

In the Court of the Additional District and Sessions Judge
3rd Court, Malda



Present: Monodeep Dasgupta
Additional District and Sessions Judge
3rd Court, Malda (WB00967)

Criminal Revision: 04 of 2025 (CIS:04/2025)
(CNR:WBML010002942025)

Against the order dated 06-01-2025, passed in
Case No. 390M/2023, by the Ld. Judicial Magistrate, 2nd Court, Malda

Pinky Chowdhury

- Revisionist.

- Vs -

1. Krishna Chowdhury
2. The State of West Bengal

- Respondents/Opposite Parties

This appeal having been finally heard on **02-06-2026** in the presence of :-

Appearance & particulars :-

For the Revisionist : Adv. Kunal Krishna Mandal
For the Respondent No.1 : Adv. Sk Afaulla
For the Respondent No. 2/State: Adv. Manotosh Barman

and having stood for consideration to this day i.e **02nd day of June 2026**, the Court delivered the following judgment :

J U D G M E N T

1. This Criminal Revision impugns the order dated 06-01-2025 passed by the Ld. Judicial Magistrate, 2nd Court, Malda (hereinafter to be referred as the Ld. Trial Court) in Case No. 390M/2023, under which the prayer for interim maintenance which was filed by the revisionist for herself was rejected on contest.
2. The TCR was called for from the Ld. Trial Court. Perused the same.
3. This Court heard the Ld. Counsels appearing for the respective parties and gone through the record.
4. For proper appreciation of this criminal revision, a brief outline of the case is necessary.

The revisionist instituted a proceeding u/s 125 of the Code of Criminal Procedure before the Ld. CJM, Malda, on 02-08-2023, praying for maintenance for herself from the respondent No. 1, along with a further prayer for interim maintenance, which was registered as Case 390M/2023, and after registration of the same, the case record was subsequently transferred to the file of the Ld. Trial Court.

After receipt of notice of the instant proceeding, the respondent No. 1 appeared before the Ld. Trial Court and filed detailed objections against the prayer of the revisionist for maintenance as well as interim maintenance. Both the revisionist and the respondent No. 1 submitted their respective affidavits of assets and liabilities before the Ld. Trial Court. The Ld. Trial Court, after due consideration of the contentions of both the revisionist and the respondent No. 1 in respect of the prayer for interim maintenance filed by the revisionist, rejected the same on contest. Aggrieved by the order of rejection of interim maintenance dated 06-01-2025, passed by the Ld. Trial Court, the revisionist have come up before this Court by way of filing this instant criminal revision with a prayer for setting aside the order of rejection of interim maintenance dated 06-01-2025, passed by the Ld. Trial Court in 390M/2023.

5. This Court has gone through the impugned order dated 06-01-2025 as well as the contents on the revision application along with the documents relied upon by the parties. The impugned order, rejecting the prayer for interim maintenance of the revisionist, is challenged on as many as nine grounds. Having considered the grounds of challenge of the order in respect of the date of effect of the award of interim maintenance dated 06-01-2025, and other relevant factors, the following point for determination is formulated.

Whether the impugned order dated 06-01-2025 passed by the Ld. Trial Court rejecting the prayer for interim maintenance filed by the revisionist is incorrect and illegal, and needs any interference in this revision application?

6. The learned Counsel appearing for the revisionist contends that the impugned order dated 06-01-2025 passed by the learned Trial Court suffers from multiple legal infirmities. It is argued that the learned Trial Court failed to take into account the exigency and urgency of the revisionist in claiming interim maintenance from the respondent No.1 along with the income and occupation of the respondent No.1, and proceeded to reject the prayer for interim maintenance without applying judicial mind. It is further submitted that the learned Trial Court erred in rejecting the prayer for interim maintenance of the revisionist. The limited submission of the Ld. Counsel for the revisionist is that the Ld. Trial Court fell in serious error in rejecting the prayer for interim maintenance. The other submission is that the order impugned is bad in law since no reasons are recorded for rejecting the prayer for interim maintenance of the revisionist.

7. Learned Counsel appearing for the revisionist contended before that the Ld. Trial Court clearly erred in deciding on the merits of the case in refusing interim maintenance. On behalf of the revisionist it was submitted that for award on interim maintenance the Court is not required to decide the merits of the case even in a summary way and the scope of enquiry should be restricted to decide want of independent income to the applicant and the availability of means of income of the respondent No.1 for the purpose of fixing quantum of maintenance.

8. On the other hand, the Ld. Counsel for the respondent No. 1, concomitantly submitted that the Ld

Trial Court rightly passed the order dated 06-01-2025 refusing interim maintenance in favour of the revisionist. Ld. Counsel for the respondent argued that the impugned order dated 06-01-2025 of the Ld. Trial Court demonstrates that the law with regard to interim maintenance has been interpreted properly as a result of which interim maintenance has been denied to the revisionist. It was further submitted that order dated 06-01-2025 passed by the Ld. Trial Court does not suffer from any illegality or impropriety, for which the same does not call for any interference by this Court. The Ld. Counsel for the respondent no 1 prayed for dismissal of the instant revision application. The Ld. Counsel appearing on behalf of the respondent No. 1 opposed all the submissions made by the Ld. Counsel for the revisionist, submitting that none of the grounds taken in the revision is tenable and the revision is liable to be dismissed.

