

Criminal Revision no. 50 of 2025

**In the Court of Additional District and Sessions Judge,
Fast Track Court -II, Bongaon, North 24 Parganas.**

Present- **Mrityunjay Karmakar**
ADJ, FTC-II, Bongaon,
JO Code: (WB-00917)

Criminal Revision no. 50 of 2025
CNR-WBNP06-002082-2025

Sri Sandip Rishidas
S/o- Late Kalipada Rishidas
Village- and P.O. Joypur
P.S.- Duttapukur
Dist. South 24 Parganas
..... Revisionist.

Vs.

1. **Smt. Moumita Das**
D/O. Krishnapada Das
W/o **Sri Sandip Rishidas**
Village & P.O. Gaighata
P.S. - Gaighata
District – North 24 Parganas,

2. **State of West Bengal** Opposite party.

Under Section 397 and 399 of Cr. P.C. 1973
Presently u/s. 438 and 440 of BNSS. 2023

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O R D E R :

NO.10 dated 02-06-2026

1. This Criminal Revision has been filed by the Revisionist being aggrieved by order dated 30.08.2015 passed by the Learned Judicial Magistrate 1st Court Bongaon in Misc. case no. 144 of 2017 Under section 125 of Cr. P.C by such order the Learned Judicial Magistrate Bongaon has passed an order of maintenance of Rs.7000/- to the petitioner and Rs.5000/- to her minor daughter in total Rs.17000/- per month from the date of filing of the said Misc. case no. 144 of 2017. In the petition the Revisionist stated that the order passed by the Learned Judicial Magistrate 1st Class, Bongaon is erroneous and beyond the scope of the law therefore liable to be set aside. Petitioner is the legally married wife of the Revisionist who applied for monthly maintenance allowance of Rs. 10,000/- per month for herself and Rs.8000/- for her minor daughter and Rs. 5000/- for her minor son in total Rs.23000/- per month. Thereafter, the case record was transferred to the Learned Judicial Magistrate 1st Court, Bongaon and there the Revisionist appeared on 01.11.2017 and filed written statement against the claim of the petitioner. After hearing both parties the Learned Judicial Magistrate 1st Court, Bongaon has been pleased to allow the maintenance application of the petitioner and directed to Opposite party to pay maintenance allowance of Rs.7000/- to the petitioner and Rs.5000/- each to her minor son and daughter in total Rs.17000/- *vide* order dated 30.08.2025. It was further contended that the Court has passed an order with effect from the date of filing of the Misc. Case on 18.05.2017 till 30.08.2025. According to the Revisionist the ground for revision is as follows: -

- 1) The impugned order of the Learned Judicial Magistrate Bongaon is erroneous and liable been set aside since the Learned Judicial Magistrate Court Bongaon has failed to apply judicial mind at the time of passing judgment.

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- 2) Learned Court failed to consider the submission of the Revisionist and his written objection, affidavit in chief and disclose above Asset liabilities of the parties.
- 3) The Court also failed to appreciate the conduct of the petitioner who willfully neglected and denied to live together with the Revisionist at his paternal home.
- 4) The Court also failed to appreciate the deposition on chief and cross examination made by the Opposite party.
- 5) The daughter and son of the petitioner are major as such the judgment is liable to be dismissed.
- 6) The Court passed the judgment on 30.08.2025 without proper consideration of the application. The Court also did not consider the income of the parties and also the petitioner did not file any pay slip of the Revisionist yet the Court passed the order.
- 7) The court didn't consider the income of the revisionist or the pay slip of the revisionist and therefore the opinion of the court was misconceived and liable to be set-aside.
- 8) The order of the Court was erroneous and therefore liable to be set aside. The opinion of the Court was wrong from the point of law and fact and the Revisionist has aged widow mother and he has to provide maintenance to her mother from his poor income from pension and there is no other source of income of the Revisionist apart from his pension of Rs.22,392/- per month.
- 9) He has to spent for medicine of his mother's treatment and also to support his financial weak brother. The Court also failed to consider the age of the daughter and son of the petitioner and the petitioner never prayed for any interim maintenance before the Court and thereby the burden appears to the Revisionist is huge. If the order is not modified and set aside, he will suffer irreparable loss and injury.
- 10) On the basis of the above the Revisionist prayed for setting aside of the order / judgment dated 30.08.2025 in Misc. case no. 144 of 2017 Under section 125 Cr.P.C and stayed the proceeding with regard to such order till the disposal of this Criminal Revision.

