

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 1438 OF 2024

WITH

CRAN/3/2025

WITH

CRAN/4/2026

SAMAR PAUL

VS.

THE STATE OF WEST BENGAL AND ANR.

For the Petitioner : Mrs. Sreeparna Das, Adv.
Mr. Amitabrato Hait, Adv.
Ms. Ritu Das, Adv.

For the Opposite Party No. 2 : Mr. Dr. Achin Jana, Adv.
Mr. Prasayan Mukherjee, Adv.
Mr. Subhajit Mukherjee, Adv.
Mr. Prosenjit Ghosh, Adv.
Ms. Chetna Rustagi, Adv.

Heard on : 7th September, 2026.

Delivered on : 7th September, 2026.

Judgment (Oral)

UDAY KUMAR, J.:

1. This criminal revisional application under Section 482 read with Sections 397 and 401 of the Code of Criminal Procedure, 1973, brings

to the fore a deeply acrimonious battleground of matrimonial discord, parallel civil litigation, and criminal cross-proceedings.

- 2.** The petitioner-husband is before this Court invoking its revisional jurisdiction to assail the legality, propriety and irregularity of the ongoing proceedings in Miscellaneous Case No. 41 of 2019 under Section 125 of the Code of Criminal Procedure, alongside the consequential execution proceedings in Miscellaneous Execution Case No. 61 of 2021 pending before the learned Judicial Magistrate, 1st Court at Uluberia, Howrah. Specifically, the challenge is directed against the interim maintenance order dated October 15, 2019, the subsequent order dated October 6, 2023, repelling the plea of non-maintainability predicated on an ex parte divorce, and the order dated March 2, 2024, culminating in the issuance of coercive distress warrants on April 4, 2024.
- 3.** The foundational canvas of facts discloses that the marriage between the petitioner, Samar Paul, and Opposite Party No. 2, Jyotsna Paul, was solemnized on February 11, 1995, in accordance with Hindu rites and customs. Two children were born of the wedlock: a son, Aditya Paul, born in 1996, and a daughter, Sangita Paul, born on October 15, 1999. Initially, the family resided in rented accommodation, but by 2001–2003, land was acquired and a residential structure erected with the assistance of the wife's family, alongside the setting up of the petitioner's business under the nomenclature "Paul Enterprise." Over time, marital friction escalated dangerously, leading to an ugly flashpoint on July 15, 2018, which triggered Uluberia P.S. Case No. 599

of 2018 under Sections 341/325/326A/354/34 of the Indian Penal Code at the instance of the wife, alleging brutal physical assault and acid-related violence. Concurrently, the petitioner lodged Uluberia P.S. Case No. 577 of 2018 alleging ouster, followed by the institution of Title Suit No. 272 of 2018 and SARFAESI proceedings before the Debts Recovery Tribunal concerning mortgaged bank properties.

4. Amidst this dense thicket of litigation, Opposite Party No. 2 instituted Miscellaneous Case No. 41 of 2019 claiming maintenance. By an order dated October 15, 2019, the learned Trial Magistrate granted modest interim maintenance of Rs. 3,500/- per month in aggregate, bifurcated as Rs. 1,500/- for the wife and Rs. 2,000/- for the daughter. Meanwhile, the petitioner instituted Matrimonial Suit No. 404 of 2018 for dissolution of marriage. Owing to the wife's absence, elicited by her preoccupation with her ailing brother at Christian Medical College, Vellore, the suit proceeded ex parte, culminating in a decree of divorce granted on June 20, 2022.
5. The wife promptly countered by filing Misc. Case No. 13 of 2022 under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree, which remains sub judice. As maintenance arrears mounted, the wife launched Miscellaneous Execution Case No. 61 of 2021. The petitioner's repeated attempts to scuttle the maintenance proceedings on the strength of the supervening divorce were summarily turned down by the trial court on October 6, 2023, and March 2, 2024, culminating in the issuance of distress warrants on April 4, 2024, which brings the petitioner to this Court.

