



**IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS
JUDGE, FAST TRACK, 8TH COURT, ALIPORE, SOUTH 24
PARGANAS**

PRESENT : Monikuntala Roy

Additional District & Sessions Judge,
Fast Track Court, 8th Court, Alipore, South 24 Parganas.
J.O. Code: WB01088

Criminal Appeal No. 167 of 2025

CIS Registration No.18 of 2025

CNR No.WBSP04-000213-2025

In the matter of :

Anupam Ray

...Appellant/Husband

-versus-

1. Smt. Sonali Ray

...Respondent No.1/Aggrieved Person/Wife

2. The State of West Bengal

...Respondent No.2

(An Appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 challenging the impugned order dated 17/05/2025 passed by the Ld. 9th Judicial Magistrate, Alipore, in connection with AC Case No. 6006 of 2019 pending before 9th Judicial Magistrate at Alipore)

Appearance

Mr. Dipankar Basu & Mr. Debajyoti Biswas Learned Advocate for the Appellants.

Md. Shamimuddin and Anwar Hosen Mondal,Learned Advocate for the
Respondent No.1

Sri Dipayan GhoshRespondent No.2/State .

Date of Institution : 24.06.2025

Date of Receiving : 10.11.2025

Date of Hearing : 16.07.2026

Date of delivery of Judgment: 16th Day of July, 2026

JUDGMENT

The present appeal has been preferred under Section 29 of the Protection of Women from Domestic Violence Act, 2005 by the appellant/husband challenging the legality, propriety and correctness of the order dated 17.05.2025 passed by the Learned Judicial Magistrate, 9th Court, Alipore, South 24 Parganas in A.C. Case No.6006 of 2019 whereby the learned Trial Court, while disposing of an application under Section 23(1) of the Protection of Women from Domestic Violence Act, directed the appellant/husband to pay interim monetary relief to the tune of **Rs.30,000/- per month in favour of the aggrieved person/wife and Rs.25,000/- per month in favour of the minor daughter**, aggregating **Rs.55,000/- per month**, with effect from **24.12.2019**, payable within the 10th day of every English calendar month.

The learned Trial Court further restrained the respondent/husband from inflicting any kind of torture upon the complainant during her stay at the matrimonial home and permitted the respondents to contest the main proceeding upon payment of three months' interim maintenance as costs precedent.

Being dissatisfied with the said order, the present appeal has been preferred.

FACTUAL BACKGROUND

The records reveal that the respondent No.1/aggrieved person instituted an application under Section 12 read with Section 23 of the Protection of Women from Domestic Violence Act on **24.12.2019** before the Learned Additional Chief Judicial Magistrate, Alipore, alleging commission of acts of domestic violence by the present appellant and seeking various reliefs contemplated under the Act including protection order, residence order and monetary relief.

The said proceeding was subsequently transferred to the Court of the Learned Judicial Magistrate, 9th Court, Alipore and was renumbered as **A.C. Case No.6006 of 2019**.

The Trial Court Record (TCR) discloses that after issuance of notice, the matter was initially fixed on **20.02.2020** for service return.

The service report having been received and the opposite party having failed to appear on call despite filing hazira, the matter was directed to proceed ex parte and was fixed on **20.04.2020** for ex parte hearing.

However, owing to the unprecedented outbreak of the Covid-19 pandemic and the resultant disruption of regular judicial functioning, no effective orders could be passed on **20.04.2020, 06.11.2020, 14.05.2021** and **28.05.2021**.

The records further disclose that on **09.03.2022**, the present appellant appeared before the Trial Court and filed an application praying for recalling/vacating the earlier ex parte order and also submitted his written objection against the application under the Domestic Violence Act.

Curiously enough, although the order sheet of that date records the presence of the parties and fixed the matter for hearing, it does not specifically record either the filing of the petition for vacating the ex parte order or the written objection submitted by the appellant. Rather, the order dated **09.03.2022** inadvertently describes the respondent as "accused", thereby indicating an apparent clerical error in recording the proceedings.

Thereafter, on **07.06.2022**, both parties appeared before the learned Trial Court. The appellant entered appearance through his learned Advocate by filing Vakalatnama and the matter was fixed on **09.09.2022** for filing affidavits of assets and liabilities in terms of the directions of the Hon'ble Supreme Court in **Rajnesh vs. Neha**.

From the order sheets it appears that on **09.09.2022, 06.12.2022, 02.03.2023** and thereafter, the matter repeatedly stood adjourned for filing affidavits of assets and liabilities.

