

Criminal Appeal No. 225 of 2025

CNR No. WBSP010119082025

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West Bengal Form No. 3386
High Court /criminal Form No. (M) 17

**HEADING OF JUDGMENT OF APPELLATE COURT
Court of Sessions/Magistrate Appellate Jurisdiction .**

**In the Court of Additional Sessions Judge, Fast Track 4th Court,
Alipore, South 24 Parganas**

**Present: Himanil Bhattacharjee (JO CODE : WB01082)
Additional Sessions Judge,
4th Fast Track Court, Alipore.
South 24 Parganas,**

**CRIMINAL APPEAL No. 225 OF 2025
CNR No. WBSP010119082025**

**Criminal Appeal U/Sec. 29 of PWDV ACT
against the Order dated 10.03.2025 passed
by the Court of the Ld. J.M., 10th Court,
Alipore, South 24–Parganas, in connection
with C Case No. 631 of 2025**

**Presented on : 20–08–2025
Registered on : 20–08–2025
Finally heard on : 10–07–2026
Decided on : 10–07–2026
Duration : 10 months, 21 days**

Sri Rajib Kr. Ghosh
..... Petitioner
Vs.

**1. Smt. Moumita Saha
2. State of West Bengal**
..... Opposite Parties

Ld. Advocate for the Petitioner Sri Sourav Chatterjee.
Ld. Advocate for the Respondent No. 1 Sri Prativ Basu
Ld. P.P for the Respondent No. Sri Biswanath Ishat.

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J U D G M E N T

1. The present Appeal has been filed by the appellant disputing the correctness of the impugned order as mentioned above by which the Ld. Trial Court has disposed of the application for *exparte* interim relief under section 23(2) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as the PWDV Act) by directed the Appellant to pay Rs. 30,000/- per month to the Respondent No.1 for her minor child as interim monetary relief with effect from 12.02.2025. The Appellant herein is aggrieved by such orders as he claims that the amount of monetary relief so ordered is disproportionate with his income.

2. The State of West Bengal (The Respondents no. 2) was represented by the Ld. P.P. in-charge, but at the time of hearing, Ld. P.P. in-charge was not present.

3. The Respondent no. 1 has contested the Appeal, she has not filed any separate W.O; it was her contention that the impugned order is not suffering from any irregularity as the Ld. Trial Court has passed the impugned order after considering all the relevant facts and materials before her and the Respondent no.1 has sought for dismissal of the Appeal and affirmation of the impugned order.

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Backdrop

4. Recording the details of the case pending before the Ld. Trial Court is not necessary for the purpose of disposal of this Appeal. The Respondent no.1 as Petitioner alleging domestic violence at the hands of her husband (Appellant herein) filed the case under section 12 of the PWDV Act seeking various relief as is available under the provisions of the said Act and in such proceeding, a petition for *exparte* interim relief in terms of section 23(2) of the said Act was pressed and by the impugned order, the Ld. Trial Court allowed the same directing the Appellant/husband to pay Rs. 30,000/- per month to the Respondent no.1/petitioner for her minor daughter.

Submissions by the parties

5. Ld. Advocate appearing for the Appellant has submitted that the Ld. Trial Court has passed the impugned order without hearing the Appellant and therefore, she obviously believed the statements of the Respondent No. 1 while passing the impugned order; however, the Respondent No. 1 has made false assertions in the application for interim relief and the monthly income of the Appellant is not at all as high as projected by the Respondent No. 1; Ld. Advocate of the

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Appellant has drawn my attention to the IT Return of the Appellant for Assessment Year 2025–26 which discloses yearly income of Rs. 1,80,000/–. The Ld Advocate of the Appellant has thus argued that the order for maintenance should be such that is proportionate with his income and the Appellant is ready to shoulder the responsibility of maintaining his child. The Ld. Advocate has relied upon a judgment in this regard passed by the Hon'ble Delhi High Court in **Babita Bisht vs. Dharmender Singh Bisht reported in AIR Online 2019 Del 787**. It was also contended by Ld. Advocate of the Appellant that the Respondent No. 1 has disclosed several Bank Accounts belonging to her in her affidavit of assets and liabilities which includes a Current Account, a Current Account is only used by persons conducting business; accordingly, the Respondent No. 1 definitely has her own business and she has suppressed her income from such business. It was further sated by the Ld. Advocate of the Appellant that the Appellant though previously was employed in Indonesia, he has already returned to India and he no further has income that he once had abroad. The Ld. Advocate has therefore prayed that the impugned order should be set aside and the Ld. Trial Court should be directed to hear both sides and to pass a reasoned order.