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2. It is relevant to mention here that the Respondent / Wife in this case initially appeared before the Court and contested the case and filed Vokalatnama on 15.12.2025 before the Court. Thereafter, the case record was taken up for hearing of the parties on 17.04.2026, unfortunately on that date the Respondent did not take any steps and therefore the Court heard argument of the Revisionist in full on ex-parte on the said date i.e on 17.04.2026.

3. Thereafter the OP/wife filed an application by put-up on 06.05.2026 and her lawyer urges for giving her opportunity to argue in this case. Accordingly, argument from each party was heard on 07/05/2026.

4. Today is fixed for passing necessary order. Both the revisionist and the OP are present in court with their Id. Advocate on record. Anyway before proceeding further, it is relevant to mention that the Court has to pass judgment regarding the legality or validity of the order dated 30.08.2025 passed by the Learned Judicial Magistrate 1st Court, Bongaon regardless of the fact of appearance and on appearance of any of the party to the appeal based on available materials in the case record.

5. However at the time of argument Learned Advocate appearing on behalf of the Revisionist contended that in the deposition in chief the Respondent / Wife admitted that the age of the son and daughter of the Revisionist is 22 and 18 years old respectively. In spite of that the Court has granted allowance in favour of the son and daughter of the petitioner. The Revisionist paid the amount of maintenance to the Opposite party so long he was in service and the petitioner used to live with him in the joint family, but now after retirement he is totally incapable of providing any financial assistance to the wife.

6. Learned Advocate further submits that the Opposite party / husband has aged mother having various ailments and he has to look after his poor brother too. Till today the husband Opposite party / did not marry with any other lady shows the character of the husband and the husband is ready to comply order of the Court but the arrears amount is huge and so also monthly allowance. He said that the Court also tried to settle the issue and sent the party to the Mediator for

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Mediation, but petitioner/wife did not go there. She is not willing to live with the Revisionist and the Revisionist was ready even to live with the Opposite party separately, but later on for some unknown reasons the petitioner refused to live with the Revisionist. Such willfully refusal on the part of the Opposite party without any justification demand dismissal of the order of the Learned Magistrate Court, Bongaon.

7. His wife is the only daughter of her parents and the father of the Opposite party was the Army personnel having sufficient income to give financial support to his daughter. It was further argued by the Revisionist that in order to attract the provision of Section 125 Cr.P.C there must be refusal or neglect and also torture. It is also necessary that the respondent has sufficient means or unable to maintain his wife and child in spite of sufficient means. Wife never made any complaint of torture to any authority. The Court has over looked the situation relied on by the Revisionist. It was further contended that Asset liability was not filed by the wife although it was mandatory after the landmark decision of the Hon'ble Supreme Court in Rajnesh Vs. Neha.

8. O.P is unable to pay maintenance of Rs.17000/- per month from his meager income of pension. The major son and daughter of the petitioner is not entitled to get any relief, but the Court is not mentioned it in the order dated 30.08.2025. He filed his Bank statement copy, but the Court has ignored it. The wife is service woman employed in Commando Hospital under the Central Government. His son also earns money and not liable to get any maintenance. Had they faced any trouble the wife could have easily filed application for interim maintenance before the Court below, but the wife did not file any such prayer before the said Court and several times the Court directed the petitioner to file show cause for her deliberate adjournment/absence before the Court. Learned Advocate further submits that the wife failed to appear before this court at the time of hearing and her conduct clearly shows that she is not interested to get the order of the Learned Judicial Magistrate Court in forced.

