

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. No.24 of 2023

... Petitioner

Versus

3. The State of Tripura,

Represented by the Secretary, Home Department,
Government of Tripura.

...Respondents

For Petitioner(s)	:	Mr. Kundan Pandey, Adv,
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P., Mr. D.P. Ghosh, Adv.
Date of Hearing	:	15.03.2024
Date of delivery of Judgment and Order	:	21.03.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This criminal revision is filed under Section 397 of Cr.P.C. for setting aside the judgment and order dated 11.07.2022 passed by Learned Additional Judge, Family Court, Agartala, West Tripura in case No.Crl.Misc.462 of

2019. By the said order Learned Additional Family Judge, Agartala has directed the petitioner-husband to pay Rs.3,000/- per month to the respondent No.1 i.e. wife and Rs. 5,500/- to the respondent No.2 i.e. the minor daughter in total Rs.8,500/- from the month of July 2022 onwards.

02. Heard Mr. Kundan Pandey, Learned Counsel for the petitioner-husband. Also heard the submission of Mr. D. Ghosh, Learned Counsel for the private respondents No.1 and 2 and Mr. S. Ghosh, Learned Additional P.P. for the State. Before entering into the merit, let us discuss the subject matter of the dispute amongst the parties. The respondent No.1, i.e. wife, [REDACTED] filed one case on behalf of herself and for the minor daughter against her husband Sri.

under Section 125 Cr.P.C. seeking maintenance at the rate of Rs.20,000/- per month.

03. The gist of the petition filed by the respondent-wife in short, is that, her marriage was solemnized with the present petitioner-husband on 24.11.2005 as per Hindu Marriage Rites and Customs in presence of relatives and well-wishers of both the sides and after the marriage she went to her matrimonial home at RouthKhala, Bishalgarh and started resuming conjugal life with her husband. After that they resumed conjugal life for certain period peacefully, thereafter, the wife-respondent observed that her husband started misbehaving with her on petty matters, even, one

day, she was severely assaulted on the issue of attending marriage ceremony of one of her relatives. After that, the matter was mitigated by the intervention of her parents-in-law but after coming back from the marriage, the husband-petitioner herein misbehaved with her with filthy languages and again assaulted her. Thus, she could realize that her husband was a man of short temperament. After one year of their marriage, the O.P. wife became pregnant and during that period, the husband-petitioner did not take any care of her for her medical checkup and medication. It was further asserted that during the period of her pregnancy, her husband also assaulted her, in case of her inability to perform household works. One day, during the advanced stage of her pregnancy, again she was severely assaulted by the petitioner-husband and for that the neighbouring persons had to intervene to mitigate the dispute. On 05.10.2007 she delivered one girl child and after that she went to her father's house and stayed therein for two months. That time also her husband abused her over telephone stating that she was avoiding to perform household works. During that period, her husband never enquired about her, nor came to his in-laws house to see her and the minor baby. After that, she returned back to her matrimonial home, when thereafter, so many incidents took place on different dates and the petitioner-husband dragged her from his residence for which the wife-respondent was compelled to come back to the residence of her father and stayed therein for eight

months. But the petitioner-husband that time also did not take any care for his wife and after that in the month of August 2008, the family members of both the parties held a meeting when the petitioner-husband assured that he will not cause any cruelty upon his wife and then she came back to her matrimonial home again. Few days were elapsed peacefully and again the petitioner husband started causing mental cruelty upon the wife-respondent, not only that the mother-in-law of the wife-respondent used to instigate her son for causing cruelty upon the wife-respondent.

In the year 2010, the marriage of the younger sister of the respondent-wife was fixed, for which her parents came to her matrimonial home for invitation. That time the petitioner-husband assaulted them saying that they had made false statement at the time of meeting and that he will never attend the marriage ceremony and also will not allow the wife-respondent to attend the marriage. But as the wife-respondent went to attend the marriage, that time the petitioner-husband abused her over telephone by filthy languages. On 04.12.2010, the petitioner-husband came to her father's house under influence of alcohol and started assaulting her physically in presence of everybody and damaged her mobile phone. And Since then, the wife-respondent has been staying in the residence of her father. Later on, she became ill when her father-in-law along with others came to see her and requested her to return back to

her to matrimonial home. The petitioner-husband also came and requested her to resume conjugal life and after that considering the future of the minor daughter and with a hope for living peaceful conjugal life, again she went to her matrimonial home but thereafter, also the same episode continued and after that on 06.10.2018 at about 4 a.m the petitioner-husband woke up suddenly from his sleep and severely assaulted the wife-respondent physically and dragged her out of his house. It was stated that the petitioner-husband also threatened to kill the wife-respondent after knowing the fact that she was trying to inform the matter to her brother. In such a situation, finding no other alternative, the wife-respondent stated to have taken shelter at her father's house on 11.12.2018 along with her minor daughter. On 06.01.2019, the petitioner-husband came to the father's house of the wife-respondent and tried to assault her but she was saved by the intervention of her parents and local people.

