

**IN THE COURT OF THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, FAST TRACK COURT, RAMPURHAT,
BIRBHUM**

Present : **Sandip Kumar Kundu (WB 00988)**

Additional Sessions Judge,
Fast Track Court, Rampurhat,
Birbhum.

**CRIMINAL REVISION NO. 16 of 2022
CIS REGISTRATION NO. 16 of 2022
CNR No. WBBB05-000408-2022**

Application under section 397/399 of the Code of Criminal Procedure

(From the judgment and order passed by the Ld. Judicial Magistrate, 2nd Court, Rampurhat, Birbhum on 11.04.2022 in connection with Misc. Case No. 221 of 2018/CIS Registration No. 1885 of 2018, under section 125 of the Code of Criminal Procedure)

Abu Ahamed Mollah

..... Revisionist

VS.

**1. Kohinoor Bibi and
2. The State of West Bengal**

..... Opposite Parties

Mr. Jyoti Prakash Roy

..... Ld. Advocate for the Revisionist

AND

Mr. Samanaya Datta

..... Ld. Advocate for the OP No. 1

Mr. Kalyan Bandopadhyay

..... Ld. Advocate for the OP No. 2/State

Judgment delivered on this 2nd day of September, 2026

JUDGMENT

PROLOGUE

1. The present Criminal Revision challenges the final order passed by the Ld. Judicial Magistrate, 2nd Court at Rampurhat, Birbhum, on 11.04.2022 in connection with Miscellaneous Case No. 221 of 2018 (T.R. No.



651/2018) under section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C').

2. The revision application was filed before the Court of the Ld. Additional Sessions Judge, Rampurhat, Birbhum, on 31.05.2022, well within the limitation period of ninety days from the date of passing of the impugned order. Thereafter, this Court received the case record from the Court of the Ld. Additional Sessions Judge, Rampurhat, Birbhum, vide Order No. 19 dated 27.01.2025 for disposal.

3. The Trial Court Record (TCR) shows that an application under section 125 of the Cr.P.C was filed by OP No. 1/wife against the present revisionist/husband, claiming maintenance allowance for herself at the rate of Rs. 10,000/- per month. The revisionist/husband contested the proceeding by filing a written objection in the form of a show cause. The Ld. Magistrate disposed of the said proceeding on 11.04.2022, directing the revisionist/husband to pay maintenance of Rs. 3,000/- per month to OP No. 1/wife from the date of filing of the case.

FACTUAL ASPECTS

4. To appreciate the grievance of the revisionist/husband, the factual background of this case needs to be recapitulated. The synopsis of the petition filed by OP No. 1 is that she got married to the revisionist according to Muslim Sariat law about 25 years ago prior to the filing of the case. After the marriage, she started living her conjugal life at the house of the revisionist/husband. During the subsistence of the marriage, she gave birth to three daughters and one son. Out of them, two daughters were married, another daughter was aged about 14 years and the son was aged about 12 years.

5. It is alleged by OP No. 1/wife that after the birth of the male child, the revisionist/husband and his family members put pressure upon her to bring a sum of Rs. 1,20,000/- in cash from her paternal home. As the said demand could not be fulfilled due to the poor financial condition of the widowed mother of OP No. 1/wife, she was subjected to physical and mental torture by the them. However, OP No. 1/wife tolerated such torture in the hope of future happiness.

6. It is further stated in the petition that in the meantime, the revisionist/husband contracted a second marriage with another lady, namely,



Rousanara Bibi. She also joined with other members of the family in inflicting assault and torture upon OP No. 1/wife and the same gradually increased day by day. Ultimately, OP No. 1/wife was driven out of her matrimonial home on 14.02.2018 in a single attire after being assaulted by the revisionist/husband, who also took away her stridhan articles and retained the minor children with him. As a result, OP No. 1/wife was compelled to take shelter at her father's house. Since then, the revisionist/husband has neither taken any information of OP No. 1/wife nor provided her with maintenance.