9. At the time of argument of Id. Advocate for the wife submitted that the respondent is a very cleaver person and he intentionally refused to pay the

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maintenance allowance in spite of sufficient means. Marriage and peternity of the child have been admitted. At the time of filing of the case the daughter was 15 years old and her son was 11 years old and the court has directed to pay arrears. However, ld. advocate appearing on behalf of the wife submitted that at present the daughter is entitled to get three years arrears and her son is entitled to get 7 years arrears. OP is a retired Indian Army personal. He always avoided the summons in execution case. He further submitted that case was filed in the year 2017 and at that time the direction of Hon'ble Supreme Court in Rajnesh v Neha case was not there. Said principle shall not be applicable to this case.

10. In reply ld. Advocate for the revisionist submitted that wife is living separately without sufficient cause. She didn't file any FIR/GDE/ COMPLAINT to anywhere. The delay was caused for the absence of the petitioner, not for the husband. So, wife is not entitled to get any arrears. Wife and her daughter are employed. Ld. Advocate for the husband submitted that the son also got money month by month from her father and the mother didn't deny it in cross examination of PW-1. He relied upon the following Judgment:

1. Doli Karmakar v Swarup Karmakar and others 2025(2) AICLR 787 (Cal) Calcutta High Court.

2. Rajnesh V Neha

3. Smt. Soma mallick vs State of West Bengal and others (2010) 2 Cal LJ (Cal) 28

4. Samita Saha v Mohan Saha and others (2011) 2 Cal LJ (Cal) 129

5. Sow Sumanbai Ramesh Garje and others v Ramesh Dagadu Garje I (2015) DMC 358(Bom)

6. Deb Narayan Halder v Anushree Halder (2014)I SCC (Cri) 164

11. In reply the wife's counsel submitted that Duttapukur PS Case No. 37 of 2017 dated 10/01/2017 U/s 498A of IPC was registered against the husband. She further submitted that since the wife wanted to live with her husband under the same roof in matrimonial life no prayer for interim maintenance was made by the wife.

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12. Upon perusal pleading of the petitioner and the order of the Learned Judicial Magistrate Court 1st Court, Bongaon the point for decision before the Court if the order dated 30.08.2025 is valid or not.

- 1. Whether the impugned order dated 30.08.2025 is liable to be set aside or modified. If so, what should be the reasonable and just amount of maintenance for the petitioner and her minor children?**
- 2. Whether the order for maintenance from the date of application is justified?**

Decision and reason thereon

13. This is case U/sec. 125 of Cr.P.C where both the husband and wife are parties. It is matrimonial suit which requires great care and caution before pronouncing any judgment in this revision. Before proceeding further, it is necessary to mention the essential condition for maintenance allowance u/s. 125 Cr.P.C. Under section 125 Cr.P.C the petitioner has to prove the following in details.

1. Legally married wife, children (legitimate or illegitimate minor) unable to maintain themselves.

2. Husband in spite of having sufficient means refused or neglected to maintain his wife and children.

However, wife is not entitled to get maintenance if:

- The wife is living in adultery.
- Refused to live with her husband without a valid or sufficient reason
- Living separately from her husband by mutual consent.

14. According to the petitioner their marriage was solemnized on 13.08.1994 as per rites and customs and fact of marriage has not been denied by the O.P. in this case. The Revisionist also did not deny the fact of paternity of the child. According to him the amount of maintenance order has beyond his capacity he is

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a pensioner unable to pay such huge amount more particularly the arrears. It is also the case of the Revisionist that the petitioner did not file any prayer for interim relief before the Court and thereby huge amount has been generated without any fault of the Revisionist and therefore necessary order may be passed and arrears amount may be omitted.

