

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

**PRESENT:**

**THE HON'BLE JUSTICE UDAY KUMAR**

**CRR 3578 OF 2022**

**JYOTIRMOY BISWAS**

**-VS-**

**STATE OF WEST BENGAL & ANR.**

*For the Petitioner* : Mr. Pritam Choudhury

*For the Opposite Parties* : Mr. Shibaji Kumar Das  
Mr. Dipendu Sarkar

*Hearing concluded on* : 01.04.2026

*Judgment on* : 05.05.2026

**UDAY KUMAR, J.: –**

**1. INTRODUCTION AND BACKGROUND FACTS**

1.1. The Petitioner, an Engineer currently engaged with the Calcutta Electric Supply Corporation (CESC), has approached this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure. The challenge is directed against an *ex-parte* ad-interim order dated 01.06.2022, rendered by the Learned Judicial Magistrate, Bangaon, in C. Case No. 123 of 2021 (*Priyanka Biswas vs. Jyotirmoy Biswas*

& Ors.). By way of the impugned order, the Learned Magistrate, purportedly exercising powers under Section 23 of the Protection of Women from Domestic Violence Act, 2005, directed the Petitioner to remit a monthly maintenance allowance of ₹12,000/- to the Opposite Party No. 2 (Wife) and ₹8,000/- for the sustenance of their minor daughter.

- 1.2. The Petitioner assailed the impugned order primarily on the grounds of procedural irregularity, the material suppression of facts regarding the Wife's independent professional income, and a fundamental violation of the principles of natural justice.
- 1.3. The factual canvas reveals a union between two individuals of formidable professional standing. The marriage was solemnized on 19.03.2014 under the Special Marriage Act, 1954. While the Petitioner manages the power infrastructure of the city as a Mains Engineer responsible for critical urban infrastructure, the Opposite Party No 2 is an accomplished medical professional as a specialized in Critical Care Medicine (MBBS, DNB), who has held prestigious positions as a Senior Registrar in premier multi-specialty hospitals including Woodlands and R.N. Tagore. Out of this wedlock, a daughter, Devanshi, was born on 26.02.2020.
- 1.4. The domestic tranquillity of the parties proved short-lived. Marital ties frayed over escalating differences regarding

lifestyle and familial obligations, reached a breaking point in March 2021, leading to the Wife's departure from the matrimonial home at Bansdroni to her paternal residence at Bangaon. This separation acted as a catalyst for a multifaceted legal offensive. The Wife initiated three distinct sets of proceedings:

- (i) A criminal complaint under Sections 498A/406/506/341/34 IPC and 3/4 D.P. Act alleging physical and mental torture;
- (ii) A maintenance application under Section 125 of the Cr.P.C.; and
- (iii) The present application under the P.W.D.V. Act, 2005, alleging domestic violence.

1.5. Central to the Wife's grievance is a socially sensitive allegation of a "grave breach of marital trust," predicated upon an asserted incestuous proximity between the Husband and his first cousin. Conversely, the Petitioner characterizes these allegations as "bohemian fabrications," contending that his involvement with the said relative was purely a discharge of familial guardianship during a period of financial exigency.

1.6. In her pursuit of interim relief, the Wife estimated the Petitioner's monthly emoluments to be a staggering ₹2,10,000/-, while simultaneously portraying herself as an

"unemployed and destitute" woman, surviving on the mercies of her ailing father. The Petitioner, however, brings to the fore a narrative of "material suppression," asserting that the Wife is a highly independent professional with significant earning capacity, while his own net take-home pay is a modest ₹70,000/-, encumbered by mandatory deductions and housing loan liabilities.

- 1.7. The core of the Petitioner's grievance lies in the "procedural haste" displayed by the Learned Court below. The impugned order was passed on the very day the Domestic Incident Report (DIR) was placed on record, without the Petitioner being afforded an opportunity to file his Affidavit of Assets and Liabilities, thereby bypassing the mandatory procedural architecture mandated by the Hon'ble Supreme Court in *Rajnish v. Neha*.

### **3. POINTS FOR DETERMINATION**

- 3.1. Based on the rival pleadings, the professional credentials involved, and the procedural history of the matter, the following Points for Determination (Issues) are framed for adjudication in this judgment:

- I. Whether the present Revisional Application under Section 482 of the Code of Criminal Procedure is maintainable against an ad-interim order of

maintenance, notwithstanding the statutory remedy of appeal under Section 29 of the P.W.D.V. Act, in light of the alleged patent procedural illegality?

