

HIGH COURT OF TRIPURA
AGARTALA
CRL.REV.P. NO. 23 OF 2023

1. Shri. Milanmoy Dewan,
S/O. Late Nripendra Lal Dewan,
Resident of C-53,
ONGC South Colony, South Badarghat,
P.O. ONGC,
Agartala, Pin-799014

.....Petitioner(s)

Versus

1. Smt. Sharmistha Dewan (Ghosh),
W/o. Milanmoy Dewan,
C/o. Satyendra Nath Ghosh,
Resident of Krishnanagar Main Road,
P.O. Agartala, P.S. West Agartala,
Pin- 799001

.....Respondent(s)

For Petitioner(s)	:	Mr. C.S. Sinha, Adv.
For Respondent(s)	:	Mr. P. Roy. Barman, Sr. Adv. Mr. S. Bhattacharjee, Adv.
Date of Hearing & Judgment and Order	:	22.12.2023
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

This revision petition is filed under Section 397 read with section 401 of the Code of the Criminal Procedure (Cr.P.C.) read with Section 19 of the Family Courts Act, 1984 against the judgment passed by Learned Judge, Family Court, Agartala, West Tripura in connection with case No. Crl. Misc 647 of 2019.

02. Brief facts leading to this revision petition are as under:

The respondent Smt. Sharmistha Dewan(Ghosh) as petitioner filed one maintenance petition under Section 125 of Cr.P.C. against her husband i.e. the present petitioner, Shri Milanmoy Dewan before the Learned Judge, Family Court Agartala, West Tripura which was numbered as Crl. Misc. 647 of 2019. The respondent (wife) in her maintenance petition stated that her marriage was solemnized /registered under Special Marriage Act 1954 on 17.10.2003 with the present petitioner. While she married the petitioner husband, she had a daughter from her past marriage who was 19 years old and before her marriage with the present petitioner her earlier marriage was dissolved by a decree of divorce granted by Learned District Judge, West Tripura on 17.01.2001. The petitioner husband also had a daughter from his first wife who died and after the death of his first wife the petitioner husband married the present respondent (wife). No child was begotten to their present marriage.

03. The respondent (wife) had brought several allegations of cruelty against the present petitioner and it was alleged by her that soon after the marriage they lived together as husband and wife peacefully for a period of two years and after that their mal-adjustment /troubles started.

According to the respondent wife, after her marriage with the present petitioner she kept her daughter with her parents for a period of three years and thereafter she brought her daughter back to her matrimonial home with the consent of the present petitioner husband. The present petitioner was that time under ONGC as Asst. Engineer who later on elevated to the post of Chief Engineer in ONGC Tripura Asset. After that he went to Mumbai for off-shore duty and during his off duty period for fourteen days he used to visit Tripura time to time at Agartala to see the respondent wife and the children at Agartala but the respondent wife never neglected in taking care of her husband and his daughter. Her husband was a Buddhist by religion and she was Hindu and the present petitioner used to interfere with her religious practice for which she used to get hurt and when the present petitioner was posted in ONGC Tripura asset that time also the petitioner husband attended his side duty and during the absence of the petitioner husband, she used to take care of her daughter and also the minor daughter of the petitioner husband and the minor daughter of the petitioner husband performed well in examination and she could get admission to M.B.B.S course in TMC and by this time she had completed her final semester of the course. The food habit of the respondent wife and petitioner husband was different and the petitioner husband was very addicted to dry fish and

pork and on the other hand, the respondent (wife) suffered from IBS problem resulting which she could not take any dry fish or pork but the petitioner husband used to insist her to follow his food habits. He also did not allow her to cook some dishes at her own taste and choice. It was the further case of the respondent wife that if there was any difference of opinion amongst them he was not ready to accept different of opinion and very often on difference of opinion of any domestic issue, the petitioner husband used to assault the respondent wife frequently and for that she informed her parents and near relatives about the assault being committed to her by the petitioner husband and on so many occasions her parents and relatives talked with petitioner husband and requested him not to cause any physical and mental torture upon the respondent wife and in the month of 2016 a quarrel took place in between the daughter of the respondent wife and the petitioner husband over an issue of electric extension cord to which the respondent wife interfered to specify the situation but the petitioner husband repeatedly slapped the respondent wife as a result of which her spectacles were broken and she suffered black patch over her nose and that time the daughter of the petitioner husband Fortuna was at home and she being a doctor examined Ritika and gave her First Aid and Fortuna informed the matter to the brother of the respondent wife who was in

