wife has suppressed material facts of having the joint accounts with her husband and few NSC lying in her name the liability of the husband do not get absolved to maintain his legally wedded wife when Section 125 Cr.P.C. is a measure of social justice, especially enacted to protect women and children, falling within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. The objective of the provision, is to alleviate the financial plight of destitute wives.

28. Therefore in order to unearth the truth it is necessary that there must be a DE novo trial before the Learned Magistrate where both parties will place their respective Affidavit of Asset and liabilities without suppressing any facts in accordance with the dictum of Hon'ble Supreme Court in the decision of ***Rajnesh vs Neha & Anr. (Supra)*** for arriving at a just conclusion about the income of the parties and also in respect of a certain other factors which were mentioned therein.

29. Therefore, even though this Court completely concurs with the observation made by the Learned Magistrate so far the suppression of fact is concerned it is not established that the wife voluntarily left the matrimonial house and

she left after receiving writ petition, so there existed a strained relationship between them in her matrimonial house. Hence, without ascertaining such fact and when the undisputed fact shows that she was not a earning lady, total refusal would amount to denial of justice to the lady.

Conclusions

30. Hence this Court after threadbare analysis of the entire facts and circumstances of the case and the law laid down in this regard is of the considered view that the judgement delivered by the Learned Judicial Magistrate, 2nd Court, Barrackpore in connection with Maintenance Case no. 352 of 2022 filed on 20.08.2024 rejecting the entire prayer for maintenance cannot sustain in the eye of law.

31. Hence, this Revisional application is allowed .The order dated August 20, 2024 passed by the Learned Judicial Magistrate, 2nd Court, Barrackpore is hereby set aside.

32. The petitioner is directed to file a fresh application under section 125 Cr.PC within a period of 4 weeks and to serve the copy of the application upon the opposite party /husband .The Learned Court will dispose of the said application in accordance with law and in the event the Learned Court found the wife is entitled for the maintenance the order will be effective from the date of filing the fresh application.

33. All other connected applications if any stand disposed of.

34. 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