04. It was further asserted that the petitioner-husband being the 2nd party is a school teacher and he is earning more than Rs.50,000/- per month. Hence, the wife-respondent as petitioner filed the application seeking maintenance. The petitioner-husband as O.P., 2nd party contested the proceeding before the Learned Family Judge, denying all the assertions and stated that he was on fixed pay employee with monthly salary of Rs.20,267/- per month

and countering all the allegations of the wife-respondent, he finally prayed for dismissal of the proceeding.

05. To substantiate the case, the wife-respondent adduced two witnesses and the petitioner-husband also adduced two witnesses and finally, after taking evidence and also on hearing arguments, Learned Additional Judge, Family Court, Agartala passed the order on 11.07.2022. The operative portion of the order runs as follows:

"In the result, I am satisfied that the 1st party has proved her Case much to the extent required by law. The relief awarded to the 1st party and directions to the 2nd party are as follows:-

a) The 2nd party is accordingly, directed to hand over the 1st party an amount of Rs.3,000/- (Rupees three thousand only) for herself and Rs.5,500/- (Rupees five thousand and five hundred Only) for their minor daughter, every month starting from the month of July 2022 to be paid by the 7th day of August 2022 and every consecutive months thereafter.

b) The 2nd party is directed to send the total amount of Rs.8,5000/- (sic. it should be 8,500/-) every month, as directed above, by way of Money Order or in any other due process, convenient to both, in the following address:

Address of the 1st party:

Deposit the same in her Bank account, if the details are forwarded to him.

c) The above total amount of Rs.8,500/- is fixed considering the basic requirements of the 1st party and her minor son, which is sufficient at present compared to the present status and income of the 2nd party.

d) Any Order of interim maintenance, if existing, shall stand vacated with immediate effect.

A copy of this judgment be furnished to both the parties free of cost for information and compliance.

With the above observation and directions, the instant Case is hereby allowed and disposed of on contest."

06. It is to be noted here that to determine the case, Learned Family Judge formulated three (3) points for decision of the proceeding which are as follows:

"i) Whether the 1st party was tortured by her husband and in-laws or that she was compelled to take shelter at her father's house along with her minor child?

ii) Whether the 2nd party neglects to maintain his wife and daughter, in spite of having sufficient means?

iii) Whether the 1st party and her daughter are entitled to get maintenance as claimed and if allowed, what should be the quantum?"

07. At the time of hearing, Learned Counsel for the petitioner fairly submitted that there is no dispute on record in respect of the fact of marriage of the petitioner-husband with the O.P. wife. Learned Counsel for the petitioner further submitted that petitioner-husband has got no objection to comply with the order of the Learned Family judge, in respect of paying maintenance allowance to the minor daughter but in respect of the respondent-wife, Learned Counsel submitted that before the Learned Family Judge the wife-respondent suppressed the fact that she was highly qualified and serving in Education Department as a guest lecturer but in course of evidence, she specifically stated that

she does not have any income of her own. Learned Counsel for the petitioner also drawn the attention of the Court to draw inference on Exhibit-A, relied upon by the petitioner-husband. Learned Counsel also submitted that there is no cause of action to file the petition by the wife-respondent because the wife-respondent by adducing oral/documentary evidence on record has failed to prove that she was subjected to cruelty by the petitioner-husband and she was refused/neglected to provide maintenance by the petitioner-husband. Learned Counsel further submitted that as the respondent-wife is earning money so, as per law, she is not entitled to get any maintenance and prayed for setting aside the order of the Learned Additional Judge, in respect of awarding maintenance in favour of the respondent-wife.

08. On the other hand, Learned Counsel for the wife-respondent submitted that Learned Court below rightly awarded maintenance in favour of the wife-respondent because according to Learned Counsel, the wife-respondent was subjected to cruelty by the petitioner-husband at her matrimonial home and even he failed to provide maintenance to the wife-respondent and drove her out from her matrimonial home. He further submitted that as alleged by Learned Counsel for the petitioner, the case was filed in the year 2019 but she got employment, as alleged, in the year 2021 but during that period, no maintenance allowance was provided by the petitioner-husband to the wife-respondent.