6. Ms. Sreeparna Das, Learned counsel appearing for the petitioner argues with considerable vehemence that the continuation of the maintenance and execution proceedings is an absolute abuse of the judicial process. The sheet anchor of his submission is that the marriage having been dissolved by a competent court on June 20, 2022, the spousal nexus stands extinguished. Furthermore, it is contended that the daughter, Sangita Paul, crossed the threshold of majority back in October 2017, long before the Section 125 petition was even filed, and being a normal, healthy individual pursuing education, she falls completely outside the narrow statutory parameters of Section 125(1)(c) of the Code of Criminal Procedure.
7. Expanding her attack, learned counsel for the petitioner urges that the petitioner has been completely ousted from his matrimonial home, has lost his livelihood at "Paul Enterprise," and is now reduced to surviving on his aged mother's pension. He submits that the coercive execution warrants have been issued in flagrant disregard of the mandatory asset disclosure directives laid down by the Hon'ble Supreme Court in *Rajnish v. Neha* [(2021) 2 SCC 324]. He concludes with a prayer to set aside the interim order or, alternatively, to stay execution until the main case is tried on evidence.
8. On the contrary, Dr. Achin Jana, learned counsel appearing for Opposite Party No. 2 mounts a robust defence of the impugned orders. He contends that under Explanation (b) to Section 125(1) of the Code of Criminal Procedure, a "wife" expressly includes a woman who has been divorced by her husband and has not remarried. Since Opposite Party

No. 2 has not contracted a second marriage, her statutory right to claim and execute maintenance remains fully alive and unblemished, irrespective of the ex parte nature of a divorce decree whose validity is itself under a cloud in pending recall proceedings.

9. Controverting the petitioner's narrative of destitution and loss of livelihood, learned counsel for the opposite party submits that this picture of penury is a complete fabrication. He asserts that the petitioner continues to run his business from his commercial shops, draws a steady income, and is merely shedding crocodile tears to evade a legal duty, while comfortably possessing the financial muscle to sponsor multiple layers of litigation across forums. As regards the major daughter, he submits that an unmarried daughter is entitled to paternal maintenance, that there is no concrete proof of independent income on her record, and that both mother and daughter are currently surviving solely on the charity and shelter of the wife's elderly parents.
10. Finally, while candidly acknowledging that the interim order of 2019 preceded the guidelines in *Rajnish v. Neha (supra)*, learned counsel for the opposite party makes a fair and pragmatic submission that if the petitioner demonstrates bona fides by depositing at least 50 percent of the genuine accumulated arrears due to the wife, the opposite party would have no objection to a stay of the execution warrants, provided the trial court is simultaneously directed to bring the main maintenance trial to a logical conclusion within a strict time frame after taking on record the mandatory affidavits of assets and liabilities.

11. Having given my anxious consideration upon the rival submissions and scrutinized the material on record, the following core questions fall for determination:

- i. Whether a maintenance proceeding under Section 125 of the Code of Criminal Procedure and its execution stand extinguished solely by virtue of a supervening ex parte decree of divorce obtained by the husband?
- ii. Whether an unmarried major daughter who attained majority prior to the institution of the petition and is pursuing studies, devoid of any physical or mental abnormality, is entitled to claim or continue receiving maintenance under Section 125 of the Code of Criminal Procedure?
- iii. Whether the executing court erred in law by unleashing coercive distress warrants without enforcing the mandatory asset disclosure protocol mandated by the Hon'ble Supreme Court?

12. Examining the statutory design, Section 125 of the Code of Criminal Procedure is a vital instrument of social justice crafted to combat vagrancy and destitution by compelling persons endowed with sufficient means to support their dependents.

13. Dealing with the first issue concerning the status of a divorced wife, I find no legal blemish in the approach of the trial courts. Explanation (b) to Section 125(1) explicitly enacts that "wife" includes a woman who has been divorced by her husband and has not remarried. The legislative

intent is unmistakable, the dissolution of a marriage, even though a decree secured by the husband, does not ipso facto wipe out his statutory obligation to maintain his former wife, provided she remains unmarried and unable to maintain herself.

14. The petitioner's reliance on the ex parte divorce decree dated June 20, 2022, to argue a total cessation of liability runs directly counter to the settled exposition of law. A three-judge Bench of the Hon'ble Supreme Court in *Vanamala v. H.M. Ranganatha Bhatta* [(1995) 5 SCC 299] authoritatively interpreted Explanation (b) to hold that a divorce does not extinguish the husband's maintenance liability, which continues in full force until the wife contracts a second marriage. This principle was subsequently reinforced in *Rohtash Singh v. Smt. Ramendri* [(2000) 3 SCC 180], where the Apex Court held that the statutory status of a "wife" under Explanation (b) survives a husband's divorce decree for all practical purposes of Section 125 until she takes a new spouse.
15. The factual disputes concerning rental incomes, property ouster, and the merits of the pending setting-aside application under Order 9 Rule 13 of the Code of Civil Procedure (Misc. Case No. 13 of 2022) are matters meant for trial. This Court, while exercising extraordinary jurisdiction under Section 482 of the Code of Criminal Procedure, cannot embark upon a mini-trial or resolve disputed questions of fact at the threshold stage, keeping in view the classic parameters laid down in *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335].
16. Turning to the second issue regarding the maintainability of maintenance in favor of the major unmarried daughter, Sangita Paul,

the statutory scheme demands strict interpretation. While Section 125(1)(b) caters to minor children, Section 125(1)(c) draws a rigid line for major children, restricting the grant of maintenance exclusively to a major child who, “by reason of any physical or mental abnormality or injury, is unable to maintain itself.”

