

**IN THE HIGH COURT OF ORISSA AT CUTTACK****CRLMC No.5526 of 2025**

(In the matter of an application under Section 528 of B.N.S.S., 2023 read with Section 482 of the Code of Criminal Procedure, 1973.)

Bishikeshan Bhal ***Petitioner (s)***

-versus-

State of Odisha & Anr. ***Opp. Party (s)***

Advocates appeared in the case through Hybrid Mode:

For Petitioner (s) : *Mr. Niranjana Panda, Adv.*

For Opp. Party (s) : *Mr. Amitabh Pradhan, ASC*
Mr. Ambika Prasad Ray, Adv.
(for O.P.2)

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-23.02.2026

DATE OF JUDGMENT:-27.02.2026

Dr. Sanjeeb K Panigrahi, J.

1. In this Criminal Miscellaneous Petition, the petitioner seeks a direction from this Court to quash the maintenance proceeding in CRP No.133 of 2007 pending in the court of learned Judge, Family Court, Cuttack and to set aside all consequential orders, contending that continuation of the proceeding amounts to abuse of process in light of the wife's alleged conduct and criminal conviction.

I. FACTUAL MATRIX OF THE CASE:

2. The facts of the case are as follows:



- (i) The dispute arises out of CRP No. 133 of 2007 pending before the Learned Judge, Family Court, Cuttack, filed by the wife (Opp. Party No.2) under Section 125 CrPC seeking monthly maintenance from the husband (petitioner in CRLMC).
- (ii) In CRP No. 133/2007, the Family Court passed an ex parte order dated 20.08.2008 directing the husband to pay ₹1,200 per month to the wife from the date of application i.e., 16.03.2007, recording that the husband entered appearance but remained absent and was set ex parte on multiple dates before final order.
- (iii) The husband challenged the ex parte maintenance order before the High Court in RPFAM No. 02 of 2009, which was disposed of on 23.08.2024, granting liberty to move an application under the proviso to Section 126(2) CrPC within two weeks, with a direction to consider delay liberally since the RPFAM had remained pending since 2009.
- (iv) Pursuant to the High Court's liberty, the husband filed a petition before the Family Court (described as u/s 144 BNSS) numbered as CRP No. 157 of 2024, seeking to set aside/recall the ex parte order dated 20.08.2008 in CRP No. 133/2007.
- (v) By order dated 03.12.2025 in CRP No. 157/2024, the Family Court allowed restoration, recalled the ex parte order dated 20.08.2008, restored CRP No. 133/2007 to file, imposed cost of ₹1,000 on the husband payable to the wife, directed the husband to take steps for day-to-day disposal without adjournments, and dropped Criminal Execution Proceeding No. 491/2008.



- (vi) There are parallel/connected criminal litigations referred to in the pleadings: the husband alleges a case where the wife was convicted in S.T. Case No. 293/2005 (arising from Tangi P.S. Case No. 54/2004 / G.R. Case No. 409/2004) under Sections including 307/326/506/34 IPC, and the wife states that her conviction is under challenge in CRLA No. 159 of 2006 and is still pending, hence not final.
- (vii) After the restoration order dated 03.12.2025, the husband filed the present CRLMC No. 5526 of 2025 (filed on 17.12.2025) seeking quashing of the maintenance proceeding; the wife alleges this is part of a pattern to delay CRP No. 133/2007.

II. PETITIONER'S SUBMISSIONS:

- 3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions.
 - (i) The maintenance order dated 20.08.2008 in CRP No. 133/2007 was obtained ex parte, allegedly without reasonable opportunity to the husband to contest, and therefore should not operate against him.
 - (ii) The husband asserts that the wife attempted to kill him by pouring kerosene and setting him on fire with her alleged paramour, resulting in 35-40% burn injuries and present disability, and that this led to her conviction in S.T. Case No. 293/2005 under 307/326/506/34 IPC (as pleaded), sentenced to imprisonment.
 - (iii) The husband's case is that a wife who is convicted for attempting to murder her husband and who allegedly fled with a paramour cannot claim maintenance, and he invokes Section 125(4) CrPC



concepts, including “living in adultery”, and also relies on High Court inherent powers to prevent abuse of process.

- (iv) He alleges the wife suppressed material facts, including conviction/related criminal facts, while initiating/continuing maintenance proceedings, and characterizes the maintenance claim as not bona fide.
- (v) He cites authorities to emphasize statutory bars to maintenance in circumstances such as adultery/refusal to live without sufficient reason/mutual consent separation.
- (vi) He alleges delay and procedural complications in the High Court proceedings (RPFAM No.02/2009), including communication gap due to death of his advocate and prior dismissals of restoration applications, to explain his inability to effectively contest earlier stages.