During the pendency of the said proceeding, the aggrieved person filed an additional application praying for certain interim reliefs under Section 19 of the Protection of Women from Domestic Violence Act.

The Trial Court order dated **02.06.2023** records that such application had been filed on that date by the aggrieved person.

However, a scrutiny of the original petition available in the Trial Court Record reveals that the endorsement and filing seal appearing upon the petition bears the date

05.06.2023, thereby creating an apparent discrepancy between the judicial record and the endorsement appearing on the application itself.

By the said application, the aggrieved person prayed, inter alia, for—

- (i) an order under Section 19(d) of the Protection of Women from Domestic Violence Act restraining the respondents from alienating, transferring or encumbering the shared household;
- (ii) permission to reside in the shared household along with the minor daughter;
- (iii) necessary directions upon the respondent/husband for payment of admission fees and educational expenses of the minor daughter in Future Canons School, Sonarpur.

The said application was kept with the record for hearing.

Subsequently, on **29.07.2023**, no effective order could be passed and the matter was fixed on **16.09.2023**.

On **16.09.2023**, time was sought by the respondent/husband for filing written objection to the subsequent application and accordingly **01.12.2023** was fixed for filing written objection, affidavit of assets and hearing.

Thereafter, from **01.12.2023** onwards, the matter was adjourned on several occasions including **11.12.2023**, **04.01.2024**, **29.01.2024**, **26.02.2024** and **01.04.2024**.

The order dated **04.04.2024** merely records that both parties were heard.

Significantly, the order sheet does not disclose as to whether the hearing related exclusively to the application under Section 23(1) of the Act or whether the subsequent application filed by the aggrieved person seeking relief under Section 19(d) of the Act was also heard simultaneously.

The order sheets during the relevant period are conspicuously cryptic and bereft of necessary particulars regarding the nature of hearing, the applications taken up for consideration and the submissions advanced by the respective parties.

Thereafter the proceeding continued through several dates including **07.06.2024**, **08.07.2024**, **08.08.2024**, **06.09.2024**, **29.10.2024** and ultimately **06.11.2024**.

The order dated **06.11.2024** records that both parties were heard. Though the next date is not specifically mentioned in the said order, it appears from the subsequent order dated **14.11.2024** that the matter had been fixed for further hearing on that date.

On **14.11.2024**, the respondent/husband filed his affidavit of assets and liabilities. Thereafter the matter was fixed on **02.12.2024** for passing orders.

Since the learned Presiding Officer remained occupied with other judicial assignments on **02.12.2024**, the order could not be delivered and ultimately the impugned order came to be pronounced on **17.05.2025**.

The impugned order unmistakably reflects that the learned Trial Court proceeded to decide the application under Section 23(1) of the Protection of Women from Domestic Violence Act after considering the affidavits of assets and liabilities submitted by both parties.

However, neither the impugned order nor any of the preceding order sheets disclose that the subsequent application filed by the aggrieved person on **02.06.2023/05.06.2023** under Section 19(d) of the Act was separately heard or disposed of by a reasoned order.

The order dated **06.11.2024**, as also the impugned judgment dated **17.05.2025**, clearly indicate that only the application under Section 23(1) of the Act was taken up for adjudication.

Accordingly, the records prima facie reveal that the subsequent application seeking residence-related reliefs under Section 19(d) of the Act has remained undisposed of.

GROUND OF APPEAL

Grounds of Appeal

The appellant has challenged the impugned order dated **17.05.2025** primarily on the following grounds:

1. Illegality of the Impugned Order:

The impugned order is alleged to be contrary to law, facts and the materials available on record and, therefore, liable to be set aside.

2. Failure to Consider the Pending Application under Section 19(d) of the PWDV Act:

It is contended that the respondent-wife had filed a separate application under Section 19(d) of the Protection of Women from Domestic Violence Act on 05.06.2023 seeking residence-related reliefs. According to the appellant, the learned Trial Court failed to consider or dispose of the said application by a reasoned order and instead proceeded to pass the impugned order under Section 23(1) of the Act, thereby committing a material irregularity.

3. Passing the Impugned Order Beyond the Scope of Hearing:

The appellant contends that the hearing before the learned Trial Court was confined to the application under Section 19(d) of the Act. Without hearing the application under Section 23(1) or deciding the application under Section 19(d), the learned Magistrate proceeded to grant interim monetary relief under Section 23(1), which, according to the appellant, is procedurally illegal and contrary to the record.