U.S.A, over telephone and on getting such information the parents and close relatives of the respondent wife came to her house and arranged the treatment of the respondent wife. During last 3 years the petitioner husband did not contribute anything towards the maintenance of the respondent wife for which she had to maintain herself for taking financial help from her father and in case of demand the petitioner husband used to taunt and humiliate her saying that to claim money from her brother and by this act the respondent wife became a psychiatric patient and had to consult Dr.Santanu Ghosh, Psychiatric, TMC and undergo counseling session for the recovery. The respondent wife further asserted that the petitioner husband did not allow her to sit for TCS examination and also for taking chance for getting job at Pramananda Vidyamandir and Holy Cross School and also to attend coaching classes on the pretext that it will affect the upbringing of his daughter. Thus, the petitioner husband was not providing the minimum basic provisions to her and thereafter she took a private job at O.N.G.C, Montessori School from where she used to get Rs. 8000/- per month and from her meagre amount she had to maintain her daughter Ritika. On 26.07.2019 the petitioner husband raised hue and cry regarding the domestic help when the respondent wife convinced the petitioner husband that the domestic help did not commit any wrong but the

petitioner husband was not ready to hear the respondent wife and thus, petitioner husband became furious and directed a punch towards her face and the respondent wife anyhow by her forearm saved her face but she suffered the punch on her forearm. Again the petitioner husband tried to gave a punch on her face and on that occasion the respondent wife saved her face and thereafter the petitioner husband dragged out the respondent wife from her matrimonial home and blocked the door from inside and finding no option she had to take shelter in her parents' house and again at 2 p.m she returned back to her home and found the home under lock and key. She tried to contact her husband i.e. the petitioner by ringing him thrice but the petitioner husband did not receive her calls. The matter was informed to Principal ONGC School and to her parents and on the following day she had to lodge a complaint at Amtali P.S. and also informed the matter to Tripura Commission for Women and on 26.07.2019 the respondent wife attended ONGC Dispensary for her treatment. The respondent wife was asked to attend TMC and on the following day she attended Dr.S. Ghosh, TMC and referred to Orthopedic Department. Thus, according to respondent wife, the petitioner husband deserted the respondent wife since 26.07.2019 and since then she had been living in her parents' house. It was the further case of the respondent

wife that the monthly salary of petitioner husband was Rs. 3 lakhs and he was getting monthly rent of 3BHK Flat in Rose Valley Apartment, Lichubagan at the rate of Rs.22,000/- per month and thus she claimed maintenance at the rate of Rs.1 lakh per month from her husband i.e. the present petitioner of this revision petition. The present petitioner contested the proceeding denying the grounds asserted by the respondent wife, rather he took the plea that the respondent wife suppressed the fact of having a child with her earlier husband before marrying the present petitioner and after 3 years of marriage when the present petitioner husband was aware of the fact, that time the respondent wife had brought her child to live with her and insisted him to adopt her legally and when he denied her proposal, the respondent wife, that time left him voluntarily and filed maintenance case under Section 125 of Cr.P.C.

04. Before the Learned Court below, both the parties have adduced their evidences and after hearing both the sides the Learned Judge, Family Court passed an order on 31.01.2023 directing the present petitioner husband to pay monthly maintenance allowance at the rate of Rs. 50,000/- per month to the respondent wife w.e.f 01.01.2023, which is presently under challenge before this Court.