III. OPPOSITE PARTYS’ SUBMISSIONS:

4. Per contra, the learned counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:

- (i) The wife asserts that she is the legally wedded wife of the petitioner (marriage in 1994 as per Hindu customs) and claims she was neglected and driven out, leading to her destitution and filing of CRP No. 133/2007 for maintenance.
- (ii) She alleges the husband had an extramarital relationship with Bilasini @ Basanti Pradhan @ Bhola, and that he demanded money and subjected her to cruelty; she further alleges the husband contracted a second marriage on 26.09.2004 and has children from



that relationship, relying on documents like a birth certificate and voter list (as pleaded) as supporting material.

- (iii) On the kerosene incident, the wife's case is that the husband attempted suicide by pouring kerosene on himself (dated 01.04.2004), she took him to hospital and nursed him, and his burn injury was minor/moderate and he is not disabled; she challenges the husband's "disability" narrative as false and asserts medical evidence/deposition indicates burns could be accidental.
- (iv) She states the ex parte order dated 20.08.2008 came to be passed because the husband, despite entering appearance, remained absent and was set ex parte on multiple occasions; she portrays the husband's subsequent litigation as a delaying tactic to avoid maintenance adjudication.
- (v) She emphasizes that maintenance is a beneficial/social justice provision meant to prevent vagrancy and protect a destitute woman, and that delay in filing maintenance was due to her illiteracy, monetary hardship, and mental distress.
- (vi) She argues that the husband's attempt to quash the maintenance proceeding is not maintainable and is meant to derail day-to-day hearing after restoration; she specifically points to the sequence where CRP was restored on 03.12.2025 and the CRLMC was filed on 17.12.2025.
- (vii) On the wife's conviction, she asserts that her conviction order is under appeal (CRLA No.159 of 2006) and thus not final; she contends that pending appeal means her status and entitlement



cannot be extinguished merely on the basis of an appealed conviction, and she relies on the Supreme Court decision cited by her side, *Rina Kumari @ Rina Devi @ Reena v. Dinesh Kumar Mahto*¹ (decided 10.01.2025) (as mentioned in her pleading).

IV. ANALYSIS OF THE JUDGMENT OF THE LOWER COURT:

5. The Family Court, upon examining the challenge to the order refusing discharge, held as follows:
 - (i) The Family Court treated the husband's application as one seeking recall of the ex parte maintenance order dated 20.08.2008, and noted from the record that the order was indeed passed ex parte after the husband remained absent on the dates fixed for hearing and evidence was taken ex parte.
 - (ii) The Court framed the nature of Section 125 proceedings as beneficial and aimed at providing social security and moral strength to a woman, but simultaneously acknowledged that the husband's non-participation resulted in him being deprived of the right to defend, and considered that a chance should be given to contest on merits.
 - (iii) On that reasoning, the Court found the husband's ground for restoration "justified in the present context" and allowed restoration "in the interest of justice," indicating a preference for adjudication after hearing both sides rather than sustaining an ex parte determination.

¹2025 INSC 55



- (iv) The order balanced equities by restoring CRP No. 133/2007 subject to cost of ₹1,000 payable by the husband to the wife, suggesting the Court attempted to compensate the wife for procedural delay/recall while still reopening the matter.
- (v) The Court issued a strong procedural direction that the husband must take effective steps for early disposal on a day-to-day basis without seeking further adjournment, reflecting the Court's concern about protraction and an intent to prevent further delay after restoration.
- (vi) As a consequential step, the Court dropped Criminal Execution Proceeding No. 491/2008, which logically follows from recalling the underlying ex parte maintenance order that was being executed, thereby resetting the matter back to trial stage for fresh adjudication.

V. EXAMINATION OF THE LEGAL MATRIX:

- 6. Heard learned counsel for the parties and perused the materials placed on record.
- 7. This petition under Section 482 CrPC is filed before the Orissa High Court seeking quashing of the pending maintenance proceeding CRP No. 133 of 2007 before the Family Court, Cuttack, instituted by the wife under Section 125 CrPC claiming monthly maintenance from the husband.
- 8. The record, as placed, indicates that the Family Court had earlier passed an ex parte order dated 20.08.2008 directing maintenance of Rs. 1,200 per month from the date of application, on the premise that the husband



entered appearance but remained absent on repeated dates and was set ex parte. The husband carried the said order to this Court in RPFAM No. 02 of 2009. By order dated 23.08.2024, the husband was granted liberty to move an application under the proviso to Section 126(2) CrPC within a short time, with an observation that delay be considered liberally because the revision remained pending for a long period. The husband thereafter moved the Family Court in CRP No. 157 of 2024, styled as under Section 144 BNSS, seeking recall of the ex parte order.