4. Non-consideration of the Appellant's Financial Capacity:

It is urged that the learned Magistrate failed to appreciate that at the time of institution of the proceeding on 24.12.2019, the appellant was drawing a monthly salary of approximately **Rs.43,000/-**. Therefore, directing payment of **Rs.55,000/- per month** with retrospective effect from the date of filing of the application is unrealistic, arbitrary and incapable of compliance. The impugned order does not explain how a person earning Rs.43,000/- per month could be expected to pay Rs.55,000/- every month.

5. Ignoring the Parallel Proceeding under Section 125 Cr.P.C.:

The appellant submits that prior to filing of the present proceeding, the respondent-wife had already instituted **M. Case No.853 of 2019** under Section 125 Cr.P.C., wherein interim maintenance of **Rs.7,500/- per month** was awarded to the wife and **Rs.5,500/- per month** to the minor daughter, totalling **Rs.13,000/- per month**. The

learned Trial Court failed to take into account the subsisting order of interim maintenance while determining the amount under the PWDV Act, thereby imposing an excessive financial burden upon the appellant.

6. Failure to Consider the Appellant's Liabilities and Expenses:

According to the appellant, the learned Trial Court ignored his recurring financial liabilities, including expenditure towards mediclaim policy for himself and the minor daughter, for which he incurs approximately **Rs.2,700/- per month**, besides other necessary expenses. The impugned order was passed without properly balancing the appellant's income with his liabilities.

7. Absence of Domestic Violence:

The appellant contends that the respondent-wife never suffered any act of domestic violence at the hands of the appellant or his family members and that the documents filed by the respondent do not disclose any prima facie case of domestic violence.

Therefore, according to the appellant, the respondent was not entitled to any interim relief under the Protection of Women from Domestic Violence Act.

8. Self-Contradictory

Findings:

It is further urged that the observations recorded in the impugned order are self-contradictory. While the learned Trial Court observed that the allegations of domestic violence are matters for trial and can only be adjudicated after evidence, it nevertheless proceeded to award substantial interim monetary relief without recording adequate reasons, rendering the order internally inconsistent.

9. Lack of Proper Appreciation of the Record:

The appellant submits that the learned Magistrate failed to properly appreciate the pleadings, affidavits of assets and liabilities and other materials available on record before determining the quantum of interim maintenance.

10. General

Ground:

The appellant has lastly pleaded that the impugned order is otherwise illegal, arbitrary, contrary to the provisions of law and the facts of the case and is therefore liable to be set aside or suitably modified by the appellate court.

SUBMISSIONS ADVANCED ON BEHALF OF THE APPELLANT

Learned Advocate appearing on behalf of the appellant/husband assailed the impugned order principally on the ground that the learned Trial Court failed to appreciate the financial capacity of the appellant in its proper perspective and mechanically awarded an exorbitant amount of interim monetary relief without recording adequate reasons.

It was submitted that although the learned Magistrate referred to the affidavits of assets and liabilities filed by both parties in terms of the decision of the Hon'ble Supreme Court in **Rajnesh Vs. Neha**, the learned Court below failed to undertake any meaningful analysis of the income, expenditure and liabilities disclosed therein before determining the quantum of interim maintenance.

Learned counsel further submitted that the appellant is a salaried employee and his monthly income, as reflected from the affidavit of assets and liabilities, is approximately **Rs.74,336/-**. According to the appellant, after deduction of statutory liabilities and necessary personal expenditure, the amount directed to be paid by the learned Trial Court leaves practically no reasonable amount for his own sustenance.

It was further argued that the learned Trial Court completely ignored that another proceeding under **Section 125 of the Code of Criminal Procedure** being **M. Case No.853 of 2019** is pending between the same parties wherein an order granting interim maintenance of **Rs.13,000/- per month** has already been passed in favour of the respondent-wife and the said order has subsequently been affirmed in revisional jurisdiction.

According to the appellant, although there may not be any legal prohibition against grant of interim maintenance in parallel proceedings, the learned Trial Court ought to have taken into consideration the existing order under Section 125 Cr.P.C. while assessing the total financial burden upon the appellant.

It was next submitted that the learned Magistrate fixed the quantum of interim maintenance in an arbitrary manner without assigning any cogent reason as to why an amount of **Rs.30,000/-** should be awarded to the wife and **Rs.25,000/-** to the minor daughter.

Learned counsel contended that the impugned order merely records that such amount would be "just, sufficient and reasonable" without discussing the basis of such conclusion from the materials available on record.