05. In course of hearing Learned Counsel, Mr. C.S. Sinha, appearing on behalf of the petitioner husband submitted that Learned Court below in deciding the case did not consider the fact raised by the husband petitioner that he could know the existence of one daughter of the respondent wife of her earlier marriage after 3 years and thus, the respondent wife suppressing the said fact cheated him and applied fraud upon him. He also submitted that the respondent wife voluntarily left her matrimonial home as such she was not entitled to get any maintenance but the Learned Court below did not consider the said fact. Learned Counsel further drawn the attention of the Court referring the final order of the Learned Court below, that there is no observation/ findings as to how Learned Court determined the quantum of maintenance and in absence of any proper findings/ observation regarding quantum of maintenance to be awarded, there is no scope to sustain that order and urged before the Court to set aside the order passed by Learned Court below. He also referred some citations which would be discussed in due course.

06. On the contrary, Learned Senior Counsel, Mr. P. Roy. Barman, assisted by Mr. Samarjit Bhattacharjee submitted that the Learned Court below rightly passed the final order fixing maintenance at the rate of Rs. 50,000/- per month. He also submitted that the grounds as projected in

the revision petition are vague and cannot be considered because according to Learned Senior Counsel if for argument sake the husband petitioner could know the existence of a daughter of respondent wife after 3 years of marriage in that case he could challenge that marriage. But since from the year 2003 to 2019, no legal step was taken on his part challenging the marriage. So, this part cannot be legally accepted. Furthermore, the petitioner husband is holding a good post in O.N.G.C and he is drawing salary more than Rs. 3 lakhs per month. So, considering the huge income of the petitioner husband Rs. 1 lakh was supposed to be awarded in his favour. But the Learned Court below only awarded Rs. 50,000/- and urged before this Court to enhance the quantum of maintenance awarded by the Learned Trial Court dismissing the revision petition. Learned Senior Counsel further referred few citations and referring those citations he tried to convince the Court as to why this present revision petition is not maintainable. I have heard detailed arguments of Learned Counsels of both the parties and gone through the record of the Learned Court below very carefully.

07. Admittedly, at the time of deciding the case Learned Court below determined the following points for decision:

(i) Whether the petitioner is the legally married wife of the OP?

(ii) Whether the petitioner has left her matrimonial home unreasonably and voluntarily?

(iii) Whether the OP-husband having sufficient means neglects or refuses to maintain the petitioner?

(iv) Whether the petitioner is entitled to maintenance from the OP and if so, to what extent?

08. Further it also appears that to substantiate the petition, the respondent wife has adduced 3 witnesses. On the other side, the petitioner husband also has adduced 4 witnesses in support of his defence.

09. It is also on record that during continuation of the proceeding before the Learned Court below, the respondent wife submitted one application for granting interim maintenance till disposal of the original proceeding and by order dated 07.02.2020 the then Learned Family Judge rejected the petition for granting interim maintenance. Challenging that order, the respondent wife preferred a revision petition before the High Court and this Court by judgment dated 17.02.2021 was pleased to set aside the order dated 07.02.2020 passed by the Learned Family Judge in Crl. Misc. No. 647 of 2019 and awarded interim maintenance at the rate of Rs. 50,000/- per month w.e.f. 07.02.2020 till disposal of the original proceeding in favour of respondent wife. Challenging that order the present petitioner husband preferred SLP before the Hon'ble

Supreme Court and the Hon'ble Supreme Court by order dated 28.04.2021 in Special Leave to Appeal (Crl.) No. 3219/2021 was pleased to dismiss that petition upholding the order of this Court and directed the Learned Trial Court to refer the matter to the mediation in case any petition is filed. But finally no settlement could take place by way of mediation.

10. As referred by Learned Counsel, Mr. C.S. Sinha, reported in **AIR 2003 Mad 212, I (2003) DMC 799, (2003) I MLJ 752** in **Manokaran @ Ramamoorthy vs. M. Devaki** dated 21.02.2003, Hon'ble the Supreme Court in Para No.5 has been observed as under:

"5. There is no dispute that the petition has been filed by the respondent/wife claiming maintenance pendente lite and expenses of the proceedings under S. 24 of the Hindu Marriage Act. Section 24 reads thus:

"24. Maintenance pendente lite and expenses of proceedings.- Where in any proceedings under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the Court to be reasonable."