- II. Whether the Learned Magistrate committed a jurisdictional error by fixing a specific quantum of maintenance on the very day of the filing of the Domestic Incident Report (DIR), thereby bypassing the mandatory requirement for the exchange of Affidavits of Assets and Liabilities as dictated in *Rajnish v. Neha [(2021) 2 SCC 324]*?
- III. Whether a spouse possessing high-demand professional qualifications, specifically a Specialist in Critical Care Medicine with a documented history as a Senior Registrar, can be legally categorized as "unable to maintain herself" solely on a self-serving statement of current unemployment?
- IV. Whether the "Earning Capacity" of a specialized medical professional must be factored in as a material consideration at the *ad-interim* stage to prevent the misuse of social justice legislation as a tool for financial leverage?
- V. Whether the assessment of the quantum (₹20,000/-) constitutes "rational guesswork" or an arbitrary exercise of discretion, given the absence of the Petitioner's

salary records and the alleged suppression of the Wife's professional identity?

- VI. To what extent should the maintenance for the minor child be isolated and protected from the professional and personal disputes of the parents, ensuring her upbringing remains commensurate with the status of an Engineer-Doctor couple?

#### **4. SUBMISSIONS ON BEHALF OF THE PETITIONER**

- 4.1.** Mr. Pritam Choudhury, learned counsel for the Petitioner, initiated his discourse by addressing the maintainability of this application. He contended that while Section 29 of the P.W.D.V. Act provides for an appeal, such a statutory remedy does not act as an absolute bar to the inherent powers of this Court under Section 482 of the Cr.P.C. It was argued that the present Revision is maintainable as the impugned order is not merely an "error of judgment" but a procedural nullity, having been passed in total defiance of the mandatory guidelines of the Apex Court and founded upon a material suppression of facts that goes to the root of the jurisdiction. He argued that where an order is *ex-facie* perverse, suffering from a foundational departure from the "due process" mandated by the Apex Court, the High Court is not only empowered but duty-bound to intervene to prevent a manifest miscarriage of

justice. The Petitioner vehemently assailed the impugned order as a "procedural nullity."

**4.2.** Mr. Choudhury vehemently argued that the Learned Magistrate committed a "procedural leap" by awarding ad-interim maintenance on the very day the Domestic Incident Report (DIR) was placed on record. Learned Counsel submitted that the Court below failed to adhere to the mandatory "disclosure regime" established in *Rajnish v. Neha* [(2021) 2 SCC 324]. By dispensing with the exchange of Affidavits of Assets and Liabilities, the Learned Magistrate bypassed the essential adversarial scrutiny required to determine the financial status of the parties, thereby rendering the order *ex-facie* illegal.

**4.3.** The primary thrust of the Petitioner's challenge rested on the Wife's professional identity. Learned Counsel pointed out that the Opposite Party No. 2 is not a layperson seeking sustenance, but a highly specialized medical practitioner, a Senior Registrar in Critical Care Medicine (MBBS, DNB). It was contended that her portrayal as "unemployed and destitute" was a calculated deception. Ld. Counsel argued that the "Earning Capacity" of a specialist clinician must be factored in even at the *ad-interim* stage; otherwise, the P.W.D.V. Act, a shield for the vulnerable, is transmuted into a sword for "professional parasitism." Mr. Choudhury submitted that a person possessed of such high-demand qualifications cannot

be deemed "unable to maintain herself" within the legislative intent of the Act.

**4.4.** Learned Counsel concluded by clarifying that the Petitioner's grievance is restricted specifically to the ₹12,000/- awarded to the Wife. He submitted that the Petitioner recognized his absolute obligation toward his minor daughter, Devanshi. However, Ld. Counsel contended that the child's maintenance should be isolated from the personal disputes of the parents. While the child is entitled to a dignified upbringing, the Wife, being a specialist Doctor, (her estimated income is ₹2,10,000/-), is legally disentitled to personal maintenance when she possesses the professional potential to earn significantly more than the Petitioner. By failing to call for salary certificates or factoring in the pre-existing Home Loan EMIs for the matrimonial flat, the Learned Magistrate's assessment morphed into a "punitive imposition" rather than a balanced "rational guesswork."