Attention of this Court was also invited to the order sheets maintained by the learned Trial Court. It was contended that the order sheets are extremely cryptic and do not disclose the nature of hearing conducted on various dates.

Learned Advocate argued that although the respondent-wife had filed another application on **02.06.2023** (bearing the filing endorsement dated **05.06.2023**) praying for residence orders and other ancillary reliefs under Section 19 of the Protection of Women from Domestic Violence Act, the impugned order does not indicate that the said application was ever heard or decided.

According to the appellant, the learned Trial Court appears to have confined itself only to the application under Section 23(1) of the Act while leaving the subsequent application completely unattended.

It was further submitted that since no speaking order has yet been passed on the application filed under Section 19(d) of the Act, appropriate directions are required to be issued to the learned Trial Court for early disposal of the said application.

On the aforesaid grounds, learned counsel prayed that the impugned order be modified by substantially reducing the amount of interim monetary relief and by issuing appropriate directions regarding disposal of the pending application filed by the aggrieved person.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1

Per contra, learned Advocate appearing on behalf of the respondent No.1/aggrieved person supported the impugned order in its entirety.

It was argued that the relationship between the parties as husband and wife and the existence of domestic relationship are admitted facts and, therefore, the learned Trial Court

rightly exercised its jurisdiction under Section 23 of the Protection of Women from Domestic Violence Act.

Learned counsel submitted that the allegations regarding domestic violence and other disputed factual issues are matters for trial and the learned Magistrate has rightly observed that those questions would be adjudicated after recording evidence.

It was contended that the object of interim monetary relief under the Protection of Women from Domestic Violence Act is to ensure that the aggrieved woman and her minor child are able to maintain themselves during pendency of the proceeding with dignity and in a manner broadly commensurate with the standard of living enjoyed in the matrimonial home.

Learned counsel argued that the affidavits of assets and liabilities filed by the parties disclose that the appellant possesses sufficient financial capacity to maintain both the respondent-wife and the minor daughter.

Particular emphasis was laid upon the disclosures made by the appellant himself in his affidavit of assets and liabilities.

It was submitted that the appellant has admitted therein that the monthly expenditure required for the education and upbringing of the minor daughter is approximately **Rs.48,230/-**.

According to the respondent, once such expenditure is admitted by the appellant himself, the learned Trial Court cannot be faulted for granting substantial interim monetary relief keeping in view the welfare of the child.

It was further submitted that merely because an order under Section 125 Cr.P.C. has already been passed in favour of the respondent-wife, the jurisdiction of the Magistrate under the Protection of Women from Domestic Violence Act does not stand curtailed.

Reliance was placed upon the decision of the Hon'ble Supreme Court in **Rajnish Vs. Neha**, wherein it has been held that maintenance awarded in different proceedings is liable to be adjusted so as to avoid duplication, but the existence of one maintenance order does not bar grant of maintenance under another statutory provision.

It was argued that the learned Trial Court has taken into consideration the affidavits of assets and liabilities filed by both parties before determining the quantum and, therefore, no interference is warranted in appellate jurisdiction.

Learned counsel accordingly prayed for dismissal of the appeal.

SUBMISSIONS ON BEHALF OF THE STATE

Learned Additional Public Prosecutor appearing for the State submitted that the present appeal essentially concerns the correctness of the interim monetary relief granted by the learned Magistrate on appreciation of the affidavits of assets and liabilities and, therefore, appropriate orders may be passed in accordance with law upon consideration of the records and the rival submissions advanced by the parties.

POINTS FOR DETERMINATION

Having heard the learned Advocates for the respective parties and upon careful perusal of the Trial Court Records, the following points arise for determination in this appeal:

I. Whether the learned Trial Court committed any illegality or material irregularity in passing the impugned order dated 17.05.2025 granting interim monetary relief under Section 23(1) of the Protection of Women from Domestic Violence Act?

II. Whether the quantum of interim monetary relief awarded by the learned Trial Court is justified on the basis of the materials available on record?

III. Whether the existence of an interim maintenance order passed in favour of the respondent-wife in the proceeding under Section 125 Cr.P.C. requires modification of the impugned order in the light of the principles laid down by the Hon'ble Supreme Court in *Rajnesh vs. Neha*?

IV. Whether the application filed by the aggrieved person on 02.06.2023/05.06.2023 under Section 19(d) of the Protection of Women from Domestic Violence Act has remained undisposed of and whether any consequential direction is required to be issued to the learned Trial Court?