Furthermore, just to avoid the liability to provide maintenance, the petitioner-husband has filed a case of RCR and further submitted that inspite of allowing order, the present petitioner is not paying any maintenance to the wife-respondent and asked for dismissal of the revision petition.

09. Here in the case at hand, there is no dispute on record in respect of the marriage of the petitioner-husband with the wife-respondent and also the birth of the minor daughter. The only contention raised by the petitioner-husband is that since the wife-respondent is earning some money, which she has suppressed in her application and also during evidence and the Learned Court below ignoring the legal position has allowed her petition. So, Learned Counsel for the petitioner urged for modification of the order to that extent. To determine the case, both the parties have adduced evidences:

"A. Witnesses of the 1st Party:

B. Documents of the 1st Party: Nil.

C. Witnesses of the 2nd Party:

D. Documents of the 2nd Party:

Exbt-A: He has submitted one memo dt.01.10.2021 issued by the Principal, Govt. Degree College, Khumulwng, West Tripura regarding engagement of the 1st party as a Guest Lecturer."

10. It is the admitted position that the wife-respondent filed the application granting maintenance on

26.07.2019 before the Learned Additional Family Judge, Agartala, West Tripura and from Exhibit-A, as relied upon by the petitioner-husband, it appears that she was engaged as a guest lecturer vide memo dated 01.10.2021 of the Principal-in-charge, Government Degree College, Khumulwng for the year 2021-22 at the rate of Rs.400/- per class subject to maximum limit of 180 classes and she was allotted 90 classes for the first time. The memo, as already stated was issued on 01.10.2021. The wife-respondent appeared before the Family Court for her evidence on 15.11.2021 when she stated that she has got no income of her own. From the contents of Exhibit-A, it is clear that, that was purely a temporary engagement on the basis of which it cannot be said that the wife-respondent had a permanent job to sustain her livelihood.

11. Learned Counsel for the petitioner, in course of hearing relied upon few citations.

In **Bheekha Ram vs. Goma Devi and Ors.** dated 22.01.1999, reported in **(1999) SCC OnLine Raj 265, Hon'ble the Rajasthan High Court** in Para No.8 observed as under:

"8. The right to be maintained by the husband stems from performance of marital duty. It is only when the Court inter alia comes to the finding that the wife claiming maintenance had been prevented from performing the marital duty by the husband that she could be awarded maintenance. When it is found that the wife declines to live with husband without any just cause and there is no evidence of ill-

treatment by the husband, wife is not entitled to maintenance. In the instant case, it is noticed that the husband even sent a registered notice to the wife asking her to stay with him but she refused to accept the notice.”

12. In Niharika Ghosh vs. Shankar Ghosh dated 12.09.2023, reported in **(2023) SCC OnLine Del 5624**, **Hon’ble the Delhi High Court** in Para No.13 observed as under:

“13. We find that in the present case it is not only that the appellant is highly qualified and has an earning capacity, but in fact she has been earning, though has not been inclined to truthfully disclose her true income. Such a person cannot be held entitled to maintenance. Pertinently, the claim for maintenance by the appellant under the provisions of Protection of Women against Domestic Violence Act has also met the same fate and the maintenance has been declined to her. We, therefore, find no merit in the Appeal which is hereby dismissed.”

13. In **Criminal Revision No.512 of 2022** dated 02.02.2024, Hon’ble the Jharkhand High Court in Para No.16 observed as under:

“16. In view of the overall evidence adduced on behalf of both the parties, it is found that the respondent-applicant has been residing aloof from the husband without any reasonable cause. Accordingly, this point of determination is decided in favour of the petitioner-husband and against the opposite party-wife. In consequence thereof, in view of Section 125(4) of the Code of Criminal Procedure, 1973 she is not entitled to any amount of maintenance. Section 125(4) of the Code of Criminal Procedure, 1973 reads as under:

“(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 my mutual consent.”