**4.5.** Finally, it was argued that the Wife's allegations of an "incestuous relationship" were "bohemian fabrications" intended to justify her voluntary desertion. Learned Counsel referred to the pending suit for Restitution of Conjugal Rights (MAT Suit No. 740 of 2022) as evidence of the Petitioner's *bona fide* intent to maintain the marital tie. It was submitted that a spouse who voluntarily withdrawn from the society of

the husband without "reasonable cause" and possesses sufficient earning capacity is not entitled to the discretionary relief of maintenance. He contended that her demand for an exorbitant sum of ₹80 Lakhs for a mutual divorce, indicates that the maintenance proceedings are being strategically deployed for "financial leverage" and "legal extortion."

**4.6.** In a concluding note of candour, the Petitioner clarified that he did not shirk his duty toward his minor daughter, Devanshi. However, he argued that the child's maintenance must be isolated from the parent's professional disputes. While the child is entitled to a standard of living commensurate with an Engineer-Doctor couple, the Wife, being an empowered professional, is legally disentitled to claim personal maintenance at the expense of a husband whose remuneration is, in fact, comparable to her own earning potential.

**5. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY NO. 2 (WIFE)**

**5.1.** Mr. Shaibaji Kumar Das, learned counsel for the Wife, contending that the present Revision is an attempt to bypass the statutory hierarchy. He robustly defended the POINT OF maintainability of the impugned order, by submitting that the present Revisional Application is a jurisdictional misadventure designed to bypass the statutory hierarchy. He argued that

Section 29 of the P.W.D.V. Act provides a specialized and efficacious appellate remedy specifically tailored for the redressal of grievances arising from interim orders. It was submitted that the Petitioner should not be permitted to invoke the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. as a "shortcut" to stall the disbursement of "financial oxygen" to a deserted mother and child, particularly when the Learned Magistrate has exercised a discretionary power vested by the statute.

**5.2.** In response to the allegation of "procedural haste," Ld. Counsel submitted that the Learned Magistrate acted well within the legislative mandate of Section 23(2) of the Act, which empowers the Court to grant *ex-parte* ad-interim relief upon the *prima facie* satisfaction of domestic violence. It was contended that while *Rajnish v. Neha* establishes a disclosure regime, it does not seek to paralyze the Court's ability to provide immediate protection against financial vagrancy. Learned Counsel argued that the Domestic Incident Report (DIR) filed by the Protection Officer disclosed a state of "deplorable destitution," necessitating the immediate order dated 01.06.2022 to prevent the starvation of the two-year-old child and her mother.

**5.3.** Addressing the Petitioner's central theme of "Earning Capacity," Ld. Counsel submitted that the mere possession of

professional degrees (MBBS, DNB) does not mitigate the reality of "actual unemployment." He argued that the Wife was systematically compelled to leave her professional practice due to the extreme physical and mental torture inflicted by the Petitioner, coupled with the supervening responsibilities of nurturing an infant during the global pandemic. Relying on the principle that maintenance is meant to address present destitution, Learned Counsel contended that the Petitioner cannot escape his legal and moral obligations by pointing to the Wife's "potential" income when his own conduct is the primary cause of her professional hiatus.

**5.4.** Learned Counsel vehemently disputed the Petitioner's claim of a modest income. He submitted that the Petitioner, as a high-ranking Engineer at CESC, enjoys multiple streams of revenue, including a car-rental business (Ola/Uber) and substantial agricultural holdings. Ld. Counsel argues that the Wife's estimate of ₹2,10,000/- is a reflection of the high standard of living the parties enjoyed during cohabitation. Consequently, the award of ₹20,000/- per month is characterized not as "arbitrary," but as a conservative and minimal sum required for the survival of a mother and child in a metropolitan city, especially when the Petitioner has admitted to a base salary of ₹70,000/-.

**5.5.** A poignant note is struck regarding the minor daughter, Devanshi. Ld. Counsel submitted that the child's right to maintenance is absolute and independent of the parents' personal professional disputes. It was brought to the notice of this Court that the Petitioner had practically abandoned the child at birth, even failing to discharge the hospital bills. He argued that a child born to an Engineer-Doctor couple is entitled to an upbringing commensurate with that status, and the award of ₹8,000/- for the minor is beyond the scope of any reasonable challenge.