15. The petitioner alleged in the original Misc. case No. 144 of 2017 that the Revisionist has nine to ten bighas of landed property and a pucca house and also a government employee. All together he earns Rs.50,000/- to Rs. 60,000/- per month. So, she prayed for maintenance of Rs.10,000/- for herself, Rs.8000/- for her minor daughter and Rs.5000/- for her minor son.

16. On the other hand, the Revisionist denied the income as alleged after few days of marriage the wife asked the Revisionist for living separately but the husband refused to do the same, consider the old age of the parents. The wife used to go to her parents' home frequently and live there for considerable period without the consent of the Revisionist and ultimately left his home along with minor children. Several times Revisionist asked to the petitioner to come back but she did not return. She left the house of the Revisionist voluntarily and therefore not entitled to get any maintenance. He was Army person retired on 28.02.2018 in the rank of *havildar* drawing pension. He has joint salary account with his wife at S.B.I Duttapukur Branch. The ATM card, cheque book is in the custody of his wife and the petitioner withdrew the salary of the O.P. and she used to made expenditure without the consent of the Revisionist and whenever he oppose, the wife became furious and left his home on 06.01.2017 with the minor children and also lodged the Criminal case u/s. 498A/406 of I.P.C being Army person his pension is around Rs.12,000/- and he has no other landed property as stated by his wife and further submitted for the dismissal of the said Misc. case.

17. After taking evidence of both parties, the Ld. J.M, Bongaon has passed an order and the Court has decided that the petitioner is unable to maintain herself and O.P. having sufficient means neglected to maintain the petitioner and her minor children. As stated above marriage between the parties has been admitted and the fact admitted need not be prove **u/s. 58 of the Evidence Act.**

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18. As far as the question, whether the wife is unable to maintain herself and her minor children is concerned, on perusal of the case record and the declaration of assets filed by the husband, and deposition of OPW-1, it appears that the husband claimed wife is an employee of Army Commando Hospital at Alipore and earns Rs. 17,000/- per month. She has own house at Gaighata which she got as gift from her father. In support of his claim, he didn't file any papers in court.

19. On the other hand, the wife denied completely of having any employment and salary income as alleged. From the cross-examination of the P.W-1 also I do not see any substantial material which indicates income of the petitioner/wife of Rs.17000/- per month. He did not file any salary slip or employment copy from the said Army Commando Hospital. The O.P. also did not call for any record or registration from the said Army Commando Hospital to prove the employment of his wife.

20. In the deposition on chief on affidavit the O.P. also reiterated the same fact without any subsistence or any prove. In the cross-examination, the husband failed to make any foundation in support of his case. I have carefully perused the deposition of PW-1 and OPW-1. None of the party marked any documents in support of their claim in this case.

21. There is no evidence on record to prove that the wife earns sufficient money for her livelihood. In this regard, it is to be remember that the phase **“unable to maintain herself”** does not mean that the wife should be the destitute or beggar to be able to get an order of maintenance from the Court. It is the duty of the Court to restore the financial status of the wife which she possessed during her matrimonial life with her husband. In the result, husband failed to prove the income of the O.P./wife

22. Now, the question what is the actual income of the husband / Revisionist. In this case the petitioner alleged that her husband is Government employee and being Army person, he earns Rs.50,000/- to Rs.60,000/- per month including his income from his landed property. It is true that the wife did not file any

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documentary prove of her husband's land or salary income. The salary income of the husband is very personal and the husband should have bring his salary slip before the Court which but the husband did not file it before the Court or call for the report from his office during trial. According to him he is now retired and his monthly pension is around Rs.20,000/- per month. His lawyer stated that at the time of filing the case his pension was very nominal. Husband also did not assist or did not file any bank statement to prove his monthly salary income. He also did not file his Form 16 statement of Income Tax to prove his Annual Income. As per **section 106 of Evidence Act**, it is the duty of the husband to prove the fact within his special knowledge. This particular fact of his salary or landed property within his special knowledge and he oath to have file relevant document in support of his claim. Suppression of materials fact and evidence before the Court gave arise to *prima-facie* presumption **u/s. 114 (g) of Evidence Act** that if those papers would have come before court it would be harmful for the husband's case.

