

30.03.2026
Court No.34
Item No. 3
sg

CRR 4934 of 2023
with
I.A. No. CRAN 1 of 2024, CRAN 2 of 2025

In the matter of: **Tamal Chatterjee**

...Petitioner.

Ms. Rita Patra
Ms. P.Das
Mr. Pradip Bose

...for the petitioner.

Mr. Satyam Mukherjee
Mr. Purnendu Sekhar Ghosh

...for the o.p.

1. This revisional application under Section 482 of the Code of Criminal Procedure, 1973 has been filed for quashing of entire proceeding initiated under Section 125 of the Criminal Procedure Code, pending before the learned 2nd Judicial Magistrate, Barasat.
2. The instant application is filed by the petitioner/husband against the opposite party no.2 /wife. The Learned advocate representing the petitioner submits that marriage was solemnized in the year 2018 and a female child was born from their wedlock. The Opposite party no.2 voluntarily left the matrimonial home without any cogent explanation and despite having sufficient means to maintain herself, has filed application under Section 125 Cr.P.C. only to put pressure upon the petitioner. It is further submitted that in order to have an order of maintenance, the Opposite Party no.2/applicant ought to have made out a case that either she was driven out from such matrimonial home or she had no sufficient means to maintain herself. That apart she also filed an application for custody of the child which glaringly shows

that she is not without any income as she not only can maintain herself but also to her child. Accordingly prays for quashing of the entire application. That apart the petitioner is presently jobless and hence she is not in a position to maintain herself.

3. On the other hand, Opposite Party raises vehement objection. At the outset the learned advocate has raised the issue of maintainability of the revisional application. It is submitted that the petitioner could have raised all these issues before the learned court of Magistrate by filing written objection but only to evade the said proceeding and to cause delay, has filed this revisional application. Due to the pendency of this application, no interim order is granted in connection with said proceedings till date when the proceeding was filed long back in the year 2023. Accordingly prays for dismissal of this revisional application.

4. Heard the submissions. The proceeding pending before the learned court of Magistrate was filed under Section 125 Cr.P.C by the opposite party no.2 with a prayer for an amount of Rs. 15,000/- per month as maintenance and such application was filed in the year, 2023 .The record reveals that after receiving summons present petitioner appeared before the learned court of Magistrate but did not file any written objection but filed this revisional application in the month of June, 2024.

5. On perusal of the order dated June, 2, 2024 it can be found that the Learned co-ordinate Bench specifically held that the pendency of the present revisional application will not deter the learned court to

proceed with the case. However, the submission of the Learned Advocate representing Opposite Party discloses that there is no progress and the matter was not even heard for the purpose of hearing of interim application. After hearing the rival contention it is seen that the question falls for consideration, whether any proceeding under Section 125 Cr.P.C can be quashed by exercising the inherent power under Section 482 Cr.P.C by this court or not. In this regard, it is pertinent to revisit the provision itself which starts with,

125 n:I if any person having means neglects or refuses to maintain-

(a)His wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child(not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, [xxx] as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct;

PROVIDED FURTHER that the Magistrate may, during the pendency of the proceeding regarding

monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct;

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation; For the purposes of this Chapter:-

(a)

“Minor” means a person who, under the provisions of the Indian Majority Act, 1875(9 of 1875) is deemed not to have attained his majority;

(b)

“wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.

PROVIDED that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due;

PROVIDED FURTHER that if such person offers to maintain his wife on condition of her living with him, and she refused to live with him, such Magistrate may consider any ground of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation: If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as

the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order”.

6. Primarily on perusal of the provision it can be found the provision incorporated with the object to maintain wife, children and parents who have no sufficient means of maintaining themselves. Furthermore the Learned Magistrate will pass such order of maintenance if it is proved that negligence or refusal was inexistence. It further makes provision that no wife shall be entitled to receive any allowance if without sufficient reason she refuses to live with her husband. The wife will first prove her case as to whether she is entitled for such order of maintenance.