The aforesaid points are taken up together for convenience, as they are interrelated and arise out of the same set of facts. In order to appreciate the rival submissions, it would first be necessary to examine the legality of the proceedings conducted by the learned Trial Court, the nature of the impugned order, the materials disclosed in the affidavits of assets and liabilities, and the scope of appellate interference under Section 29 of the Protection of Women from Domestic Violence Act.

DISCUSSION, APPRECIATION OF EVIDENCE ON RECORD AND FINDINGS

I have given my anxious consideration to the rival submissions advanced on behalf of the respective parties. I have also carefully perused the impugned order, the pleadings of the parties, the affidavits of assets and liabilities, the documents annexed thereto and the entire Trial Court Records (TCR).

At the outset, it is pertinent to note that the present appeal arises out of an interlocutory order passed under Section 23(1) of the Protection of Women from Domestic Violence Act, 2005. The appellate jurisdiction under Section 29 of the Act empowers this Court to examine the legality, propriety and correctness of the order impugned. While exercising such jurisdiction, this Court is not expected to conduct a mini trial or adjudicate the disputed questions of fact finally. The appellate Court is required to ascertain whether the discretion exercised by the learned Magistrate suffers from perversity, arbitrariness, material irregularity or non-consideration of relevant materials warranting interference.

There is no dispute before this Court that the respondent No.1 is the legally married wife of the appellant and the minor daughter, namely Anisha Ray, was born out of the said wedlock. The domestic relationship between the parties also stands admitted. Consequently, the respondent No.1 answers the description of an "aggrieved person" within the meaning of Section 2(a) of the Protection of Women from Domestic Violence Act and is legally entitled to seek appropriate interim reliefs pending adjudication of the main application.

The learned Trial Court has rightly observed that the allegations constituting domestic violence and the defence raised by the respondent are matters requiring

adjudication upon evidence and cannot be conclusively decided at the interlocutory stage. To that extent, this Court finds no infirmity in the approach adopted by the learned Magistrate.

However, the appellate scrutiny cannot end there.

The Trial Court Records reveal certain procedural aspects which deserve consideration.

A careful examination of the order sheets demonstrates that after the appearance of the appellant and filing of the written objection, the matter remained pending for a considerable period primarily for filing affidavits of assets and liabilities in terms of the guidelines laid down by the Hon'ble Supreme Court in **Rajnish vs. Neha**.

Unfortunately, the order sheets maintained by the learned Trial Court during the relevant period are extremely cryptic. Most of the orders merely record the appearance of the parties and adjournment of the matter without indicating the precise stage of the proceeding, the petitions taken up for consideration or the submissions advanced by the learned Advocates. Judicial orders are expected to reflect application of judicial mind. Even interlocutory orders should indicate, at least briefly, the purpose for which the matter was taken up and the reason for the order passed. The order sheets in the present case fall short of such desirable standards.

Another aspect which has attracted the attention of this Court is the discrepancy relating to the application filed by the aggrieved person seeking relief under Section 19(d) of the Protection of Women from Domestic Violence Act.

The order sheet dated 02.06.2023 records that the said petition was filed on that date. However, the endorsement appearing on the original application bears the filing seal dated 05.06.2023. Although such discrepancy by itself may not materially affect the rights of the parties, it certainly reflects lack of procedural clarity in the maintenance of the judicial record.

More importantly, from a careful scrutiny of the subsequent order sheets it does not appear that the said application was ever independently heard or disposed of.

The application, inter alia, sought restraint against alienation of the shared household, permission to reside therein along with the minor daughter and a direction upon the respondent to bear the educational expenses of the child. Such prayers are distinct from the relief claimed under Section 23(1) of the Act and required independent consideration.

The order dated 04.04.2024 merely records that both sides were heard. It nowhere specifies whether the hearing related only to the application under Section 23(1) or whether the subsequent application under Section 19(d) was also taken up simultaneously.

Likewise, the order dated 06.11.2024 indicates that the matter was heard with regard to the application under Section 23(1) and filing of assets by the opposite party. The impugned order dated 17.05.2025 also unmistakably records that the learned Magistrate proceeded to dispose of the application under Section 23(1) of the Act after considering the affidavits of assets and liabilities.

There is absolutely no discussion in the impugned order regarding the subsequent application filed on 02.06.2023/05.06.2023 nor has any reasoned order been passed thereon.

Thus, this Court is constrained to hold that the said application continues to remain undisposed of.