23. Any way considering the age and the family status and the pension / salary of the husband, I am of the view that the husband is capable his earn at least **Rs.30,000/-** from his all sources of income.

24. Now, another question that has been raised by the Ld. Counsel on behalf of the Revisionist that the husband did not neglect or refuse to maintain to the wife. On the contrary, the wife left his home voluntarily on 06.01.2017. He contended that the husband tried several times to bring her back but the wife did not return. Said contention of the husband has not been substantiate by any of his family members before the Court. It is admitted by the parties that a case u/s. 498A I.P.C was filed by the wife against the Revisionist and registration of the case of cruelty to a married woman also *prima-faciely* lent support to the case of the wife that she was subjected to torture by her husband and other family members. Mere allegation that wife voluntarily left his home cannot be considered as Jaspal truth without corroboration from any independent source. On the contrary, in the cross-examination of P.W.-1 the O.P. failed to demolish her trustworthy.

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25. Any married woman having two children is not supposed to leave her matrimonial home without any reason. The husband did not assign any reason before the Court as to why the wife has taken such decision to leave him. This gave raise to doubt to the submission of the ld. advocate appearing on behalf of the husband. I have also perused the judgment of the Ld. J.M. court, Bongaon and in the detail judgment Ld. Court has elaborately discussed about the relation of the spouse and held that the petitioner is living separately for sufficient reasons.

26. The marriage of the parties was held / solemnized on 13.8.1999 and the wife take the decision to leave apart from 01.11.2017 and during these 18 years they lived together and the wife has successfully tolerated all the torture inflicted upon her to save her family life and children. On the other hand, the husband failed to justify before the Court why after 18 years of living together the wife decided to leave her husband. The family members of the husband did not come to court in favour of the husband and there is no corroborative evidence against the wife which may suggest that the wife voluntarily left her husband.

27. In this situation, I do not see any justification in the contention of the Ld. Advocate appearing on behalf of the husband that the wife left voluntarily without any sufficient reason.

28. Now, what should be sufficient reason for leaving the husband by the wife is matter of fact and depends upon the evidence and circumstance of each case. In this case the husband alleged that the wife used to go to her parents' home frequently for unreasonable period of time, but in the evidence, he failed to prove any document or any corroborative evidence regarding such allegation. It is not unlikely for a married woman to visit her parental home for a consideration period, more particularly when there is allegation of torture made by the wife against the husband and other family members.

29 The allegation of taking ATM card or cheque book of the husband has also not proved by any documentary evidence or corroborative evidence by the revisionist during trial. The husband has made of blunt allegation without any

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supporting evidence and document and therefore any reliance cannot be placed to the testimony of OPW-1. In the result, this court is of the opinion that the wife is justified in living separately from her husband.

30. Now, the next question that has been come up before the court as to whether the wife is entitled to get maintenance from her husband or not. In this regard as discussed above the essential ingredient of section 125 of Cr.P.C has been proved. It has been proved that the wife is unable to maintain herself and her minor son and daughter and the husband in spite of sufficient income refused or neglect to pay maintenance to his wife. It has also been held by the court that the wife is not living separately voluntarily, but under compulsion she is leaving apart from the husband. As per section 125 of Cr.P.C there are few exceptions when the Court can refuse to grant maintenance to the wife and those exceptions are as follows: - If the wife leaves her husband voluntarily or by mutual consent or the wife is living in adultery. In these three circumstance the court can refusal to grant maintenance to wife. In this case the O.P. has failed to prove any of this exception as per section **125 (4) of Cr. P.C.** So, the wife is entitled to get maintenance from her husband. So also, the minor children of the petitioner till they attain the age of majority.