6. Per contra, Ld. Advocates of the Respondent Nos. 1 has submitted that there is nothing wrong with the impugned

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orders which was passed on consideration of the materials on record. He has submitted that the Appellant has shown a less amount as his monthly income in his recent IT Return willfully to avoid making payment of proportionate maintenance to the Respondent No. 1. The Ld. Advocate of the respondent no. 1 has further submitted that the Appellant used to work as a Yoga Instructor in Indonesia and used to earn \$6000 per month from such avocation which will be close to Rs. 70,00,000/- per year; it is therefore hardly believable that he now earns only Rs. 1,80,000/- per year as disclosed in his IT Return. Thus, the Ld. Advocate of the Respondent No. 1 has prayed for dismissal of the appeal.

Decision with Reasons

7. I have carefully gone through the materials on record and I have also taken into account the submissions made by the Ld. Advocates on behalf of the parties.

8. Since the application for interim relief under section 23(1) of PWDV Act is still pending before Ld. Trial Court, I must refrain from entering into the merits of the case in detail or else the Ld. Trial Court may be influenced causing prejudice to either side. At this stage, I find that the paternity of the minor child is not in dispute. The fact that the minor child is now

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staying with the Respondent No. 1 is also virtually admitted. The Ld. Trial Court has not granted any monetary relief to the Respondent No. 1 for herself, so, I shall avoid discussion regarding any income that she might have at this stage.

9. The question raised in this appeal is regarding the quantum of monetary relief. I find it to be highly improbable that a person who was once had earning \$6000 per month would return home without any reason leaving such job and would settle for a relatively meager income of Rs. 1,80,000/- per year. No exceptional circumstance forcing the Appellant to leave his job and return home and live with such a paltry income has been narrated by him.

10. IT Return is not a conclusive proof of the income of the declarant, it is merely his declaration for the purpose of computing his tax liability. In this regard, reference may be made to the judgment of the Hon'ble Calcutta High Court in **Tumpa Basak Vs. Tufan Basak reported in 2025 SCC Online Cal 5923**. In the above referred judgment the Hon'ble Court has observed as follows: "...it would be axiomatic to remind one and all the settled proposition of law that the income tax return of an individual cannot be considered as conclusive proof of his income as primarily the return is based on the information provided by the tax payer himself. The figures reported therein are subject to the tax payer's understanding and interpretation which is not always accurate or comprehensive. In addition to that there is always a possibility of

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potential of under reporting. Therefore, the actual income of an individual would indeed be very different from the figures shown in the income tax return that is why the courts often look beyond I.T. returns while determining the income of a person, especially in proceedings such as maintenance cases.” It was further observed by the Hon’ble Court in the said judgment as follows: “Therefore, it is made crystal clear that the Courts while determining the quantum of maintenance should not just examine the present income of the alimony prayer but also his potential, past earnings and assets.”

11. The Appellant at this stage has not disclosed his assets and liabilities yet as the impugned order was passed without notice upon him, he is due to file affidavit of his assets and liabilities before the Ld. Trial Court before the consideration of the petition for interim relief in contested form by the Ld. Trial Court. Only on filing such affidavit it can be adjudicated what should be the quantum of monthly monitory relief for the minor child as all available assets of the Appellant will be before the Court. There is no qualm as to the proposition of law as discussed in Babita Bisht(supra); the quantum of maintenance should be proportionate to the income of the provider; but the income of the Appellant at this stage is not clearly disclosed by him and an attempt to hide the real financial potency on the part of the Appellant is sensed by this Court. *Prima facie*, I accordingly find no reason to interfere with the impugned order which rather seems to have fixed the

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amount of monetary relief on the lower side considering the apparent status of the parties.

12. Accordingly, I must hold that the impugned order is not required to be interfered with.

13. Hence, it is

ORDERED

That the Criminal Appeal No.225 of 2025 is hereby dismissed on contest without any cost.

14. The impugned Order dated 10.03.2025 passed by the Court of the Ld. J.M., 9th Court, Alipore, South 24 Parganas, in connection with C Case No. 631 of 2025 is hereby affirmed.

15. The said Ld. Trial Court is requested to dispose of the petition under section 23(1) of PWDV Act expeditiously without granting unnecessary adjournments to either sides and without being influenced by any of the observations made in the instant Judgment which are limited for the purpose of the present proceeding only.

16. Let a copy of this Judgment be sent to the Ld. Trial Court for information and necessary action.

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17. Copy of the Judgment be uploaded in thee CIS.

18. The case is thus disposed of.

Dictated & Corrected by me

**Additional Sessions Judge,
4th Fast Track Court, Alipore,
South 24 Parganas**

**Additional Sessions Judge,
4th Fast Track Court, Alipore,
South 24 Parganas**