Coming now to the principal controversy regarding the quantum of interim monetary relief, this Court finds that the learned Magistrate has correctly appreciated the legal principle that while determining interim maintenance, the Court is required to consider the affidavits of assets and liabilities filed by the parties.

The directions issued by the Hon'ble Supreme Court in **Rajnesh vs. Neha** were intended to introduce uniformity and transparency in maintenance proceedings. The affidavits are intended to enable the Court to make a realistic assessment of the financial capacity of the parties and to avoid speculative determination of maintenance.

The impugned order specifically records that both parties had filed affidavits of assets and liabilities.

A careful examination of the affidavit submitted by the appellant/husband reveals that his admitted monthly income is **Rs.74,336/-**.

Equally significant is the admission made by the appellant regarding the monthly expenditure incurred for the upbringing, education and welfare of the minor daughter.

The affidavit discloses that the expenditure towards the minor daughter is approximately **Rs.48,230/- per month**.

Such admission, having emanated from the appellant himself, constitutes a relevant circumstance while assessing the financial requirement of the child.

The learned Magistrate was therefore justified in concluding that the respondent-wife and the minor daughter are entitled to interim monetary relief.

The entitlement itself does not call for interference.

The question, however, is whether the quantum fixed by the learned Magistrate is proportionate to the admitted income of the appellant.

The learned Trial Court directed payment of **Rs.30,000/- per month to the wife and Rs.25,000/- per month to the minor daughter**, aggregating **Rs.55,000/- per month**.

Although the impugned order states that such amount is "just, sufficient and reasonable", it does not disclose any objective basis for arriving at the said figure.

No analysis has been made regarding the net disposable income of the appellant, his unavoidable liabilities or the balancing exercise required while determining interim maintenance.

An award of Rs.55,000/- out of an admitted monthly income of Rs.74,336/- leaves a comparatively narrow margin for the appellant to meet his own statutory deductions, personal expenses and other unavoidable liabilities. Interim maintenance is intended to provide immediate financial support to the aggrieved woman and the child; it cannot ordinarily be so fixed as to become oppressive or practically incapable of compliance. Equally, it should not be illusory or inadequate. The Court is therefore required to strike a

careful balance between the needs of the claimants and the paying capacity of the respondent.

Another important circumstance which cannot be overlooked is that the respondent-wife has already obtained an order granting interim maintenance in **M. Case No.853 of 2019** instituted under Section 125 of the Code of Criminal Procedure.

The records reveal that the learned Magistrate in the said proceeding awarded interim maintenance of **Rs.13,000/- per month** in favour of the respondent-wife and the said order has subsequently been affirmed in revisional jurisdiction.

The existence of such order, however, does not create any legal embargo upon grant of interim monetary relief under the Protection of Women from Domestic Violence Act.

The Hon'ble Supreme Court in **Rajnesh vs. Neha** has categorically held that maintenance awarded in different proceedings arising out of different statutes is legally permissible. What is required is adjustment of the amount awarded in one proceeding against the amount awarded in another so that there is no duplication or unjust enrichment.

Therefore, this Court is unable to accept the contention of the appellant that the learned Magistrate lacked jurisdiction to grant interim monetary relief merely because an order under Section 125 Cr.P.C. was already in existence.

The entitlement of the respondent-wife and the minor daughter to claim interim monetary relief under the Protection of Women from Domestic Violence Act is thus fully protected in law.

Nevertheless, while determining the quantum, the Court is duty-bound to bear in mind the cumulative financial burden imposed upon the respondent so that the aggregate amount remains fair, reasonable and capable of compliance.

Having regard to the admitted income of the appellant, the admitted expenditure relating to the minor daughter, the subsisting order under Section 125 Cr.P.C., the object of interim monetary relief under the Protection of Women from Domestic Violence Act and the principles laid down by the Hon'ble Supreme Court in **Rajnesh vs. Neha**, this Court is

of the considered opinion that although the grant of interim monetary relief calls for affirmation, the quantum fixed by the learned Trial Court requires suitable modification.

FINDINGS

Upon an overall consideration of the facts and circumstances of the case, the pleadings of the parties, the Trial Court Records, the affidavits of assets and liabilities and the submissions advanced on behalf of the respective parties, this Court arrives at the following conclusions:

Firstly, the domestic relationship between the parties and the marital status of the respondent No.1 as the legally wedded wife of the appellant are admitted facts. The minor daughter is also admittedly residing with the respondent No.1. Therefore, the entitlement of the respondent-wife and the minor daughter to seek interim monetary relief under the provisions of the Protection of Women from Domestic Violence Act, 2005 cannot be doubted.