The above provision would show that for grant of maintenance pendente lite, the party should not have sufficient independent income for her/his support. In other words, if it is found that the applicant has found sufficient income for his/her support, no amount can be allowed as maintenance pendente lite as per Section 24 of the Act. While construing the very same provision in similar circumstance, A.S. Venkatachamoorthy, J. in Kumaresan v.

Aswathi [(2002) 2 Mad LJ 760 has arrived at a similar conclusion. Now I shall consider whether the respondent/wife has any independent income which is sufficient for her survival and for the proceedings. In para 10 of the counter statement filed by the wife in O.P. No. 1310/2000, she herself admitted that,Now the respondent (wife) had got her present job in private body and running her life with the salary and staying with her brother...". The above statement shows that she is employed in a private concern, getting salary and staying with her brother. In the application for interim maintenance, the husband has filed a counter affidavit wherein he has specifically stated that his wife is drawing a salary of Rs.4,500/- from a private concern. In para 5 of the counter affidavit it is stated that,

"5. The respondent denies all the allegations in para 5 and put the petitioner to strict proof of the same. The averment about I am literally suffering without financial assistants is put to strict proof since this petitioner is working in the organization Kumari Neruvanam at No. 40, Venkat Narayanan Road, T. Nagar, Chennai 600 017, and drawing a salary of Rs.4500/- she also disclosed this before the All Women Police Station, Thousand Lights, and this petitioner also admitted in her counter statement that she is working in private and running her life. But contradictory to her statement in counter statement now this petitioner came forward with a plea that she is without financial assistance. This petitioner is working as typist and main organizer for a programme in Neingalum Pachalar Agalam a programme telecaste in RAJ TV during Sunday 8.00 A.M, from her company Kumari Neruvanam. The averment about that this respondent is owner of the "Venkataswari Turning Works" at Muthumariamman Koil Street, Anna Nagar, Chennai-600 040 is put to strict proof since this respondent is not the owner of the said company and A. Loganathan is the owner of the said Turning works and this respondent is working in Senthil Auto Garage at Annai Sathya Nagar, Anna Nagar (East) Chennai-600 102, and drawing a salary of Rs.2000/- and this respondent need not to give any monetary assistance to the petitioner for her claim."

The above averment shows that the petitioner herein/husband is working in Senthil Auto Garage, Annai Sathya Nagar, Chennai-102 and drawing a salary of Rs.2000/- per month. Likewise, it is also seen that the respondent herein/wife is working in Raj T.V and drawing a salary of Rs.4,500/-. Though the said aspect

has not been substantiated, I have already referred to the admission of the respondent herein in her counter statement filed in the main O.P.1310/2000 wherein she admitted that she secured a private job and is getting salary and staying with her brother. On the other hand, it is established particularly from Ex. R-1, the petitioner herein is getting only Rs.70/- per day or Rs.2000/- per month by working in Senthil Auto Garage. I have already referred to the language used in Section 24 which makes it clear that for grant of maintenance pendente lite the party should not have sufficient independent income for her support. In the light of the materials available, particularly the admitted case of the respondent/wife, she is employed in a private Satellite T.V. and earning for her livelihood staying with her brother, it cannot be construed that she is not having sufficient independent income. The Family Court lost its sight to consider the above material aspect."

Referring the said citation, Learned Counsel for the petitioner husband submitted that Learned Trial Court below at the time of coming to the conclusion did not give any reasonable finding as to how the Learned Court decided to fix Rs. 50,000/- per month as maintenance allowance for which the judgment is liable to be interfered with. He also submitted that no specific issue/point was determined by the Learned Trial Court regarding suppression of the fact of having one girl daughter of the respondent wife at the time of her marriage with the present petitioner and just on the basis of mere conjecture and surmise, delivered the final order/judgment. He further submitted that the respondent wife is drawing Rs. 10,000/- per month from her place of employment which has now increased to Rs. 15,000/- although there is no such evidence on record like that but the Learned Court below did not consider the said fact and

awarded exorbitant amount which has caused prejudice to the petitioner husband.

