

West Bengal Form No. 3701

HIGH COURT FORM No. (J)2

HEADING OF JUDGMENT IN MOTION

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, 2nd Court,
SERAMPORE**

**Present : Nayyar Azam Khan
Additional Sessions Judge
2nd Court Serampore**

Criminal Motion No. 42 of 2021

CIS No.27/2021

***(arising out of Order dated 23.3.21 passed in Misc Case No. 16 of 2019 by the
Id Judicial Magistrate, 3rd Court Serampore in connection with petition filed
under section 125 of the Criminal Procedure Code)***

Delivery of judgement Tuesday the 16th day of June 2026.

Dipankar RoyPetitioner/Revisionist

-Vs-

State of West Bengal & Anr.Opposite Party

J U D G E M E N T

1) The Revisionist of the instant motion has preferred herein the instant Criminal Motion challenging the Order dated 23.3.2021 therein passed in Misc Case No. 16 of 2019 by the learned Judicial Magistrate 3rd Court, Serampore. The genesis of the matter culminating in the judgement impugned is as follows :

Case of the petitioner in the Id Trial Court

The petitioner Paromita Ghosh who is the Opposite Party (hereinafter referred to as O.P.) No. 2 herein had filed an application under section 125 of the Criminal Procedure Code (hereinafter referred to as Cr.P.C.) before the court of Id Additional Chief Judicial Magistrate, Serampore on 11.01.2019 and thereafter filed another petition on 13.01.2020 praying for allowing interim monthly maintenance allowance for herself to the tune of Rs. 20000/- per month and Rs. 10000/- per month for her minor child. The Id court registered the matter as Misc. Case No. 16 of 2019 and transferred the same to the court of Id Judicial Magistrate (hereinafter referred to as J.M.) 3rd Court, Serampore. The petitioner Paromita Ghosh inter alia submitted therein that after marriage with the O.P.

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therein i.e. Dipankar Roy on 26.01.2008, she went to her matrimonial home and started conjugal life with the O.P. after which she gave birth to a male child on 06.12.2019. Thereafter she was subjected to physical and mental torture by the O.P. and his family members over demand of more dowry and was denied proper food and medication and finally on 18.7.2015 the petitioner along with her minor child was driven out of her matrimonial home by the O.P. and his family members, after which she took shelter in her paternal home with her minor child. Thereafter the petitioner again went to her matrimonial home on 31.10.2017 but was refused entry therein. After the petitioner was driven away, the O.P. and his family members did not take any care of her or her minor child and further did not pay any sum of maintenance to the petitioner who had no source of income due to which the petitioner had to survive on the charity of her retired father for her maintenance and the maintenance of her minor child. The O.P. is a Sales Manager of a reputed company in Eastern India and also does a business of selling products wherefrom he earns a sum of Rs. 75000/- per month. The petitioner has prayed for grant of the relief of interim maintenance to the tune of Rs. 20000/- and Rs. 10000/- per month for herself and her minor child respectively from the O.P.

2) Case of the O.P. in the Id Trial Court

The O.P. who is the present Revisionist, appeared in the present matter before the Id trial court and filed his written objection in which he denied the allegations of torture for more dowry levelled against him by the petitioner and also denied driving away the petitioner with their minor child from her matrimonial home after admitting the marriage and the birth of their child. He has claimed that the petitioner voluntarily left her matrimonial home with their child without any valid cause after which he along with his family members had requested the petitioner on several occasions to return to her matrimonial home with their child but she refused to do so. The O.P. never refused to maintain his wife and child but rather tried to live with them. The O.P. is presently unemployed and is in search of a job while the petitioner is working in a departmental store wherefrom, she is earning Rs. 10000/- per month and she also runs a business of beauty parlour, napkin and clothes from her house.

The O.P. prayed for dismissal of the instant interim maintenance petition filed by the petitioner.

The Id trial court had heard the said interim maintenance petition in presence of both the sides and passed the impugned order being Order dated 23.3.2021 thereby partly allowing the said petition of the petitioner and directing

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the O.P. therein to pay the petitioner-wife an interim maintenance sum of Rs. 4000/- per month for herself and Rs. 4000/- per month for their minor child till the disposal of the instant misc. case.

Being aggrieved by and dissatisfied with the aforesaid order, the O.P.-husband as revisionist herein has filed the present criminal motion.