7. The inherent power under Section 482 of the Cr.P.C. of the High Court is intended to prevent the abuse of process of the Court and to secure ends of justice. This provision can be exercised for the purpose of quashing of First Information Report/ criminal complaint/charge sheet or any order passed in connection with a criminal proceeding.

8. The question arises whether a proceeding under section 125 Cr.P.C is a criminal proceeding which can be quashed by exercising power under section 482 Cr.P.C.

On perusal of a case reported in ***Bhuwan Mohan Singh vs Meena and Others AIR 2014 SC 2875*** the Court observed that section 125 Cr.P.C. was conceived to ameliorate the agony, anguish and financial sufferings of a Woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court, and she can sustain herself and for her children if they are with her. The Hon'ble Supreme Court took note of a three Judges Bench in ***Vimla (K) vs. Vera Swamy (K) ,1991 (2) SCC 375*** while discussing about the basic purpose under Section 125 Cr.P.C opined that Section 125 Cr.P.C is meant to achieve a said purpose. The special is to prevent vagrancy and destitution. It provides a speedy remedy for supply of food, clothing and shelter to the deserted wife.

9. In ***Badsha vs Urmila Badsah Godse & Anr. (2014)1 SCC 188,*** the Supreme Court held that "the provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual, while dealing with cases under this provision, drift in the approach from "adversarial" litigation to "social context" adjudication. It was further observed that the standard of proof required in civil proceeding is preponderance of probabilities whereas in criminal prosecution conviction requires proof beyond reasonable doubt and such principle

cannot be applied per se to a proceeding for maintenance under Section 125 Cr.P.C .

10. In the case of ***Rina Kumari @Rina Devi @ Reena vs Dinesh Kumar Mahato in 2025 INSC 55***, the Hon'ble Supreme Court discussed the provision which is analogous to and continuance of Section 488 of erstwhile Cr.P.C . The Hon'ble Supreme Court discussed the decision of ***Chaturbhuj vs. Sita Bai AIR 2008 SC 530*** where it was observed that the object of maintenance proceeding is not to punish a person for his neglect but to prevent vagrancy and destitution of a deserted wife by providing her food, clothing and shelter by speedy remedy. It is decided by the Hon'ble Supreme Court that maintenance proceedings under Section 125 Cr.P.C are essentially civil in nature and should not be equated with criminal proceedings merely because they invite a penal consequence.

11. Therefore, from the above observations and the law laid down in this regard when the object and purpose of incorporation of the provision being a beneficial legislation, to provide social security and financial assistance to the spouse, child and parents, at any point of time such a proceeding initiated under Section 125 Cr.P.C. praying for maintenance, and a proceeding cannot be declared as an abuse of the process of law. Therefore in exercise of power under Section 482 Cr.P.C. even if primarily it is found that the applicant is not entitled to receive the maintenance .

12. It is settled law that the present petitioner had ample opportunity to place his case before the learned Magistrate by way of

written objection disclosing his exact income and the financial status, he is enjoying supported with affidavits disclosing assets and liability declarations in terms of celebrated decision of ***Rajnesh Vs. Neha*** reported in ***(2021) 2 SCC 324***.

Even the issue of maintainability as regard the maintenance of the wife, can very well be raised before the learned court of Magistrate who can decide that after hearing the parties. The objection to the maintainability is raised by the present petitioner being the husband as the wife left the matrimonial home without assigning any reason and that itself disentitles her from claiming any maintenance, which ought to have been raised before the learned magistrate and the said ground can no way be a reason to maintain this application under Section 482 Cr.P.C for quashing the entire proceeding under Section 125 Cr.P.C. Hence there is no merit in this application.

13. Therefore, the petitioner is directed to appear before the learned court of Magistrate and must participate in the proceeding and filed his written objection as directed by the learned Magistrate.

14. Accordingly this criminal revisional application stands dismissed without cost.

15. The Learned Magistrate is directed to make all endeavour to dispose of the proceeding which is pending since 2023 without granting any unnecessary adjournments to either of the parties.

16. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]