14. In **Civil Revision No. 1290/99** dated 24.03.2000, reported in **(2000) SCC OnLine MP 580**, **Hon'ble the High Court of Madhya Pradesh** in para No.7 observed as under:

“7. In view of this, the question arises, as to in what way Section 24 of the Act has to be interpreted. Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure? Whether such spouse should be permitted to get pendente lite alimony at higher rate from other spouse in such condition? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself Or herself inspite of sincere efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversory by implementing the provisions of law suitable to their purpose. In the present case Mamta Jaiswal is a well qualified woman possessing qualification like M.Sc. M.C. M.Ed. Till 1994 she was serving in Gulamnabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service? It really puts a bug question which is to be answered by Mamta Jaiswal with sufficient cogent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, cannot be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not

meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice versa also. If a husband well qualified, sufficient enough to earn, sits idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well idles so also does not want an army of self-made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, atleast, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversary who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That cannot be treated to be aim, goal of Section 24. It is indirectly against healthiness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient effort are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling/working hours."

15. Referring the same, Learned Counsel for the petitioner submitted that in view of the principles of the aforesaid citations, the wife-respondent is not entitled to get any maintenance. I have heard detailed submission of Learned Counsels at length. From the evidence on record, it appears to me that some mal-adjustment cropped up amongst the parties for which the wife-respondent had to

take shelter at her parents' house and since December 2018 she has been staying at her paternal house and after waiting for some period, she has filed the case before the Family Court on 26.07.2019. There is no evidence on record that during that period and thereafter also the petitioner-husband paid any maintenance to the wife-respondent and her minor daughter. Further, from the cross-examination of the petitioner-husband before the Family Court, it appears that he filed the case of restitution of conjugal life against the wife-respondent after receiving notice of maintenance case from the Family Court, which was filed by the wife-respondent.

16. Learned Judge, Family Court, after considering all the facts and circumstances of the case determined the amount of compensation at the rate of Rs.3,000/- per month from the month of July 2022 in favour of the wife-respondent. The petitioner-husband, in course of his examination before the Court stated that he is receiving gross salary of Rs.34,852/- per month as on December 2021. By this time, his salary might have increased. In this regard, there was no finding by the Learned Family Court.

17. In **Sunita Kachwaha and Others vs. Anil Kachwaha** dated 28.10.2014 reported in **(2014) SCC 715**, Hon'ble the Supreme Court in para 6 and 8 observed as under:

"6. The proceeding under Section 125 CrPC is summary in nature. In a proceeding under Section 125 CrPC, it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant wife and the respondent and observing that the appellant wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of the appellant wife and the factual findings, as recorded by the Family Court.

8. The learned counsel for the respondent submitted that the appellant wife is well-qualified, having postgraduate degree in Geography and working as a teacher in Jabalpur and also working in the Health Department. Therefore, she has income of her own and needs no financial support from the respondent. In our considered view, merely because the appellant wife is a qualified postgraduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance."

From the aforesaid principle of law laid down by the Hon'ble Supreme Court of India, it appears that the wife is well-qualified, having post-graduate degree and working as a lecturer and is earning something is not a ground to reject her claim for maintenance. Here in this case, after going through the evidence on record of the Learned Court below, it appears to me that the respondent-wife has been able to prove that she has been neglected and refused to provide maintenance by the petitioner-husband.

Furthermore, there is no any specific evidence on record as to how much amount of money is earning by the respondent-wife after attending her classes or earning any money or not. So, in view of the principle laid down by the Hon'ble Apex Court, it appears to me that the Learned Additional Judge, Family Court, Agartala, reasonably and rightly awarded maintenance in favour of the respondent-wife and their daughter. As already stated, there is no satisfactory evidence on record from the side of the petitioner-husband that the respondent-wife is serving/holding any post of permanent in nature rather, her engagement is purely temporary in nature as surfaces from the contents of Exhibit-A as relied upon by the petitioner-husband. Furthermore, it appears that the Learned Additional Judge, Family Court awarded lesser amount of maintenance allowance in favour of the respondent-wife for which, she shall have the liberty to claim for enhancement of maintenance in due course of time, if she is so advised.

18. But considering the present facts and circumstances of the case, I do not find any scope to interfere with the order passed by Learned Additional Judge, Family Court, Agartala dated 11.07.2022.

19. In the result, the petition filed by the petitioner-husband challenging the judgment and order dated 11.07.2022 passed by Learned Additional Judge, Family Court, Agartala, West Tripura in case No.Crl.Misc.462 of

2019 is hereby dismissed. The petitioner-husband is hereby asked to ensure the order dated 11.07.2022 passed by Learned Additional Judge, Family Court in Criminal Misc.462 of 2019 in letter and spirit, so as to enable the wife-respondent and her daughter to avoid sufferings from any vagrancy and destitution.

20. With this observation, the revision petition is dismissed on contest. Pending application(s), if any, also stands disposed of.

Send down the LCR along with the copy of the judgment.



JUDGE