7. OP No. 1/wife also asserted in her petition that she has no income of her own, whereas the revisionist/husband is an able-bodied person engaged in the business of road contracting and also runs a hardware shop under the name and style of 'Hasan Hardware'. In addition, he owns a house standing on 3 decimals of land and agricultural land measuring 2½ bighas. According to OP No. 1/wife, the revisionist/husband earns about Rs. 60,000/- per month. Thus, OP No. 1/wife prayed for an order of maintenance allowance from her husband to the tune of Rs. 10,000/- per month for herself.

8. The revisionist/husband refuted the claim of the OP No. 1/wife by filing a written objection, wherein he challenged and disputed all the allegations made in the petition. However, he admitted the factum of the marriage between the parties and the birth of four children out of their wedlock.

9. While denying all the allegations made in the petition, the revisionist/husband contended that he is financially poorer than the family of his wife's parental home. Therefore, according to him, OP No. 1/wife voluntarily left her matrimonial home, leaving the minor children with him. It is stated that he went to his in-laws' house to bring OP No. 1/wife back and resume their marital life, but she was not interested in living with him.

10. It is further alleged that OP No. 1/wife is living as husband and wife with one Wajed Sk of village Bishore, P.S. Murarai, which is known to the villagers. The revisionist/husband also stated that he is a daily labourer and earns Rs. 150/- to Rs. 200/- per day. Therefore, he has no capacity to pay maintenance to his wife separately. The revisionist/husband denied having any business or landed property, as stated by OP No. 1/wife. According to him, OP No. 1/wife earns Rs. 5,000/- per month from bidi-binding work. Thus, the revisionist/husband prayed for dismissal of the case.



11. In order to prove their respective cases, both parties adduced evidence. During the trial, OP No. 1/wife was examined herself as PW-1. One Kadam Rasul Sk. of Bulchand Para, under P.S. Paikar and Khateja Bibi, the sister of OP No. 1/wife, were examined as PW-2 and PW-3 respectively, supporting the case of the petitioner. On the other hand, the revisionist/husband entered the witness box and was examined as OPW-1, He also examined one witness namely, Sadek Sk., who happened to be a co-villager of the revisionist/husband.

12. Neither party produced or exhibited any documentary evidence during the course of the trial.

13. After hearing both sides and scrutinizing the evidence on record, the Ld. Magistrate passed an order directing the present revisionist/husband to pay Rs. 3,000/- per month to OP No. 1/wife as maintenance allowance from the date of filing of the case. The revisionist/husband was also directed to pay such maintenance allowance within the first 10 days of each English calendar month, failing which OP No. 1/wife would be at liberty to put the order into execution.

GROUND OF REVISION

14. Being aggrieved by and dissatisfied with the said order of maintenance, the impugned order of the Ld. Trial Court was assailed in this revision on the following grounds:-

i) The Ld. Trial Court whimsically passed the baseless judgment and order dated 11.04.2022 with a view to spoiling the life of the revisionist, without going through the force of section 125 of the Cr.P.C.

ii) The judgment and order dated 11.04.2022 passed by the Ld. Trial Court are contrary to law.

iii) The Ld. Trial Court ought to have believed the evidence adduced by the present revisionist in Misc. Case No. 221 of 2018.

iv) That OP No. 1 has failed to prove her case.

v) The revisionist duly proved his case.

15. Accordingly, the revisionist/husband prayed for setting aside the impugned judgment and order and for passing such further order or orders as this Appellate Court may deem fit and proper.



POINT FOR RUMINATION

16. The sole point for determination in this Criminal Revision is whether the impugned judgment and order passed by the Ld. Judicial Magistrate, 2nd Court, Rampurhat, Birbhum, on 11.04.2022 in connection with Miscellaneous Case No. 221 of 2018 call for any interference by this Court with regard to their correctness, legality or propriety ?

