

CNR No.WBHG09-000438-2025

W.B. Form No 3886.
H.C. Criminal Form No. (M) 17.

HEADING OF JUDGEMENT OF APPELLATE COURT
Court of Sessions/ Magistrate,
APPELLATE JURISDICTION.

Present : Sri Jagojyoti Bhattacharyya
(J.O. Code - WB00971)
Additional Sessions Judge,
Fast Track Court,
Chandannagar.

CRIMINAL Appeal NO.08 OF 2025
(Arising out of Misc. Case No.91 of 2021)

DATE OF JUDGEMENT : 18th day of March, 2026

Sri Biswanath Ghosh

-- Appellant/husband.

-Vs-

1) Smt. Kakoli Ghosh

2) STATE OF WEST BENGAL

-- Respondents

**Appeal under Sec. 29 of the Protection of Women from
Domestic Violence Act**

Ld. Advocates for :

The Appellant-Petitioner: Sri Debojyoti Ganguly

The Respondents: 1) Sri Anirban Bhattacharya
2) Ld. P.P Sri Gopal Patra

J U D G E M E N T

1. The criminal appeal has been filed under
sec.29 of the **Protection of Women from**

Domestic Violence Act (in short DV Act) against the order dt. 12.03.2025 passed by the Ld. Judicial Magistrate, 2nd Court, Chandernagore, Hooghly in connection with M.C. Case No.91 of 2021.

2. Before I entered into the merit of the present appeal, I want to recapitulate the factual matrix that has originated the present appeal, which are as under.

Sri Biswanath Ghosh, the appellant herein, was married to Smt. Kakali Ghosh, the respondent No.1 herein and their marriage was solemnized on 13.03.2001 as per Hindu Rites and Customs. Subsequently, their marriage was registered and consummated. She gave birth of her son on 02.01.2004. During her stay at her matrimonial house dispute cropped up. She was subjected to torture. It was alleged that once in the month of April, 2006, she was mercilessly bitten by her husband and she lodged a general diary at Chandannagore PS. However, after due interference of the well-wishers the matter was resolved and she returned to her matrimonial house. For a couple of months there was no disturbance, but her husband had continued to torture her again and did not provide her any livelihood. It compelled her to initiate a maintenance case against her husband. But the same was withdrawn with an understanding that her husband would continue to look after her. Lastly on 20.02.2021 she was driven out

along with her minor son from her matrimonial house. Having no other alternative, she took shelter at her mother's house along with her son and she was passing her days in the mercy of others as Respondent-wife has no earnings to maintain her and her disabled son. Whereas, her husband is a businessman and earns Rs.50,000/- per month, inspite of that he did not pay any farthing as her maintenance. It compelled her to initiate the present proceeding under sec. 12 of the D.V. Act. In the said proceeding she has prayed for interim order of maintenance at the rate of Rs.10,000/- per month for her and Rs.10,000/- per month for her disabled son along with the other reliefs.

3. In defence husband-appellant has denied each and every allegation labeled against him. In his defence husband has stated that wife-respondent no.1, used to misbehave with him and other members of his family. She used to pick up quarrel on trifling matters and misbehaved with her in-laws. It compelled the appellant-husband to initiate a divorce case under sec. 13 of the Hindu Marriage Act vide Mat Suit No.711 of 2020, before the Ld. Additional Judge, Barasat. Moreover, the appellant-husband has been suffering from sleeping-appeunia and he has been undergoing treatment under AIMS, Bhubaneswar, but his wife never look after him nor took any care of

him. On the contrary, she had constantly heckled him, maligned him and threatened to initiate criminal cases. At last, she had initiated a police case at Chandannagore police station vide case No.106 of 2024. To save her skin and to squeeze money she has been initiating one after another cases. There is no question to inflict domestic violence upon the respondent No.1, therefore, the present case is not maintainable in the eye of law. The husband has further stated that he is a mere driver by profession and earns Rs.15,000/- per month, out of that fund he has to maintain his parents and to continue his medical treatment and there is no sufficient fund to pay the money as his wife has sought for and he has prayed for dismissal of the case and rejection of the interim prayer.

4. After considering the case of either of the party, Ld. Magistrate was pleased to allow the interim prayer of the wife on contest, with a direction upon the husband to pay maintenance a sum of Rs.8,000/- per month for his wife and Rs.8,000/- per month for his minor son on and from 10.03.2021. In addition to that Ld. Magistrate was pleased to direct the husband and his family members

not to cause any domestic violence upon the wife and to permit her to stay in the share house-hold.

5. Feeling aggrieved by the said order husband has preferred this appeal as an appellant.
6. During hearing of the appeal Ld. Advocate for the appellant-husband has contended that the Ld. Trial court has failed to consider the case of the appellant-husband. In the entire body of the impugned order there is no explanation as to why major son of the respondent No.1 was granted maintenance. As he is major and he is not suffering from any disability as alleged. The son of the respondent No.1 is a good mountainer and he is good in computer. The impugned order does not bear any reason as to why residence order was granted. The total expenditure as mentioned in the affidavit of assets does not tally with the break up expenditure as submitted by respondent No.1. The income of the appellant-husband has been certified by the local councilor and he has no further capacity to pay the amount as the trial court has directed. The order passed by the impugned court is baseless and is required to be set aside.
7. In reply, ld. Advocate for the respondent-wife

has submitted that impugned court has properly considered the case of the petitioner and there is no scope for interference as the order passed by the trial court is interim in nature.

