

HEADING OF JUDGMENT OF APPELLATE COURT
**In The Court of Additional District & Sessions Judge,
Alipurduar.**

Present: **Smt PGB Hussain (WB00817)**

Crl. Rev. 41 of 2021
CNR-WBJP05-001269-2021

Revision from the Judgement and order dated 04.10.2021 passed by Learned Judicial Magistrate, 3rd Court, Alipurduar in connection with MR Case No. 286 of 2019 under Section 125 of Cr P C.

Smt Mamata Biswas Roy

.....**Revisionist/petitioner**

-Versus-

1) Shri Dinesh Roy

2) State of West BengalOpposite Parties.

Shri Samir Majumdar.....Advocate(s) for the Revisionist

Shri Kaushik Banik.....Advocate for Respondent NO. 1.

Date of Delivery of Judgment :- **17th day of June, 2026**

J U D G M E N T

1. **PROLOGUE:** This Revisional application has been directed against Judgment & order dated 04.10.2021 passed by Learned Judicial Magistrate, 3rd Court, Alipurduar in connection with MR Case No. 286 of 2019 u/s 125 of Cr P C.

2. **CASE OF THE REVISIONIST:**

2.1 The revision has been filed by the petitioner-wife. It is her case that respondent No.1 is the husband and the petitioner is the wife. The petitioner alleges that the parties got married on 29.04.2007 in accordance with Hindu Rites and Customs.

2.2 That at the time of marriage huge articles including cash of Rs. 1,00,000/- and gold ornaments about 3 bhories was given by the parents of petitioner to the Respondent No. 1 as a dowry.

2.3 Then petitioner's side also committed that a motor bike will be given to the Respondent No. 1 within 6 months of the marriage. Within 7 to 8 days of marriage the OP-1 and his inmates raised question about the quality of the dowry articles and uttered filthy languages in the name of father of petitioner.

2.4 Day by day the said mental torture was increasing and in the meantime the petitioner came to know that the Respondent No. 1 is man of bad character, he has illicit relation with the various easy available lady. The petitioner raised objection and on this the Respondent No. 1 and his inmates started physical and mental torture upon the petitioner.

2.5 The respondent pressurized the petitioner for a motor bike and failure to give the same ensued torture on her. The respondent also attempted to murder her but she escaped. On 23.11.2019 at night the respondent and his relatives brutally assaulted the petitioner with the intention to

kill her. But somehow she escaped and next morning, i.e., on 24.11.2019 she was assaulted again and she left the matrimonial house in one apparel. It is also alleged that she was ousted by the respondent and his family members.

2.5 It is the further case of the petitioner that the guardian of the petitioner tried to settle the matter but the respondent and his inmates threatened her saying that if she tried to go to her matrimonial house they would murder her. Ultimately, the petitioner lodged the complaint against the respondent and his inmates with the officer in-charge, Kalchini PS.

2.6 Since the petitioner has no means to maintain herself she filed a petition for maintenance against her husband which was numbered as MR case No. 286 of 2019. In the petition she alleged that the OP/husband is a pharmacist presently posted at Jaigaon PHC and has huge quantity of agricultural land. It is alleged that he earned Rs. 4,00,000/- in 2019 and at present he earns not less than Rs. 50,000/- per month. In this situation she prayed for maintenance but after hearing both the sides the Ld Magistrate was pleased to reject her prayer for interim maintenance.

2.7 Against such order of refusal of, maintenance the petitioner -wife has preferred this revisional application.

3.GROUNDS

The revisionist- wife has preferred the revision on the following grounds:

a) The Learned Trial Court did not apply judicial mind while considering the Interim maintenance petition filed by the Revisionist/petitioner.

- b) The Learned Trial Court failed to appreciate the matter disclosed in the ad-interim maintenance petition filed by the petitioner. There are sufficient materials in support of the claim of your Revisionist/petitioner.
- c) It is admitted position that the revisionist/petitioner is the married wife of the respondent No. 1 and also several cases are pending against the Respondent No. 1 before the Ld court, Alipurduar.
- d) The Learned Judicial Magistrate, 3rd Court did not hear the petitioner or the Counsel of the petitioner properly.
- e) The Learned Magistrate failed to appreciate the provisions of law where the party is bound to serve copy of documents to the other side before hearing, the documents on which they are rely to support their case.
- f) The Learned Trial Court arrived at a decision which is not logical conclusion.
- g) The impugned order dated 04.10.2021 passed by the Learned Judicial Magistrate, 3rd Court is illegal, unjust and not in conformity with the with the existing law.
- h) The order dated 04.10.2021 passed by the Learned Judicial Magistrate, 3rd Court, Alipurduar is bad in law on the some other points, the Revision crave leave to argue on the said points at the time of hearing.