17. The legal frontier on this score stands sealed by the Hon’ble Supreme Court in *Abhilasha v. Parkash & Ors.* [(2021) 13 SCC 99] wherein it was categorically held that the provision of Section 125 Cr.P.C. limits the claim of maintenance of major children strictly to clause (c). While an unmarried Hindu daughter possesses a civil right under Section 20(3) of the Hindu Adoptions and Maintenance Act, 1956, to seek maintenance from her father until marriage, that remedy must be pursued through appropriate civil proceedings under personal law. It cannot be stretched to override the explicit legislative embargo embedded in summary proceedings under Section 125(1)(c) of the Code of Criminal Procedure. Here, the daughter attained majority in October 2017, prior to the filing of the petition in 2019, and is a healthy individual without any physical or mental disability. Her inclusion in the maintenance order is therefore wholly without jurisdiction and cannot be sustained in law.

18. Adverting to the third facet concerning the execution of arrears in light of *Rajnesh v. Neha (supra)*, the Hon’ble Supreme Court sought to eradicate systemic guesswork and concealment by laying down binding pan-India directions enshrined in paragraph 72 to 81 of the judgment mandating comprehensive asset disclosure:

“72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India;

72.1. (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [Kaushalya v. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915] . On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would

be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections ("EWS"), or are living below the poverty line ("BPL"), or

are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

72.11. (k) A professional Marriage Counsellor must be made available in every Family Court.

Permanent alimony

73. Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the court concerned, for fixing the permanent alimony payable to the spouse.

74. In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.

75. Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family.

76. If there are any trust funds/investments created by any spouse/grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.

III. Criteria for determining quantum of maintenance

77. *The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.*

78. *The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7; Refer to Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290].*

79. *In Manish Jain v. Akanksha Jain [Manish Jain v. Akanksha Jain, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712] this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for*

her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339]

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. [Chaturbhuj v. Sita Bai, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356] The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.”

- 19.** Although the interim order here originated in 2019 prior to the 2021 mandate, the sharp factual chasm, where the petitioner pleads total

ruin while the opposite party alleges flourishing business operations and active litigation sponsorship, cannot be bridged through guesswork. Execution under Section 125(3) cannot degenerate into a blind, punitive tool, yet a defaulter cannot stall process without demonstrating bona fides. Evaluating the fair stance struck by the opposite party's counsel, this Court considers it appropriate to condition any stay of execution upon a substantial deposit of arrears due to the wife, coupled with an expedited trial.

20. Resultantly, the criminal revisional application, C.R.R. 1438 of 2024, is allowed in part, with the following directions:

- i. The challenge against the continuation of Miscellaneous Case No. 41 of 2019 and Miscellaneous Execution Case No. 61 of 2021 in respect of Opposite Party No. 2 (the wife, Jyotsna Paul) is dismissed, affirming her statutory status and entitlement as a divorced wife who has not remarried, pursuant to Explanation (b) to Section 125(1) of the Code of Criminal Procedure.
- ii. The interim maintenance award and all consequential execution processes, including distress warrants issued in favour of the daughter, Sangita Paul, are hereby set aside, as she attained majority prior to the litigation and falls outside Section 125(1)(c) Cr.P.C. pursuant to the law laid down in *Abhilasha v. Parkash (supra)*.
- iii. The coercive execution proceedings and distress warrants in Miscellaneous Execution Case No. 61 of 2021 shall

remain stayed, subject to the condition that the petitioner deposits 50 percent of the genuine accumulated arrear amount (restricted strictly to the wife's share of interim maintenance, excluding the daughter) before the learned Trial Court within four weeks from this date. In default, the trial court shall be at absolute liberty to proceed with execution in accordance with law.

- iv. The learned Trial Magistrate is directed to make endeavour to dispose of Miscellaneous Case No. 41 of 2019 by a reasoned final order as expeditiously as possible, untrammelled by any preliminary observations made herein.

21. There shall be no order as to costs.

22. Interim order, if any, stands vacated.

23. All pending connected applications are also disposed of accordingly.

24. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance with requisite formalities.

(UDAY KUMAR, J.)

Ali & S. Kundu
(AR.CT.)