ARGUMENT OF THE CONTESTING PARTIES

3) Ld Advocate for the revisionist argued that the Id trial court while holding that the O.P. was duty bound to disclose his income as per sec. 106 of The Indian Evidence Act as the same was within his special knowledge, did not use the same principle and insist that the petitioner was also duty bound to disclose her income as the same was within her special knowledge. He also argued that the Id trial court did not consider that the O.P. is unemployed and that he had to tender his resignation to his former employer under compulsion during the lock-down. Ld Advocate for the revisionist further argued that the impugned order does not mention the basis on which the quantum of the interim maintenance ordered by it was decided by the Id trial court. He prayed for setting aside the impugned order and for passing appropriate order as deemed fit by this court.

Ld Advocate for the O.P.2 submitted that the impugned order of payment of Rs. 8000/- for the interim maintenance of the petitioner and their minor child was justified at this interim stage where the evidence was not furnished and was not an exaggerated sum of money considering the prices of essentials and the cost of living. He prayed for dismissal of the instant revision petition.

O.P.1/State did not appear in this matter in spite of receiving the notice and the instant case was heard ex parte against it.

4) POINT FOR DETERMINATION

Whether the impugned Order dated 23.3.2021 passed in Misc. Case No. 16 of 2019 by the learned J.M. 3rd Court, Serampore is sustainable in law and facts ?

5) DECISION WITH REASONS

Having gone through the materials on record, it appears that the instant matter relates to the petition filed by the petitioner under sec. 125 of the Cr.P.C. At this juncture it would be profitable to visit the said provision of law.

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125. Order for maintenance of wives, children and parents.—(1) If any person having sufficient means neglects or refuses to maintain— (a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or (d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

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Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

(4) 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.

The West Bengal Amendment further says :

“Provided further that where in any proceeding under this section it appears

to the Magistrate that the wife referred to in clause (a) or the minor child referred to in clause (b) or the child (not being a married daughter) referred to in clause (c) or the father or the mother referred to in clause (d) is in need of immediate relief for her or its or his support and the necessary expenses of the proceeding, the Magistrate may, on the application of the wife or the minor child or the child (not being a married daughter) or the father or the mother, as the case may be, order the person against whom the allowance for maintenance is claimed, to pay to the petitioner, pending the conclusion of the proceeding, the expenses of the proceeding, and monthly during the proceeding such allowance as, having regard to the income of such person, it may seem to the Magistrate to be reasonable.”.

6) The present revision is directed against an order granting interim maintenance under Section 125 of the Code of Criminal Procedure. At the outset it is necessary to bear in mind that while exercising revisional jurisdiction, this Court is not sitting as a court of appeal. Interference is warranted only where the order under challenge suffers from patent illegality, material irregularity, jurisdictional error or perversity resulting in miscarriage of justice. If the view adopted by the learned Magistrate is a reasonably possible view on the materials available at the interim stage, revisional interference would not ordinarily be justified

A plain reading of the above provision in the light of the instant case implies that the power entrusted to the 1st trial court includes ordering payment of monthly maintenance including interim maintenance for the petitioner and her minor child upon the application filed by the petitioner after taking into consideration the income of the parties, if the 1st court is satisfied that the petitioner and her minor child are unable to maintain themselves and the O.P. has sufficient means and is neglecting or refusing to maintain them. The relationship of husband and wife between the parties is admitted. The fact that a minor son was born out of the wedlock is also admitted. Therefore, the foundational facts necessary for considering an application for interim maintenance are not in dispute. The principal contention of the revisionist is that the opposite party-wife voluntarily left the matrimonial home without any sufficient cause and, therefore, is not entitled to claim maintenance. The revisionist has also contended that he never neglected or refused to maintain the wife and child. Such defence raises disputed questions of fact. It is not disputed that the parties are living separately and there is no material to show that the revisionist is presently maintaining either the wife or the minor child. Consequently, a prima facie case of neglect warranting interim intervention is made out. Whether the wife left the matrimonial home voluntarily,

whether there existed sufficient cause for her separate residence, whether she was subjected to cruelty or ill-treatment and whether there was neglect or refusal on the part of the husband are matters requiring evidence. At the stage of consideration of an application for interim maintenance, the court is only required to arrive at a prima facie satisfaction on the basis of the available materials and is not expected to conduct a mini trial. Therefore, the learned Magistrate rightly refrained from rendering any final finding on those disputed questions.