Secondly, this Court finds no legal infirmity in the decision of the learned Trial Court to entertain and decide the application under Section 23(1) of the Protection of Women from Domestic Violence Act. At the interlocutory stage, the learned Magistrate was not required to record any final finding regarding the allegations constituting domestic violence, since such disputed questions can only be adjudicated after the parties adduce evidence during trial.

Thirdly, the Trial Court Records reveal that the learned Magistrate considered the affidavits of assets and liabilities filed by both parties in terms of the directions issued by the Hon'ble Supreme Court in **Rajnesh Vs. Neha**. The adoption of such procedure is in consonance with the law laid down by the Hon'ble Apex Court and, therefore, the decision-making process cannot be faulted on that count.

However, this Court is unable to approve the quantum of interim monetary relief awarded by the learned Trial Court.

The affidavit of assets and liabilities filed by the appellant discloses that his admitted monthly income is **Rs.74,336/-**. The affidavit also reflects that the monthly

expenditure required for the maintenance and education of the minor daughter is approximately **Rs.48,230/-**. These disclosures undoubtedly justify grant of interim monetary relief to both the respondent-wife and the minor daughter.

Nevertheless, the learned Trial Court awarded a consolidated amount of **Rs.55,000/- per month**, comprising **Rs.30,000/- in favour of the respondent-wife and Rs.25,000/- in favour of the minor daughter**, without assigning any specific reasons indicating how the said figures were arrived at on the basis of the materials available on record.

The impugned order merely records that such amount would be "just, sufficient and reasonable" but does not undertake any analytical exercise regarding the disposable income of the appellant, his liabilities and the balancing exercise required while fixing interim maintenance.

In the considered opinion of this Court, although the learned Magistrate rightly recognised the entitlement of the respondent-wife and the minor daughter, the quantum fixed appears to be on the higher side having regard to the admitted monthly income of the appellant.

Another important circumstance which deserves consideration is that the respondent-wife has already obtained an order of interim maintenance in **M. Case No.853 of 2019** instituted under Section 125 of the Code of Criminal Procedure. The records reveal that interim maintenance of **Rs.13,000/- per month** has already been granted in favour of the respondent-wife and the said order has attained affirmation in revisional jurisdiction.

The existence of such order, however, does not create any legal bar for grant of interim monetary relief under the Protection of Women from Domestic Violence Act.

The Hon'ble Supreme Court in **Rajnish Vs. Neha** has authoritatively held that maintenance awarded in different proceedings arising out of different statutes is legally permissible. The Court has simultaneously directed that the amount awarded in one proceeding should be adjusted against the amount awarded in another so that there is neither duplication nor double recovery.

Accordingly, this Court finds no merit in the contention advanced on behalf of the appellant that the learned Magistrate lacked jurisdiction to pass the impugned order merely because a proceeding under Section 125 Cr.P.C. was already pending.

However, while determining the appropriate quantum, the existence of the parallel order under Section 125 Cr.P.C. certainly constitutes a relevant circumstance for balancing the equities between the parties.

Considering the admitted income of the appellant, the admitted expenditure relating to the minor daughter, the financial requirements of the respondent-wife and the settled principles governing grant of interim maintenance, this Court is of the opinion that ends of justice would be adequately served by modifying the quantum of interim monetary relief to a consolidated amount of **Rs.30,000/- per month**, payable at the rate of **Rs.15,000/- per month each** to the respondent-wife and the minor daughter.

Such modification, in the opinion of this Court, would reasonably safeguard the interest of the aggrieved person as well as the welfare of the minor child while simultaneously ensuring that the appellant is not subjected to an excessive financial burden incapable of compliance.

There is another aspect of the matter which cannot escape the notice of this Court.

A careful scrutiny of the Trial Court Records reveals that during pendency of the proceeding the respondent-wife filed another application on **02.06.2023**, though the filing endorsement upon the petition bears the date **05.06.2023**, praying for relief under Section 19(d) of the Protection of Women from Domestic Violence Act, including restraint against alienation of the shared household, permission to reside therein and other consequential reliefs.

Neither the impugned order dated 17.05.2025 nor any of the preceding orders indicate that the said application was independently heard or disposed of.

Rather, the impugned order specifically confines itself to adjudication of the application under Section 23(1) of the Act.

Consequently, this Court has no hesitation in holding that the application dated **02.06.2023/05.06.2023** still remains pending before the learned Trial Court.