**5.6.** In conclusion, Mr. Das submitted that the Petitioner's suit for Restitution of Conjugal Rights is a "strategic sham" initiated solely to create a defense against the maintenance claim. Placing reliance on the specific allegations of an illicit relationship with a cousin, Ld. Counsel argued that the Wife had "just cause" to live separately. It was submitted that the Petitioner, having created a hostile and adulterous environment, cannot now seek to deny maintenance on the ground of the Wife's "voluntary" withdrawal. The Learned Advocate prayed for the dismissal of the revision with exemplary costs, seeking a direction for the immediate clearance of all accumulated arrears.

## **6. DISCUSSION AND FINDINGS OF THE COURT**

### **6.1. Determination of Question No. 1: On the Maintainability of the Revision under Section 482 Cr.P.C. vis-à-vis Section 29 of the P.W.D.V. Act.**

6.1.1. At the very threshold of these proceedings, this Court is called upon to navigate the jurisdictional thicket concerning the maintainability of a Revisional Application under Section 482 of the Code of Criminal Procedure against an *ad-interim* order of maintenance. The Opposite Party No. 2 has raised a formidable objection, contending that since Section 29 of the Protection of Women from Domestic Violence Act, 2005, provides for a statutory appeal to the Court of Session against *any* order passed by the Magistrate, the Petitioner ought to be relegated to the appellate forum.

6.1.2. It is a fundamental canon of matrimonial and criminal jurisprudence that where a statute provides a specific remedy, the High Court should be circumspect in exercising its inherent or revisional powers. However, the rule of "alternative remedy" is a rule of judicial discipline and discretion, not an absolute ouster of jurisdiction. The inherent power of the High Court is a "safety valve" intended to be used to prevent the abuse of the process of any Court or otherwise to secure the ends of justice.

6.1.3. In addressing this question, reliance is placed on the ratio in *Prabhu Chawla v. State of Rajasthan [(2016) 16 SCC 30]*, where the Hon'ble Supreme Court clarified that the availability of an alternative remedy under Section 397 Cr.P.C. or any other statutory provision does not bar the High Court from exercising its jurisdiction under Section 482 Cr.P.C., provided the circumstances demonstrate a patent illegality or a miscarriage of justice. The Court observed:

*"Nothing in the Code, not even Section 397(2), can affect the High Court's inherent power to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

6.1.4. In the factual matrix of the case at hand, the Petitioner does not merely challenge the "quantum" of maintenance, which would typically fall within the domain of an appellate court, but assails the very methodology adopted by the Learned Magistrate. The Petitioner contends that the impugned order is a "procedural nullity" because it was passed in total disregard of the mandatory disclosure regime established by the Apex Court in *Rajnish v. Neha [(2021) 2 SCC 324]*.

6.1.5. To appreciate this contention, one must look at the mandatory nature of the directions in *Rajnish v. Neha*. The Supreme Court, in Paragraph 72.1, held:

*"The Affidavit of Disclosure of Assets and Liabilities... shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrate Court, as the case may be, throughout the country."*

6.1.6. In the present case, the record reveals that the Learned Magistrate passed the *ad-interim* order on the very day the Domestic Incident Report (DIR) was filed, without even directing the parties to file their respective Affidavits of Assets and Liabilities. Where a subordinate court bypasses a mandate issued by the Supreme Court under Article 141 of the Constitution, such an order is not merely "erroneous," but is passed in excess of jurisdiction. In such circumstances, relegating a party to a time-consuming appeal would amount to perpetuating a procedural illegality.

6.1.7. Furthermore, the Petitioner has raised a compelling plea of "Material Suppression." It is alleged that the Opposite Party No. 2, while identifying herself merely as a "Doctor," suppressed her specialized status as a Senior Registrar in Critical Care Medicine. It is a settled principle of law that "Fraud and justice never dwell together" (*Fraus et jus nunquam cohabitant*). As held in *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1]:

*"A litigant, who approaches the court, is bound to produce all the documents executed by him which are*

*relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."*

6.1.8. If the Wife, being a high-earning specialist, suppressed her professional standing to fit the narrative of a "destitute" woman, the resulting order is tainted by a suppression of material facts. While an appellate court *could* examine this, the High Court under Section 482 is the appropriate forum to exercise its "supervisory-inherent" role when the integrity of the judicial process is at stake.

6.1.9. Distinguishing the present facts from cases where revisions are dismissed due to the availability of an appeal, this Court observes that in those instances, the challenge usually pertains to the *appreciation of evidence*. Here, the challenge is to the validity of the procedure itself. If the Learned Magistrate has bypassed the "due process" of financial disclosure, the order becomes an abuse of the process of the court.