9. By order dated 03.12.2025, the Family Court recalled the ex parte order, restored CRP No. 133 of 2007 to file, imposed costs of Rs. 1,000 payable by the husband to the wife, directed the husband to take steps for day-to-day disposal without adjournments, and dropped the connected execution proceeding. After such restoration, the present CRLMC was filed on 17.12.2025 seeking quashing of the maintenance proceeding.
10. The husband contends that the wife is not entitled to maintenance as she allegedly attempted to kill him and stands convicted in a sessions case, and that she allegedly lived in adultery and suppressed material facts. Relying on Section 125(4) concepts, it is urged that continuation of the maintenance proceeding is an abuse of process, warranting interference under Section 482 CrPC. The husband also refers to the earlier ex parte order and urges that the maintenance claim is not bona fide.
11. The wife opposes the petition asserting that she is the legally wedded wife, that she was neglected and driven out, and that the husband has allegedly contracted a second marriage and maintained an extramarital relationship. She disputes the husband's version of the burn incident



and disputes the claim of disability. She further states that her conviction, if any, is under challenge in a pending criminal appeal and is not final. Reliance is placed on the principle that maintenance is a beneficial provision and that the present petition is intended to delay the adjudication after restoration.

12. Section 482 CrPC preserves inherent powers of the High Court to secure the ends of justice and to prevent abuse of process. However, this jurisdiction is exceptional and is not meant to substitute a trial on disputed facts or to short circuit a statutory adjudicatory process where the parties have an efficacious forum to urge their rival versions.

13. In the case of *State of Karnataka v. L. Muniswamy*², the Supreme Court has held that inherent power can be exercised where continuation of proceedings itself would amount to abuse of process or where the ends of justice demand quashing. The Court held as follows:

“In the exercise of this whole some power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the; ends of justice require that the proceeding ought to be quashed.”

14. Equally, while exercising jurisdiction under Section 482 CrPC, the High Court cannot undertake a mini trial or decide contested factual defences as if finally adjudicating the lis. In this regard, the Supreme Court in the case of *Central Bureau of Investigation v. Aryan Singh*³ held as follows:

“As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising

²(1977) 2 SCC 699

³ (2023) 18 SCC 399



the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not."

15. Tested on the aforesaid parameters, this Court finds no ground to invoke the inherent jurisdiction. The proceeding sought to be quashed is one under Section 125 CrPC, a summary and welfare-oriented remedy intended to prevent destitution. Significantly, the earlier ex parte order dated 20.08.2008 has already been recalled, and CRP No. 133 of 2007 stands restored for fresh adjudication on merits. The parties are thus placed back before the Family Court at the proper stage where evidence can be led and findings recorded.

16. The core pleas raised by the petitioner, alleged attempt to murder, conviction, alleged adultery, suppression of facts, and the consequent disentitlement under Section 125(4) CrPC, are disputed factual defences. Equally, the wife disputes these allegations and asserts neglect, ouster, and the husband's alleged second relationship/marriage, besides contending that any conviction is under challenge in appeal. Such



assertions and counter-assertions cannot be conclusively determined in a petition under Section 482 CrPC without entering into a fact-finding exercise, which is impermissible. The Family Court is the competent forum to appreciate evidence and apply the statutory conditions and exceptions under Section 125 CrPC.

17. The petitioner's reliance on Section 125(4) CrPC, at this stage, can only operate as a matter of plea and proof before the Family Court. Disqualifications such as "living in adultery", refusal to live with the husband without sufficient reason, or living separately by mutual consent are not presumptions to be applied mechanically. Rather, they are conclusions that follow adjudication on evidence. This Court, in exercise of inherent powers, cannot pre-judge such issues merely on pleadings, particularly when the proceeding has been restored precisely to enable a merits determination.

18. This Court also notes that the maintenance proceeding has remained pending since 2007. The Family Court, while restoring the proceeding, has directed day-to-day disposal without adjournments, reflecting a conscious attempt to expedite adjudication. In that backdrop, a quashing petition instituted immediately after restoration is liable to impede the statutory process. The petitioner has an adequate opportunity to raise every permissible defence before the Family Court; the extraordinary jurisdiction under Section 482 CrPC is not to be employed to short-circuit that adjudication in a matter turning substantially on contested facts.



VI. CONCLUSION:

19. For these reasons, this Court is not persuaded that continuation of the restored maintenance proceeding, where the petitioner has full opportunity to raise his defences and lead evidence, constitutes abuse of process warranting interference under Section 482 CrPC. The petition is, therefore, liable to be dismissed, keeping open all rival contentions to be urged before the Family Court.

20. Accordingly, the CRLMC is **dismissed**.

21. The interim order, if any, passed earlier staying the proceedings is vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 27th February, 2026/