Since the said application concerns valuable statutory rights available to an aggrieved woman under Chapter IV of the Protection of Women from Domestic Violence Act, the same deserves expeditious adjudication by a reasoned and speaking order after affording adequate opportunity of hearing to both parties.

Accordingly, appropriate directions are required to be issued to the learned Trial Court in that regard.

EDICT

In view of the discussions made hereinabove, the appeal succeeds in part.

Accordingly, it is hereby **ORDERED** that:-

1. **The Criminal Appeal No.167 of 2025 is allowed in part on contest.**
2. **The impugned order dated 17.05.2025 passed by the Learned Judicial Magistrate, 9th Court, Alipore, South 24 Parganas in A.C. Case No.6006 of 2019 is modified only with regard to the quantum of interim monetary relief.**
3. The appellant/husband shall pay a consolidated sum of **Rs.30,000/- (Rupees Thirty Thousand only) per month** as interim monetary relief with effect from **24.12.2019**, apportioned as follows:
 - **Rs.15,000/- (Rupees Fifteen Thousand only) per month** in favour of the respondent No.1/aggrieved person-wife; and
 - **Rs.15,000/- (Rupees Fifteen Thousand only) per month** in favour of the minor daughter, namely **Anisha Ray**.
4. The interim monetary relief shall continue to be payable within the **10th day of each English calendar month** until further orders or till disposal of the main proceeding, whichever is earlier.
5. The arrears of interim monetary relief accrued in terms of this modified order shall be cleared by the appellant **within three months from the date of this judgment.**

6. It is made clear that the amount of interim maintenance already awarded in **M. Case No.853 of 2019 under Section 125 Cr.P.C.** shall be **adjusted against the amount awarded in the present proceeding**, in accordance with the principles laid down by the Hon'ble Supreme Court in **Rajnesh Vs. Neha**, so as to avoid duplication of maintenance.
7. The direction contained in the impugned order restraining the respondent/husband from committing any act of domestic violence or harassment against the aggrieved person shall remain **undisturbed**.
8. The learned Judicial Magistrate, 9th Court, Alipore, South 24 Parganas is directed to take up the application filed by the aggrieved person on **02.06.2023/05.06.2023** seeking relief under Section 19(d) of the Protection of Women from Domestic Violence Act and dispose of the same by a **reasoned and speaking order**, after affording adequate opportunity of hearing to both parties, **within thirty (30) days from the date of communication of this judgment**.
9. In the event the appellant/husband fails to avail the opportunity of hearing despite due notice, the learned Trial Court shall be at liberty to proceed in accordance with law and dispose of the said application on the basis of the materials available on record.
10. In the impugned order dated 17.05.2025 the next date was fixed for recording of evidence, respondents at liberty to submit W/O and affidavit of assets and liabilities. The purpose of the next date for filing affidavit of assets and liabilities by the Respondent/husband is struck out as the TCR reflected that the respondent/husband already filed the affidavits of assets and liabilities on 14.11.2024.
11. Save and except the aforesaid modification regarding the quantum of interim monetary relief and the above directions, the remaining part of the impugned order dated 17.05.2025 shall remain **unaltered**.
12. The interim order of stay, if any, stands vacated.
13. All the interlocutory applications are accordingly disposed of.

Let a copy of this judgment along with the Lower Court Records be transmitted forthwith to the learned Judicial Magistrate, 9th Court, Alipore, South 24 Parganas for information, compliance and expeditious disposal of the pending application in accordance with law.

Urgent certified copy of this judgment, if applied for, be supplied to the parties on compliance with all legal formalities.

The appeal is, accordingly, **disposed of**.

The judgment is accordingly delivered and pronounced in the open Court.

Let a soft copy of the order be uploaded in the CIS as per the modalities of law.

Note the Disposal in Germane Register.

Dictated and Corrected by me,

Sd/

Additional District and Sessions Judge,
Fast Track 8th Court,
Alipore, South 24 Parganas

Additional District and Sessions Judge,
Fast Track 8th Court,
Alipore, South 24 Parganas

Let a copy of this Judgment along with TCR in connection with AC Case No. 6006 of 2019 be sent Ld. Judicial Magistrate, 9th Court Alipore for information.

Dictated and corrected by me.

**Additional District & Sessions Judge
8th Fast Track Court, Alipore,
South 24 Parganas**

**Additional District & Sessions Judge
8th Fast Track Court, Alipore,
South 24 Parganas**