The next contention relates to the financial capacity of the parties. The wife has alleged that the husband was employed as a Sales Manager and was earning a substantial income. The husband, on the other hand, has claimed that he is unemployed and in search of employment. Neither side has produced cogent documentary evidence conclusively establishing the exact income of the other. However, inability of a spouse to produce documentary proof of the exact income of the opposite party at the interim stage is not uncommon. The law is well settled that maintenance proceedings are measures of social justice intended to prevent destitution and vagrancy. Consequently, the court is entitled to make a prima facie assessment on the basis of the pleadings, affidavits and surrounding circumstances. The learned Magistrate has observed that the husband is an able-bodied person. The materials on record do not disclose any physical incapacity, disability or circumstance rendering him incapable of earning. Even assuming that the revisionist is presently unemployed, temporary unemployment by itself cannot absolve a husband from his statutory obligation to maintain his wife and minor child. An able-bodied person is expected to make reasonable efforts to earn and support those whom the law obliges him to maintain. The revisionist has further contended that the wife herself is earning and is carrying on business activities. However, except making such allegations in the written objection, no prima facie material has been produced before the learned Magistrate to establish that the wife is gainfully employed or is possessed of sufficient independent income to maintain herself and the minor child. Mere allegations, unsupported by any material whatsoever, are insufficient to deny interim maintenance. At this interlocutory stage, the unrebutted assertion of the wife that she has no sufficient independent income for maintaining herself and the minor child furnishes a prima facie basis for grant of interim maintenance.

The learned Magistrate has granted interim maintenance of Rs. 4,000/- per month to the wife and Rs.4,000/- per month to the minor child. It is true that the impugned order could have contained a more elaborate discussion regarding the basis of quantification. Nevertheless, inadequacy of reasons by itself is not sufficient ground for interference if the ultimate conclusion appears reasonable on the materials available.

The Court cannot lose sight of the fact that the maintenance awarded is only interim in nature and is subject to final adjudication after evidence is adduced by both sides. The amount awarded is modest. Having regard to contemporary living costs, educational expenses of a school-going child, medical requirements, food, clothing and other incidental expenses, the sum awarded cannot be said to be excessive or arbitrary. Rather, the amount appears to be a conservative estimate intended to provide subsistence support pending disposal of the main proceeding. It is also pertinent to note that the entitlement of the minor child to maintenance stands on an independent footing. The liability of a father to maintain his minor child is a statutory obligation and the child cannot be deprived of maintenance because of disputes between the spouses. On an overall consideration of the materials available on record, this Court finds that the learned Magistrate exercised jurisdiction vested in him by law, considered the relevant factors and arrived at a conclusion which cannot be termed perverse, illegal or manifestly unreasonable. No ground has been made out warranting interference in revisional jurisdiction.

In view of the aforesaid discussion, the order impugned as regards entitlement of interim maintenance of the petitioner and her minor child is found to be sustainable in law. Thus, the revisional application is liable to be dismissed. The point for determination is answered in the affirmative.

It is, therefore,

O R D E R E D

that Criminal Revision No. 42 of 2021 be and the same is dismissed on contest against O.P.2 and ex parte against O.P.1. However, there is no order as to costs. The impugned order dated 23.3.2021 passed by the 1d court of J.M. 3rd Court, Serampore in in Misc. Case No. 16 of 2019 is affirmed. The aforesaid interim maintenance shall be payable from the date of the interim maintenance application filed by the petitioner before the 1d trial court i.e. from 13.01.2020 as per the direction of the Hon'ble Supreme Court in its judgement dated 04.11.2020 in *Rajnish Vs Neha AIR 2021 SC 569*. The stipulation and the manner of such payment as mentioned in the impugned order is found to be proper and is also retained. Considering the substantial accumulation of arrears during pendency of the revision, the revisionist-husband is permitted to liquidate the arrears in 20 equal monthly installments commencing from July 2026, in addition to the current monthly maintenance, after adjustment of payments already made. The stay dated 22.6.2021 granted upon the impugned order now stands vacated.

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P/8

Let a copy of this judgement and the record of Misc. Case No. 16 of 2019 be sent back to the court of learned Judicial Magistrate, 3rd Court, Serampore at once.

Dictated & corrected by me

Sd/-
Additional Sessions Judge, 2nd
Court, Serampore.

Sd/-

Additional Sessions Judge, 2nd
Court, Serampore.