11. Learned Counsel further referred another citation and submitted that in **Sanjay Sudhakar Bhosale vs. Khristina**, reported in **(2008) 3 AIR Bom R 325**, w/o Sanjay Bhosale in Bombay High Court dated 08.04.2008 in Para Nos. 9, 10, 11, 12 and 13 observed as under:

"9. There is solitary and interested version of PW-Khristina in support of her application for separate maintenance allowance. Her version gives inconsistent account about so-called unlawful demand. She deviated from her pleadings. The findings of the learned Magistrate are based on due appreciation of the evidence. The further development may be noticed. The petitioner filed an application for restitution of conjugal rights in the Family Court at Pune. His application (P.A. No. 500 of 2002) is allowed by the Family Court on 21st July 2003. So far, the respondent (wife) has not challenged the Judgment of the Family Court. The Family Court raised a specific issue as follows:

"Whether the petitioner proves that the respondent without any reasonable excuse has withdrawn from the society?"

10. The learned Judge of the Family Court recorded an affirmative finding on the said issue. It is manifest, therefore, that not only the learned Judicial Magistrate, on appreciation of the evidence tendered by the spouses, came to the conclusion that she left his house, probably under burden of the domestic chores, but the civil Court also found that she is guilty of deserting him without any reasonable excuse.

11. The impugned Judgment reveals that the learned Sessions Judge undertook reassessment of the entire evidence though he was supposed to exercise the revisional jurisdiction. The, learned Sessions Judge did not find any particular fault in the process of appreciation of evidence, as done by the learned Magistrate. The relevant observations of the learned Sessions Judge may be reproduced as follows:

"14. On carefully scrutinising the evidence of the applicant and opponent it will reveal that the matrimonial life of the applicant was not smoothly going on due to some quarrel and ultimately, it was resulted into leaving the house of

opponent, by the applicant. Observations made by the lower Court that the applicant had stayed for short period in the house of the opponent and therefore, there is no possibility of ill-treatment, does not appear to be proper and legal in the circumstances of the case. When the applicant has positively stated that she was subjected to ill-treatment not only that but she has lodged complaint in Yerwada Police Station, this will prima-facie give rise that she was ill-treated and, therefore, she has left the house of the opponent. Provisions of Section 125 of Code of Criminal Procedure need not require that there must be a strict proof of cruelty.

12. The above observations of the learned Sessions Judge would indicate that he accepted version of the wife only because she gave positive statement that she was subjected to ill-treatment and had lodged the complaint at Yerwada Police Station. As stated before, there is no scintilla of evidence to show that really she had lodged a complaint about the matrimonial cruelty. Nor her so-called positive statement finds support from her pleadings. In this view of the matter, it is difficult to countenance the findings of the learned Sessions Judge. Her mere statement could not have been taken as gospel truth as regards neglect and refusal of the husband to maintain her. It is overlooked by the learned Sessions Judge that within a short span of the marriage, the wife left his company and no notice was given within a reasonable time by her, seeking restitution of the conjugal rights.

13. The Apex Court, in "Deb Narayan Haider v. Smt. Anushree Haider", (2003) 3 B Cr C 286 : ((2003) 11 SCC 303 : AIR 2003 SC 3174). held that the appellate Court or revisional Court while setting aside findings recorded by Court below must notice those findings and where the findings are of facts, evidence on record must be discussed, which should justify reversal of findings recorded by the Court below. The Apex Court held that when the maintenance application of the wife was rejected by the learned Magistrate, holding that she had on her own left the matrimonial home, the High Court was not justified in reversing such findings recorded by the trial Court and to grant maintenance to the wife."

Referring the above, Learned Counsel for the petitioner submitted that mere statement of the respondent wife could not have been taken as a gospel truth as regards neglect and refusal of the husband petitioner to maintain her

which was over looked by the Learned Trial Court. Finally, Learned Counsel has drawn the attention of this Court to allow the revision petition and to set aside the order of the Learned Trial Court and to pass appropriate order.