SUBMISSIONS FROM THE BAR

I. On behalf of the revisionist/husband:

17. The Ld. Counsel for the revisionist/husband argued that the Ld. Trial Court failed to appreciate the facts of this case in their proper perspective. According to him, without considering the pleading of the revisionist/husband and solely on the basis of the oral testimony of OP No. 1/wife, the Ld. Magistrate ought not have to be passed the impugned order, seemingly punishing the revisionist/ husband disbelieving him because husband is always at the receiving end, and the same is absolutely unjust, improper if not whimsical. It was further argued that OP No. 1/wife, during her cross examination admitted that she was living with her second husband. Therefore, her conduct falls within the ambit of section 125(4) of the Cr.P.C. and as such, she is debarred from claiming any maintenance allowance from the revisionist/husband. The Ld. Counsel for the revisionist/husband also submitted that the revisionist/husband is a day labourer and is not financially capable of paying the maintenance allowance as ordered by the Ld. Trial Court while finally disposing the Misc. Case.

II. On behalf of OP No. 1/wife:

18. The Ld. Advocate for OP No. 1/wife argued that the order passed by the Ld. Trial Court is reasonable. There existed sufficient and justifiable grounds for her not to reside with the revisionist/husband and during her evidence, PW-1 clearly demonstrated as to why she has been residing separately from the revisionist/husband. It was further argued that the revisionist/husband is financially capable of paying the maintenance allowance as ordered by the Ld. Trial Court, particularly because he contracted a second marriage during the subsistence of the first marriage. Further, OPW-1 and OPW-2 failed to prove the allegation of adultery against OP No.1/wife. No



complaint was lodged before the concerned police station regarding the alleged adulterous relationship. Therefore, the allegation is wholly false and concocted. In conclusion, the Ld. Advocate for OP No. 1/wife submitted that the revisionist/husband, being an able-bodied person, is duty-bound to maintain his wife, who is unable to maintain herself. Accordingly, he contended that the order passed by the Ld. Magistrate requires no interference by this Revisional Court and prayed for dismissal of the revision with costs.

III. On behalf of the OP No. 2/State:-

19. The Ld. Counsel for OP No. 3/State, supporting the arguments advanced on behalf of OP No. 1/wife, submitted that the Ld. Magistrate passed the impugned order after duly considering all relevant aspects of the case and that the same is a well-reasoned order. Therefore, there is no necessity for this Revisional Court to interfere with the said contested order.

DECISION WITH REASONS

20. At the very outset it is to be remembered that revision against an order passed under section 125 of the Cr.P.C. is for limited jurisdiction and purposes. It has been settled by the Hon'ble Apex Court in **Bakulabai vs. Gangaram, (1988) SCC (1) 537**, that the court of revision has its limitation and narrow scope to revise or revisit the impugned order sought to be assailed. The finding of the magistrate on disputed questions of fact, if recorded after full consideration of evidence, should not be disturbed by revisional court in absence of any error of law. It is equally well settled by the Hon'ble Apex Court in **Deb Narayan Halder vs. Anushree Halder, 2004 SCC (Cri) 164**, that the revisional court must come to the clear conclusion that those findings are untenable, then record its reasons for coming to the said conclusion.

21. Churning out the averments and submissions of the parties, it is explicit in this case that the factum of marriage between the revisionist and OP No. 1 is not disputed. It is also undisputed that the parties have been living separately and have four children, out of whom two are already got married, while the remaining two, who are minors, are presently in the custody of their father, i.e., the revisionist/husband. The points in controversy are whether the wife has been living separately voluntarily after marrying another person and whether the quantum of maintenance allowance awarded by the Ld. Trial



Court, to be paid by the revisionist to the petitioner of the Misc. Case, namely OP No. 1, is erroneous or excessive.

22. Before setting out on the quest to unravel the apparent legal quandary, it is germane to note here that the proceeding under section 125 of the Cr.P.C. was initiated by OP No.1/wife in the year 2018. This Court is not oblivious to the dictum of the Hon'ble Apex Court postulated in **Rajnesh Vs Neha, (2021)2 SCC 324**, wherein the Hon'ble Court directed all the Courts deciding maintenance matters to call for affidavits of income, assets and liabilities from the parties. The TCR reflects that the revisionist, being the OP in the Misc. Case, filed his affidavit of assets and liabilities. However, since the evidence of both parties was already on record, no such affidavit was obtained from OP No.1/wife.