8. Ld. Advocate for the State has left the case at the discretion of this court.

9. ANALYSIS: -

a. Indisputably, the trial Court has passed the order in the interim stage only after considering the applications for interim maintenance, documents supplied at the time of hearing by either of the party and their affidavit of assets. Therefore, there is mere scope to testify the veracity of the information supplied by either of the party. However, it is expected that the parties have disclosed their true fact and they have not suppressed anything, which in turn will help the Court to dispose of the application. Basing on the said information in appeal this Court has to adjudicate the following facts:

- i. Whether the impugned Court has truly considered the case of the petitioner and respondent as per law.
- ii. What order?

b. Admittedly, the petitioner and respondent are in marital relationship, since 2001 and they have a child who born on 12.01.2004, therefore, their son has already attained majority. It is the further case of the respondent No.1 that her child is a specially abled boy and has been suffering from nervous system disorder for which she has been undergoing treatment, but she has not substantiated the fact by producing any document to show that her son has been declared as disable and the percentage of disability. Admittedly the appellant and the respondent No.1 are residing separately since 20.02.2021. Their matrimonial dispute had originated multiple cases including a criminal case under Sec.498A of IPC. From all the above fact, it is prima facie presumed that the respondent-wife was subjected to domestic violence during her stay along with her husband.

c. Appellant-husband has claimed that by occupation he is a driver. However, in his defence he has claimed his income as Rs.15,000/- per month, whereas in his affidavit of assets he has claimed it as Rs.8000/- per month, it indicates he has undermined his actual income. Whereas, respondent-wife has claimed his income as

Rs.50,000/- per month. As it is especially within the knowledge of the appellant-husband it casts a duty upon him to disclose it without suppressing anything. That apart appellant-husband has claimed that he has certain economic liability as he has to maintain his aged parents and he has been undergoing treatment, but his affidavit of assets does not bear any such information and it does not bear any information about his economic liability. If he had any such economic liability he would have substantiated it by producing necessary document to obviate his responsibility. Basing on the asseveration as made by the appellant-husband it is presumed that he has sufficient earnings to maintain his wife. However, the question of providing maintenance to her son does not arise as neither her son comes within the definition of the Child of the Act nor he be considered as disabled child.

- d. Now the question arises about the quantum of maintenance. It would be apposite to refer herein the judgment titled as Rajnesh v. Neha & Anr.(2021) 2 SCC 324: **[2020(3) HLR (S.C) 1: 2021 (4) ICC (S.C) 757: 2020(3) AICLR (S.C) 435]**, to get a clear picture and the relevant whereof reads as

under:

“III. Criteria for determining quantum of maintenance.-

(i) The objective of granting interim/permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

82. The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.

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84. On the other hand, the financial capacity of the husband, is actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

ii) A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes on the financial status of the respondent and the standard of living that the applicant was accustomed to in her matrimonial home.

85.The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes, i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent. Nor should it be so meager that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

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86.In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship if the wife is educated and professionally qualified but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and re-train herself to secure a job in the paid workforce to rehabilitate herself. With the advancement of age it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years.”

e. The above enunciated legal principle in Rajini's, leaves no room for any doubt(s) as

to how it has to be determined and the date from which the maintenance amount ought to have been awarded. Usually, it should be granted on and from the date of the application and in exceptional circumstances it may be granted from the date of order.

f. Further, the maintenance amount cannot be said to be exorbitant and beyond the scope of the appellant-husband. There is no yardstick that one fifth or one fourth of the income of the husband be granted by way of maintenance. The amount be determined applying the principle as held in Rajnesh(supra.) as well as considering the status of the spouse.

g. Returning to the present case it appears from the impugned order that learned Magistrate has considered the prayer for interim relief and has allowed the prayer on contest, but she has allowed the relief in favour of her son without considering any such document of his disability, which is

not justifiable. As her son has already attained his majority and he does not come within the definition of 'child'. However, the order passed in respect of residence is quite reasonable as every such women within the domestic relation, has every right to residence at her shared household and her husband is liable to afford alternative sorts of arrangement.

- h. Relying upon the foregoing discussion, the order passed by the learned Magistrate requires to be interfered with.
- i. In the light of the observation made above, it is;

ORDERED

that instant appeal is allowed on contest without any order as to costs.

The order dated 09.11.2022 passed by the learned Magistrate, 2nd Court is hereby modified as under;

- i. Husband is directed to pay maintenance @ Rs.8000/- per month on and from 10.03.2021 that is the date of filing of application as her maintenance;
- ii. Husband is further directed to accommodate her in the shared household along with her son, or arrange same level of alternative accommodation or to pay her Rs.2000/- per month for her residence;
- iii. He is further prohibited from committing any act of domestic violence, aiding or abetting the same.

Send back the TCR along with a copy of this Judgment at once to the Id. Trial Court.

Stay order or interim order if any passed by this Court during be vacated at once.

Given under my hand and seal of this court on this 18th day of March, 2026

Dictated & corrected by me

Additional Sessions Judge,
Fast Track Court,
Chandannagar, Hooghly

Additional Sessions Judge,
Fast Track Court,
Chandannagar, Hooghly