31. It was contended by the Ld. Counsel appearing on behalf of the husband that the Ld. J.M Bongaon has directed to pay Rs.5000/- each to the son and daughter of the petitioner but the order is not restricted up to age of the majority of the children. In this case, I do agree with the contention Ld. Counsel appearing on behalf of the husband. Section 125 of Cr.P.C also allows maintenance of minor daughter and son till they attain the age of majority.

32. Therefore, that part of the order of the Ld. J.M. Bongaon is certainly required to be corrected.

33._ Another question which is now most important from the revisionist point of view, if the order passed by the Ld. J.M. Court, Bongaon for granting maintenance to the wife and the children from the date of the Misc. case no. 144

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of 2017 or if order is require to be passed from the date of order i.e, with effect from 30.08.2025.

34. It is true that the case was initiated in the year 2017 and no prayer was made by the wife for interim maintenance allowance which generate huge burden upon the husband to pay arrears maintenance from the date of filling of this case i.e 18/05/2017. The final maintenance order was passed by the court on 30/08/2025. On perusal of the case record and order sheet it appears that there were multiple reasons for delay. Sometime petitioner got adjournment. Few times the husband took adjournment. There was also resolution of local Bar Association “Not to pass adverse order”. All these thinks has contributed in delay about 8 years. The petitioner had to suffer financial trouble. Mediation was also failed. The fact that wife refused to live with husband even in rented house doesn’t disentitle her to get maintenance from the date of filling. After all the court already held that the wife is justified in living separately from her husband after taking evidence from both parties.

35. Previously there was difference of opinion regarding the effective date of maintenance U/s 125 of Cr.P.C. But bow after the land mark judgment of **Rajnesh v Neha Hon’ble Supreme Court** has settled the matter and held that *“it would therefore be in the interest of justice and fair play that maintenance is awarded from the date of the application in all cases, including section 125 of CR.P.C.”* Deviation from this rule would be exceptional. It is true that in this case the trial court didn’t record any reason for allowing maintenance from the date of application, yet I do not see any illegality in it keeping in view of the ration of judgment of the Hon’ble Supreme Court in Rajnesh v Neha. It is sufficient if the court mention specifically the maintenance shall be given from the date of application. The fact that the petitioner didn’t file any interim application on the pretext of amicable settlement which ultimately failed doesn’t disqualify her to get maintenance from the date of application. After all court proceeding was beyond the control of the applicant/wife.

36. I have also gone through the decision relied upon by the respondent. All the judgments are land mark judgment which helped me to understand the

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true prospect of law but the fact and circumstance of the instant case as well as the ratio decidendi of the referred judgment are totally different and therefore the cited judgments are not applicable in this case.

37. In the result the order for maintenance from the date of application is justified and thus keeping in view of the income of the respondent and his liability and expenses of the respondent, I think that following order shall meet the demand of justice. Hence it is

ORDERED :

38. That the **Criminal Revision No.50 of 2025** is partially allowed and the husband/revisionist **Sri Sandip Rishidas** is directed to pay Maintenance allowance of **Rs.6000/-** per month to his wife **Smt. Moumita Das** and **Rs.4000/-** each to his son and daughter **until they attain the age of majority and order shall be affected from the date of application on 18/05/2017.** Revisionist is directed to pay the current maintenance by 7th day of each succeeding English calendar month. Revisionist Sri Sandip Rishidas is directed to pay the arrears maintenance *w.e.f.* 18/05/2017 to 30/08/2025 in three **(3) equal instalments** by the end of 31st August 2026, **(1st Installment)**, by the end of 31st October 2026 **(2nd Installment)** and by the end of 31st December 2026, **(3rd Installment)** failing which the petitioner is entitled to execute the order as per law.

39. Let a copy of this order along with LCR be returned to the Id. JM Court Bongaon for necessary action. The Criminal revision is disposed of on contest. Note in the relevant TR and CIS.

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Bongaon, North 24 Parganas.
JO CODE:WB00917

Dictated and corrected by me

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