12. On the contrary, Learned Senior Counsel Mr. P. Roy Barman, assisted by Mr. S. Bhattacharjee in course of hearing referred few citations one by one and urged before the Court to consider the principles of the said citations in deciding this present revision petition.

13. In **Amit Kapoor vs Ramesh Chander and Another** in Criminal Appeal No. 1407 of 2012 dated 13.09.2012 reported in **(2012) 9 SCC 460** in Para No. 12, Hon'ble Supreme Court observed as under:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

Referring the same, Learned Counsel submitted that under Section 397 of Cr.P.C. the power of the Court is very limited. The Court is to satisfy itself as to the legality, irregularity and impropriety of any proceeding or order of the Court below. But in the present case from the order of the Learned Trial Court the petitioner husband could not satisfy as to how the order passed was erroneous.

14. In the **State of Kerala vs. Puttumana Illath Jathavedan Namboodiri** in Criminal Appeal No. 554 of 1995 dated 11.02.1999 reported in **(1999) 2 SSC 452** in Para No. 5, Hon'ble the Supreme Court observed as under:

"5. Having examined the impugned Judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In Its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned Judgment of the High Court from the aforesaid stand point, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining

several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned Judgment of the High Court is wholly unsustainable in law and we, accordingly set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence."

Referring the same, Learned Senior Counsel further drawn the attention of this Court that in revisional jurisdiction High Court can call for and examine the record of any proceeding for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order and the jurisdiction of the High Court is supervisory jurisdiction only for correcting miscarriage of justice and said revisional power cannot be equated with the power of an appellate Court nor it can be treated as a second appellate jurisdiction. And also submitted that it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion when the evidence has already been appreciated by the Learned Trial Court, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

15. In **Pyla Mutyalamma Alias Satyavathi vs. Pyla Suri Demudu and Another**, in Criminal Appeal No. 219 of 2007 dated 09.08.2011 reported in **(2011) 12 SCC 189**,

Hon'ble the Supreme Court in Para No. 16 is further observed:

"16. In a revision against the maintenance order passed in proceedings under Section 125 Cr.P.C., the Revisional Court has no power to re-assess evidence and substitute its own findings. Under revisional jurisdiction, the questions whether the applicant is a married wife, the children are legitimate/illegitimate, being pre-eminently questions of fact, cannot be reopened and the Revisional Court cannot substitute its own views. The High Court, therefore, is not required in revision to interfere with the positive finding in favour of the marriage and patronage of a child. But where finding is a negative one, the High Court would entertain the revision, re-evaluate the evidence and come to a conclusion whether the findings or conclusions reached by the Magistrate are legally sustainable or not as negative finding has evil consequences on the life of both child and the woman. This was the view expressed by the Supreme Court in *Santosh v. Naresh Pal* (1998) 8 SCC 447, as also in *Pravati Rani Sahoo v. Bishnupada Sahoo*. Thus, the ratio decidendi which emerges out of a catena of authorities on the efficacy and value of the order passed by the Magistrate while determining maintenance under Section 125 Cr.P.C. is that it should not be disturbed while exercising revisional jurisdiction."

Referring the same, Learned Senior Counsel also drawn the attention of this Court that revisional Court has no power to re-assess evidence and substitute its own findings. The High Court is therefore not required in revision to interfere with the positive findings. But where the finding is a negative one, the High Court would entertain the revision, re-evaluate the evidence and come to a conclusion whether the findings or conclusion reached are legally sustainable or not. Here in the case at hand, according to Learned Senior Counsel, Learned Trial Court after elaborate discussions

came to a positive finding. So, at this stage there is no scope to interfere to the findings of Learned Trial Court.

16. In **Badshah vs. Urmila Badshah Godse and Another** in Criminal Miscellaneous Petition No. 19530 of 2013 dated 18.10.2013 reported in **(2014) 1 SCC 188**, Hon'ble the Supreme Court further observed in Para Nos. 14 and 20 observed as follows:

"14. Of late, in this very direction, it is emphasized that the courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

"It is, therefore, respectfully submitted that 'social context judging' is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social- economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication."