23. This is a case where the petitioner, being the wife of the OP, has claimed maintenance allowance by invoking section 125 of the Cr.P.C. Therefore, the question that arises for consideration is whether the petitioner/wife is entitled to receive maintenance allowance from the present revisionist/husband.

24. The revisionist/husband has taken the plea that OP No. 1/wife has left his company and has been living with one Wajed Sk. of village Bishore, P.S. Murarai, as husband and wife. According to him, this fact is known to the villagers. Thus, the revisionist/husband has invoked the provisions of section 125 (4) of the Cr.P.C., which provides, 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.

25. During the trial, the revisionist, as OPW-1, reiterated the said facts in his testimony. OPW-2, an inhabitant of village Bishore, also deposed in support of the defence case of the revisionist, stating that the petitioner/wife was presently residing in the house of her second husband. The impugned judgment reveals that the Ld. Trial Court examined the oral testimony of the OPWs and came to a conclusion that: **'So, the fact of adultery as asserted by the O.P is a mere defence and has not been established by cogent evidence.'**



26. However, this Court differs from the aforesaid observation and finding of the Ld. Trial Court because the petitioner/wife herself admitted her present status and place of residence, which, prima facie, supports the defence case. It appears from the evidence on record that the petitioner/wife was examined on oath 28.12.2020. In her examination-in-chief, she narrated her case. On the same day, after completion of her examination-in-chief, the opposition side put only one question to her and in response thereto she stated, *“Presently I am leading my conjugal life with my second husband.”* Therefore, though she did not disclose the name of her alleged second husband, it became an admitted position that she has been residing with another person whom she claimed to be her second husband.

27. No evidence has come on record in this case to show that the marital tie between the revisionist and OP No. 1 has been legally dissolved. In such circumstances, the unequivocal admission made by OP No. 1/wife during her cross-examination that she is presently living with her second husband leaves no room for doubt that the present case falls within the ambit of sub section (4) of section 125 of the Cr.P.C.

28. It is noteworthy that the petitioner/wife attempted to explain away her aforesaid admission regarding her present living status on the next date of her cross-examination on 25.02.2021, when she stated, *“Since last 3 years I am staying at my father’s house.”* Not only that, but in order to overcome the effect of such admission, the petitioner/wife also examined two more witnesses in support of her case. Be that as it may, in view of the petitioner’s own admission, she has disentitled herself from claiming any maintenance from the revisionist/husband. During the course of arguments, the Ld. Counsel for the revisionist/husband brought this aspect of the case to the notice of this Court.

29. To sum up the above discussion, it can be said that the Ld. Trial Court committed an error by overlooking the material admission made by the petitioner/wife and in holding that she was entitled to maintenance allowance from the present revisionist Ergo, the impugned order calls for interference by this Revisional Court and consequently, the revision succeeds.

30. The court fees paid are sufficient.

31. Hence, it is,



ORDERED

that the instant Criminal Revision No. 16 of 2022, be and the same is allowed on contest against the OPs, but without any order as to costs.

The impugned order dated 11.04.2022 passed by the Ld. Judicial Magistrate, 2nd Court, Rampurhat, Birbhum, in connection with Misc. Case No. 221 of 2018 is hereby set aside.

The interim order, if any, stands vacated.

The interim application, if any, stands disposed of.

A copy of this judgment be supplied to the parties free of costs.

Let a copy of this judgment along with the TCR be placed before the Ld. Judicial Magistrate, 2nd Court, Rampurhat, Birbhum for information.

Dictated and Corrected by me.

Sd/-
Additional Sessions Judge,
Fast Track Court, Rampurhat,
Birbhum.

Sd/-
Sandip Kumar Kundu
Additional Sessions Judge,
Fast Track Court, Rampurhat,
Birbhum.

