

## Calcutta High Court

HON'BLE JUDGE(S): SUBHENDU SAMANTA , J

SUTAPA PAL V. STATE OF WEST BENGAL

CRR - 1129 of 2018, decided on 13/12/2022

**Criminal P.C. (2 of 1974) , S.125, S.127— Maintenance - To wife - Husband stated that wife did not disclose fact of earlier order of maintenance before Magistrate - Guidelines of Supreme Court were not followed by parties during proceedings before Magistrate - Matter remanded. AIR 2021 SC 569-Followed**

(Para 10, 11)

**Case Referred :**

**Chronological Paras**

AIR 2021 SC 569 : AIROnline 2020 SC 915 (Followed)

Para No.( 8, 9, 10, 12 )

AIR 2017 SC 2383

Para No.( 9 )

AIR 2011 SC 2748 : 2011 AIR SCW 4340

Para No.( 9 )

**Name of Advocates**

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Srinjoy Sengupta, Subrata Karmakar, for Petitioner; Srinjoy Sengupta, Narayan Prasad Agarwal, Pratick Bose, for Respondent.

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**ORDER:-**

1. Both the husband and wife have challenged the order of a Magistrate passed in a proceeding under Section 127 of the Code of Criminal Procedure.
2. Wife filed the revisional application on the ground of inadequacy and the husband on the ground of impropriety.
3. The brief fact of the case is that by virtue of an order of maintenance passed by a jurisdictional Magistrate under Section 125 of the Code of Criminal Procedure, husband was directed to pay Rs.1500/- per month to the wife. Thereafter, wife filed one application under Section 127 of the Code of Criminal Procedure for enhancement of the maintenance amount. Learned Magistrate by passing the impugned order enhance the monthly maintenance to Rs.14,000/- per month.
4. Learned advocate appearing on behalf of the wife submits that the husband is earning more than Rs.65,000/- per month. He has some other source of income. The award of maintenance is not commensurate with the present income of the husband. The monthly maintenance of Rs.14,000/- is not sufficient.

5. Learned advocate on behalf of the husband submits that the wife has other independent income. He also submitted that the husband is now paying Rs.17,000/- per month to the wife by virtue of an order passed by a Court of competent jurisdiction in another proceeding.

6. Learned advocate for the wife pressed hard that though amount of maintenance was given by the husband but the husband is not complying with the order of Learned Magistrate. Nothing was paid in furtherance to the order passed by the Magistrate.

7. Learned advocate for the husband submitted before this Court that the husband is actually paying more monthly maintenance than is ordered by the Magistrate in the proceeding under Section 127 of the Code of Criminal Procedure.

8. During argument learned advocate for the husband cited a decision of Hon'ble Supreme Court passed in Rajnesh v. Neha and Anr. reported in (2021) 2 SCC 324 : **(AIR 2021 SC 569)**. He placed his reliance at para 60 and para 61 of the said judgment and submitted that the wife did not disclose the fact of early order of maintenance before the learned Magistrate.

9. Learned advocate for the wife also cited some decisions of Hon'ble Supreme Court in Kalyan Dey Chowdhury v. Rita Dey Chowdhury nee Nandy passed in Session Appeal No.5369 of 2017 **(AIR 2017 SC 2383)**, Vinny Parmvir Parmar v. Parmvir Parmar in Civil Appeal no. 5831-5833 of 2011 : **(AIR 2011 SC 2748)** and Rajnesh v. Neha and Anr.(supra).

10. The guideline formulated by the Hon'ble Supreme Court in Rajnesh v. Neha and Anr. is well accepted. During the course of argument both learned advocates for the parties admitted that the guideline of the Hon'ble Supreme Court in Rajnesh v. Neha's case was not followed by the parties during the proceeding before the learned Magistrate. Both of them are in consensus of the fact that if the matter is remanded back they shall take proper steps before the Magistrate by virtue of directions of Hon'ble Supreme Court in Rajnesh v. Neha's case.

**11.** Considering the submission of the parties the instant revisional applications are disposed of with a direction that the matter is hereby remanded back to the learned Magistrate for determination afresh.

**12.** Learned Magistrate shall allow the parties to file "Affidavit of Disclosure of Assets and Liabilities" and shall dispose of the same according to the guideline of

the Hon'ble Supreme Court passed in Rajnesh v. Neha.

13. Further, learned Magistrate shall also consider the "issue of overlapping jurisdiction" as guided by the Hon'ble Supreme Court(supra).

14. I make it clear that this Court has not entered into the merit of this matter and it is open to the learned Magistrate to decide the matter afresh without being influenced by any of the finding of this Court.

15. Thus, the instant revisional criminal application is disposed of.

16. Any order of stay passed by this Court during the proceeding of the revisional is also vacated.

17. Connected CRAN applications, if any, is also disposed of.

18. Let the copy of this order be served upon the learned Magistrate for his information and necessary action with a direction to dispose of the same as early as possible, more preferably within six months from the date of receipt of the order.

19. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**Order Accordingly**