20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in *Heydon Case* (1584) 3 Co Rep 7a which became the historical source of purposive interpretation. The court would also invoke the legal maxim of construction *ut res magis valeat quam pereat*, in such cases i.e. where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the

system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 Cr.P.C., such a woman is to be treated as the legally wedded wife.”

Referring the aforesaid citation, Learned Counsel Mr. S. Bhattacharjee again has drawn the attention of this Court that considering the nature of the present proceeding being social justice adjudication, the Court should take lenient view in settling the case in favour of the respondent wife.

17. In **Shamima Farooqui vs. Shahid Khan** in Criminal Appeals Nos. 564-65 of 2015 dated 06.04.2015 reported in **(2015) 5 SCC 705**, Hon’ble the Supreme Court in Para Nos. 16, 17 and 20 observed as under:

“16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In *Chaturbhuj v. Sita Bai* (2008) 2 SCC 316, it has been ruled that (SCC p.320, para 6):-

“6. ... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Capt. Ramesh Chander Kaushal v. Veena Kaushal* (1978) 4 SCC 70 falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the

deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* (2005) 3 SCC 636."

17. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

20. In the instant case, as is seen, the High Court has reduced the amount of maintenance from Rs.4,000 to Rs.2,000. As is manifest, the High Court has become oblivious of the fact that she has to stay on her own. Needless to say, the order of the learned Family Judge is not manifestly perverse. There is nothing perceptible which would show that order is a sanctuary of errors. In fact, when the order is based on proper appreciation of evidence on record, no Revisional Court should have interfered with the reason on the base that it would have arrived at a different or another conclusion. When substantial justice has been done, there was no reason to interfere. There may be a shelter over her head in the parental house, but other real expenses cannot be ignored. Solely because the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction. It only reflects the non-application of mind and, therefore, we are unable to sustain the said order."

Referring the above, Learned Senior Counsel submitted that in a proceeding under Section 125 of Cr.P.C. it is the obligation of the husband to maintain his wife and where substantial justice has been done there is no reason to interfere the order of the Learned Trial Court below.

18. Lastly, Learned Senior Counsel referred another judgment **Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy** in Civil Appeal No. 5369 of 2017 dated 19.04.2017 reported in **(2017) 14 SCC 200**. In Para

No. 15 of the said judgment Hon'ble the Supreme Court observed that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent wife.

"15. The review petition under Order 47 Rule 1 CPC came to be filed by the respondent-wife pursuant to the liberty granted by this Court when the earlier order dated 02.02.2015 Rita Dey Chaudhury v. Kalyan Dey Chowdhury, 2015 SCC OnLine Cal 10447 awarding a maintenance of Rs.16,000/- to the respondent-wife as well as to her minor son was under challenge before this Court. As pointed out by the High Court, in February 2015, the appellant- husband was getting a net salary of Rs.63,842/- after deduction of Rs.24,000/- on account of GPF and Rs.12,000/- towards income-tax. In February, 2016, the net salary of the appellant is stated to be Rs.95,527/-. Following *Kulbhushan Kumar v. Raj Kumari* (1970) 3 SCC 129, in this case, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependant on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Since in February, 2016, the net salary of the husband was Rs. 95,000/- per month, the High Court was justified in enhancing the maintenance amount. However, since the appellant has also got married second time and has a child from the second marriage, in the interest of justice, we think it proper to reduce the amount of maintenance of Rs.23,000/- to Rs.20,000/- per month as maintenance to the respondent-wife and son."

Referring the aforesaid citation Learned Counsel, Mr. S. Bhattacharjee again drawn the attention of this Court that the petitioner husband before the Learned Court could not adduce any contrary evidence on record that his salary was less than Rs.3 lakhs per month. So, considering the

entire evidence on record Learned Court below awarded maintenance in favour of the respondent wife at the rate of Rs. 50,000/- per month which was reasonable and justified commensurate with the income of the petitioner husband and more so, in awarding maintenance, the Court should also see that considering the status of the wife befitting amount of maintenance allowance to be granted in her favour for her proper livelihood which the Learned Court below considered at the time of delivering the final judgment.