4.CASE OF THE OPPOSITE PARTIES:

4.1 It is the case of the opposite party that the petitioner has made false accusation against the respondent and his family members. It is further alleged that on the date of the marriage the Ex-lover of the petitioner came to the house of the OP and proposed to marry her. Since then the petitioner is very adamant and misbehaving with the OP. It is also alleged that on 2nd October, 2019 the OP inquired from the petitioner and came know about the illicit relation of Shankar Paul and the petitioner.

4.2 It is also the respondent's case that he also came across a number of objectionable photographs of the petitioner and Shankar Paul. In light of this, it was prayed by the OP that the petition for ad-interim maintenance was rightly rejected and the present revision should be dismissed.

5.ORDER OF THE LEARNED TRIAL COURT

5.1 The Learned Trial Court took into account the photographs showing compromising position of the petitioner with a man, and held that a strong defence case is made out. It was further observed by the Learned Trial Court that the OP has not only raised allegation of leading adulterous life by his wife but also produced some photographs in support of his claim.

5.2 In view of the discussion it was held that the prudence of the court suggests that purpose of justice would fail if OP is directed to give maintenance allowance to the petitioner from this stage totally ignoring his strong defence. The Learned Trial Court opined that the interim maintenance should be refused.

5.3 It was also held by the Learned Trial Court, "having regard to the jurisprudential rationale of section 125 of the Code which is protect the weaker section of the society from destitution and vagrancy, this court take every step to ensure that the petitioner may adduce evidence at the earliest to facilitate her to prove her case. If it appears to the court at any subsequent stage that the OP is not pursuing with the case thus being indolent with this order refusal of interim monetary relief to the petitioner, interim order shall be modified. Accordingly, it is ordered: That the prayer for interim maintenance by the petitioner hereby stands refused. Fix 08.10.2021 for payment of cost of Rs. 500/- by the OP to the petitioner and evidence of PWs."

6.POINT FOR DECISION: Points for decisions in this revision are as follows :

i) Has the Learned Court failed to appreciate the principles enumerated for grant of interim maintenance ?

ii) It is the order dt. 04.10.2021 passed in MR Case No. 286/19 by Ld Judicial Magistrate, 3rd Court, Alipurduar liable to be set aside ?

7.DECISION WITH REASONS

7.1 This is a case where Learned Judicial Magistrate has refused the interim order of maintenance on the ground that the petitioner was prima facie living in adultery which disentitle her from getting maintenance from her husband. In holding so the Learned Magistrate relied upon 15 photographs of the lady-petitioner in compromising position with a male person which is present in the Trial Court's record as filed by the respondent.

7.2 Section 125 Cr P C definitely has a purpose in the society and the same is to prevent vagrancy and condition of destitution. Sub section 4 of this section hold adultery as a ground for refusal of interim maintenance. Learned Trial Judge has appreciated that the Opposite Party has brought forward a disputable case and in case he proved the photographs at the trial, the case would be in his favour.

7.3 It appears that the petitioner has not been able to dispute the photographs and the photographs prima facie show adulterous life of the petitioner. It is the petitioner's case that she was driven away on 24.11.2019, but no complaint was lodged on the said date. Even if for argument's sake it is held that the petitioner wanted to resume the matrimonial ties and to keep it undisturbed, she did not approach the police, yet there is no medical document to prove that she was injured or assaulted physically and attempted to be murdered for which she left the matrimonial home. The injuries which she alleges, were made while

driving her out and attempting to murder her, must have necessitated medical attendance, but no such document of treatment comes forward.

7.4 Though, the statement of assets and liability are filed but the crucial question that arises is the veracity of the photographs which can only be proved on trial. However, the photographs do create a doubt in the petitioner's case and as such, the interim of maintenance has been rightfully rejected by the Learned Judicial Magistrate. Be it mentioned here that the order of Learned Magistrate is very comprehensive and keeps the scope rightly open for reconsideration of this prayer if the Opposite party does not pursue the case properly.

8. ORDER

8.1 In the result, the instant **Criminal Revision No.41 of 2021** is liable to be **rejected** on contest but without any cost.

8.2 Hence, it is,

ORDERED

That the **Criminal Revision No.41 of 2021** arising out of the Judgment and order dated 04.10.2021 passed by Ld. Judicial Magistrate, 3rd Court, Alipurduar in connection with **MR Case** No. 286 of 2019 u/s 125 of Cr P C is **rejected** on contest. T

8.3 The impugned Judgment and order dated 04.10.2021 passed by Ld. Judicial Magistrate, 3rd Court, Alipurduar in MR Case no. 286 of 2019 is hereby **affirmed**.

8.4 However, the respondent No. 1 are directed to file receipt of payment of cost of Rs. 500/- to the petitioner for the vacating of the order of Exparte hearing against them as directed by the Learned Trial Court, in default of which the Learned Magistrate shall proceed with the MR case Exparte.

8.5 Let a copy of this judgment along with TCR be sent down at once for information.

Dictated & corrected by me

ASJ,

Addl. Sessions
Judge,
Alipurduar.