9. It is first submitted by learned Counsel for respondent No.1 that under [Section 125 \(4\) CrPC](#) no order for interim maintenance can be passed if the Court is satisfied that the wife is, "without any sufficient reason" refusing to live with her husband. It is submitted that in the instant case, although the respondent No. 1 has always been willing to take back the revisionist, it is she who has been unreasonably refusing to come back to the matrimonial home. It is further submitted by the Ld. Counsel for the respondent No.1 that the Ld. Trial Court has correctly observed that no proper explanation has been given by the revisionist as to why she left her minor child with the respondent No.1 and further no fact was brought out by her in seeking grant of urgent interim relief. The further contention of the Ld. Counsel for the respondent No. 1 was that the Ld. Trial Court did not commit any error in observing that the revisionist has failed to sufficiently prove that basic ingredients for grant of interim maintenance.

10. This argument is without merit. At the outset it requires to be noticed that the respondent No.1 offers no justification whatsoever for not paying till date any maintenance to the revisionist. The learned Trial Court while deciding the question of interim maintenance to a wife is only expected to form a prima facie opinion whether such wife was staying away from the husband without any sufficient reason. If the argument of the respondent No.1 has to be accepted then it is only after the entire evidence is led that an order for interim maintenance can be passed. That would defeat the very purpose of providing for payment of interim maintenance in [Section 125 CrPC](#). What the learned Trial Court is required to determine at the stage of grant of interim maintenance is to be prima facie satisfied, on the basis of the pleadings and any other material on record, that the wife has not stayed away from the husband without sufficient reason. Applying such yardstick, it cannot be said that in the instant case the revisionist stayed away from the respondent No.1 without sufficient reason. Without at this stage determining which of the parties was responsible for the situation in which they were unable to stay together, it is held that the pleadings do not prima facie show that revisionist stayed away from the respondent No.1 without sufficient reason. This submission of the learned counsel for the respondent No.1 is therefore rejected.

11. It is submitted by the Ld. Counsel for the revisionist that the Ld. Trial court remarked on the merits of the case before conducting which was absolutely incorrect and improper. It is further argued Ld. Counsel for the revisionist that purpose of granting interim maintenance allowance is to save the revisionist from destitution and enable her to establish her claim in the court of law by prosecuting her case. It is contended by learned counsel that despite adequate materials being made available before

the Ld. Trial Court about the inability of the revisionist to maintain herself and the neglect of her husband towards her maintenance inspite of having ability, the Ld. Trial Court has illegally denied interim maintenance to her. It is argued Ld. Counsel for the revisionist, that if the impugned order dated 06-01-2025 of the Ld Trial Court is allowed to continue it will cause serious hardship and grave injustice to the revisionist wife and therefore, the impugned order dated 06-01-2025 warrants interference in revision to prevent miscarriage of justice.

12. It is settled that while adjudicating an application for grant of interim maintenance, the Ld. Trial Court must be prima facie satisfied whether such case is made out or not. It is trite to observe that it is the duty of the husband to maintain his wife despite the circumstances, however, for grant of interim maintenance, prima facie satisfaction is necessary to determine whether the wife is genuinely in need of maintenance and the factors leading to such need of maintenance.

13. In the present context, the Ld. Trial Court by its order dated 06-01-2025 to have examined the merits of the case at the intermediate stage and has in no uncertain terms recorded the findings that the revisionist has left the company of the respondent No.1 on her own volition and therefore, she is not entitled to any interim maintenance. Such an order is likely to give an impression to the revisionist that her right to maintenance allowance against her husband has been finally decided by the Ld. Trial Court before trying her case. The last paragraph of the impugned order of the Ld. Trial Court is reproduced hereunder for reference:

" It appears that the marriage and the paternity of the child is admitted facts. However, in this instant application, the petitioner has portrayed herself as a destitute lady and OP neglected to maintain her. But, in my opinion, the petitioner has not explained properly why she left her small child with the OP and the steps she has taken to bring her child back. OP has obligation to maintain his aged ailing parents. Moreover, it is seen at this stage, the petitioner cannot bring out any fact for which any urgent interim relief should be granted, otherwise she will suffer any irreparable loss. The petitioner cannot sufficiently prove the basic ingredients for allowing interim maintenance allowance. Upon, considering the entire aspect, it is.

ORDERED

That the interim petition is considered and rejected on contest without any cost."