19. I have heard submissions of both the sides and also perused the aforesaid citations and the record of the Learned Court below. Here in the case at hand there is no dispute on record in respect of the marriage of the petitioner husband with the respondent wife under Special Marriage Act. It is also on record that both the parties had their children of their earlier marriage. Their marriage took place in the year 2003. The maintenance case was filed in the year 2019. So, it is apparent on record that since from the year 2003 to 2019 there were no other cases amongst the parties. As already stated Learned Court below has determined four points to decide the proceeding. As I have already stated the marriage has not been disputed by the petitioner husband of this case. The petitioner husband in this petition confined his arguments only on two points.

Firstly, their argument was that no issue/point was determined by the Learned Court below regarding the suppression of fact of having daughter of the respondent wife to the petitioner husband at the time of marriage and secondly, at the time of fixation of monthly maintenance allowance of Rs. 50,000/-, no specific observation/ finding was made by the Learned Court below. Learned Court below in disposing of the case has discussed the evidence on record of both the sides in detail and came to the conclusion of this proceeding. There is no evidence on record from the side of petitioner husband that he had ever taken any step against his wife for suppression of the fact of marriage by his wife save and except in his written objection. From the evidence on record it appears to me that there existed some matrimonial discord amongst the parties on some issues and ultimately, the respondent wife had to leave her matrimonial home and started residing in the residence of her parents. It is also on record that the petitioner husband being the lawful husband of the respondent wife refused/neglected to provide maintenance to the respondent wife. It is further on record that the monthly income of the petitioner husband is more than Rs. 3 lakhs. It is also the admitted position that the respondent wife is earning Rs. 10,000/- per month from her school. But this amount is not sufficient to maintain her livelihood. On the other side, the petitioner husband is under

legal obligation to provide food, shelter etc. to his wife. The petitioner husband in course of cross-examination of the witnesses of the respondent wife could not make any cloud/doubt to the case of the respondent wife regarding refusal to provide maintenance by the petitioner husband to his wife. As observed by the Hon'ble Supreme Court as discussed there is very least scope on the part of the revisional Court to re-assess the evidence on record on the basis of which the judgment was delivered and after going through the evidence on record it appears that the Learned Trial Court after considering everything and after elaborate discussions of the evidence of both the parties came to the conclusion of this proceeding. The citations as referred by Learned Counsel for the respondent wife are very much relevant for just decision of this case and in deciding this case I have taken note of the principles of the aforesaid citations. Learned Counsel for the petitioner in course of hearing save and except raising two points could not raise any other issue/points to interfere the proceedings of the Learned Court below and those points as raised by Learned Counsel are not relevant for the decision of this present petition as those are already been adjudicated. And furthermore, there is also no cogent evidence on record from the side of petitioner husband that he came to know the fact of existence of the daughter of the respondent wife after 3

years of marriage. Rather it appears that, prior to his marriage he had full knowledge about the daughter of his wife from her first marriage who came to his residence after 3 years of his marriage with the respondent wife from the residence of her grandfather. So, I cannot agree with the submission of the Learned Counsel for the petitioner made in course of hearing of arguments of this case.

20. Thus, it appears to me that the Learned Court below after taking into consideration of all aspects has rightly and reasonably allowed maintenance allowance at the rate of 50,000/- per month in favour of the present respondent wife which does not need any interference at this stage by this Court.

21. In the result, the revision petition fails and is hereby dismissed on contest. The judgment dated 31.01.2023 passed in connection with case No. Criminal Misc. 647 of 2019 by Learned Judge, Family Court, Agartala, West Tripura is hereby affirmed.

No costs.

22. A copy of this order/judgment be communicated to the Learned Court below along with LCR.

JUDGE

MOUMITA
DATTA
Purnita

Digitally signed by
MOUMITA DATTA
Date: 2023.12.22
17:48:35 +05'30'