14. The impugned order reflects that the Ld. Trial Court did not keep in mind the avowed object of interim maintenance which has been enunciated by the Hon'ble Apex Court in the case of Savitri W/O Govind Singh Rawat. The consideration as to whether the wife voluntarily left the company of her husband or kept her minor son with her husband and went away will not come on the way of her getting interim maintenance allowance. If she can convince the court that she is not able to maintain herself and her husband despite having income and ability neglects or refuses to maintain his wife, there is no hurdle before the court to grant interim maintenance to the wife. As enunciated by the Hon'ble Apex Court, there is no bar even in passing ex- parte order granting interim maintenance if the application is supported by an affidavit. In the given case the revisionist in her application for interim maintenance supported by an affidavit has referred to numerous incidents of harassment and cruelty meted out to her by the respondent No. 1. Though the respondent No. 1 has denied such allegations, he has admitted that the revisionist is his wife. It is also admitted by him that he is a

constable posted at DIB Office, Balurghat. Monthly salary of the husband is about Rs. 44,700/- per mensem. The revisionist on the other hand does not have any income of her own for maintaining herself. No more proof is required for granting interim maintenance to a wife. The refusal of maintenance allowance to the revisionist in such circumstances is injustice has seriously affected the legal and substantial right of the revisionist.

15. Having applied the tests laid down in the case of Savitri W/O Govind Singh Rawat., this Court is of the view that the impugned order of the Ld. Trial Court denying interim maintenance to the revisionist despite availability of prima facie proof of her case has adversely affected her legal and substantial right and such an order cannot be treated as purely interim or temporary in character because by this order the Ld. Trial Court has adjudicated one aspect of the pending proceeding which cannot assume the character of steps in aid of the proceeding. There is no doubt that if the impugned order dated 06-01-2025 is allowed to continue, it will cause hardship and grave injustice to the revisionist. It is therefore, necessary to interfere with the order to prevent miscarriage of justice. Accordingly, the impugned order dated 06-01-2025 of the Ld. Trial Court is set aside and the revision application stands allowed.

16. Bearing in mind the limited scope of interference of this revisional Court, it is observed that instant case warrants interference in respect of the impugned order of refusal of the interim of the revisionist as passed by the Ld. Trial Court. This Court is aware of the fact that in terms of prima facie perusal of the record, at present, revisionist is not employed or at least there is nothing on record to indicate she is employed in any gainful work. The object of [Section 125](#) Cr.P.C. is to provide speedy remedy to women and children who are unable to support themselves and are in distress. Since the respondent No.1 is under legal obligation to maintain the revisionist, the respondent No. 1 cannot shy away from his statutory obligation of maintaining the revisionist and has to render the interim maintenance to her.

17. Appreciating the submissions of the two sides and perusing the records of the case, the inter-se relationship of husband and wife, as also the birth of the minor child out of this wedlock are not put to any challenge. In the instant case it is an admitted fact coming on record that the main maintenance petition under [Section 125](#) Cr.P.C. is pending before the Ld. Trial Court. The determination of the maintenance amount will be done by the Ld. Trial Court after leading of evidence by the respective parties and on the basis of material documents and income affidavits of the parties.

18. As per the provisions of [Section 125](#) Cr.P.C., since the right to claim maintenance by the wife and children, who are not capable to maintain themselves, is a statutory right which has been conferred by way of public policy and thus, the husband is certainly under bounden duty to pay maintenance allowance as per his economic status. Proceedings under [Section 125](#) Cr.P.C. are summary in nature and therefore, at this stage of the proceedings, especially when the parties are litigating over grant of interim maintenance, it is not necessary for the Court to ascertain the technicalities and as to who was on the wrong side of the law and the very legalities and details of the matrimonial discord. What the Court has to see at this stage is that the wife must aver positively that she is unable to maintain herself and that the husband has sufficient means to maintain her and has rather neglected to do so.

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19. It is pellucid from the above discussion that the L.d Trial Court committed grave error in refusing interim maintenance to the revisionist during the pendency of her maintenance application under [Section 125](#) of Cr.P.C by dint of the impugned order 06-01-2025. The impugned order, is therefore, required to be set aside.

20. The point for determination is decided to the extent as discussed above.

Hence, it is,

ORDERED

That the instant Criminal Revision being no 04 of 2025 (CIS:04/2025) **stands allowed on contest.**

The impugned order dated 06-01-2025 passed in Case No. 390M/2023, by the Ld. Judicial Magistrate, 2nd Court, Malda is hereby set aside.

With a view to the income of the respondent No.1 and the needs of the revisionist, the respondent No.1/ Krishna Chowdhury is directed to pay interim maintenance allowance @₹5,000/- per month w.e.f. 02-08-2023 to the revisionist Pinki Chowdhury. The arrears from 02-08-2023 till 31-05-2026 shall be paid in six instalments within the next 06 months and the monthly interim maintenance allowance @ ₹5000/- per month for the month of June, 2026 and onwards shall be paid within 7th day of every succeeding month.

The Trial Court record along with the copy of this judgment be sent to the Ld. Trial Court for information.

Both the parties to appear before the Ld. Trial Court on **16-06-2026.**

Note in CIS.

**Additional District and Sessions Judge,
3rd Court, Malda
J.O. CODE WB00967**