6.1.10. Consequently, this Court holds that the Revisional Application is maintainable. The statutory bar of Section 29 of the P.W.D.V. Act does not fetter the inherent power of the High Court to strike down an order that is *ex-facie* violative of the mandates of the Apex Court and is predicated upon an evidentiary void created by material suppression. The

jurisdictional gate is, therefore, open for an inquiry into the merits of the procedural and substantive challenges raised by the Petitioner.

**6.2. Determination of Question No. 2: On the Procedural Propriety of the Ad-Interim Order and the Mandate of *Rajnesh v. Neha*.**

- 6.2.1. The second point for determination concerns whether the Learned Magistrate committed a jurisdictional error by awarding a specific quantum of ad-interim maintenance on the very day the Domestic Incident Report (DIR) was placed on record, effectively bypassing the "disclosure regime" established by the Apex Court.
- 6.2.2. It is observed from the record that the impugned order was passed on 01.06.2022. A perusal of the order sheet reveals a striking "procedural leap"; the Learned Magistrate took cognizance of the DIR and, in the same breath, quantified the ad-interim maintenance at ₹20,000/- per month. While Section 23 of the P.W.D.V. Act undoubtedly empowers the Magistrate to pass such interim orders as are "just and proper," this discretion is not a license for judicial arbitrariness. It must be exercised within the guardrails of procedural due process.
- 6.2.3. The landmark judgment of the Hon'ble Supreme Court in *Rajnesh v. Neha* [(2021) 2 SCC 324] was necessitated

specifically to curb the practice of "guesswork" in maintenance proceedings. The Apex Court noted with concern that in the absence of a uniform format for financial disclosure, maintenance proceedings were being dragged on for years while orders were being passed on "hypothetical assumptions." To rectify this, the Court issued a mandatory direction under Article 141 of the Constitution:

*"72.1. (a) The Affidavit of Disclosure of Assets and Liabilities... shall be filed by both parties in all maintenance proceedings... throughout the country... (b) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks."*

6.2.4. In the present case, the Learned Magistrate proceeded to fix the quantum before the Petitioner-Husband was even afforded an opportunity to file his Affidavit. This methodology fundamentally undermines the "Disclosure Regime." While the Wife's counsel argues that Section 23(2) permits *ex-parte* orders to prevent immediate starvation, such an argument must be reconciled with the fact that the parties here are not from a marginalized socio-economic background, but are an Engineer and a Doctor. In such high-stakes litigation involving professionals, the "emergency" must be weighed against the "accuracy" of the financial data.

- 6.2.5. Furthermore, the ratio in *Rajnesh v. Neha* emphasizes that the Court must consider the "standard of living," the "essential expenditures," and the "actual income" of both parties. By awarding ₹20,000/- without having the Petitioner's salary certificate or the Wife's disclosure of her specialized clinical income on record, the Learned Magistrate acted in a vacuum. This Court finds that such "rational guesswork" becomes "irrational" the moment it ignores a mandatory Supreme Court guideline.
- 6.2.6. Comparing the present facts with the spirit of the directions in *Aditi alias Mithi v. Jitesh Sharma [2023 SCC OnLine SC 1451]*, the Supreme Court reiterated that the guidelines in *Rajnesh* are not mere "suggestions" but are "mandatory instructions" to be followed by all Courts. The failure to elicit the Affidavit of Assets and Liabilities before determining the quantum, even at the *ad-interim* stage, results in a failure of justice, as it saddles the husband with a liability based on the wife's unilateral (and often inflated) assertions.
- 6.2.7. In this case, the Petitioner asserts a net income of ₹70,000/-, while the Wife alleges ₹2,10,000/-. Without the Affidavit, the Magistrate had no legal basis to choose one figure over the other. The "haste" shown by the Learned Magistrate in quantifying the amount on the very first day of the DIR filing,

without waiting for the Petitioner's financial disclosure, constitutes a patent procedural irregularity.

- 6.2.8. Accordingly, this Court holds that the Learned Magistrate committed a jurisdictional error by bypassing the mandatory requirement of exchanging Affidavits of Assets and Liabilities. While the Magistrate had the power to grant *ad-interim* relief, the quantification of that relief without following the *Rajnesh v. Neha* timeline renders the order procedurally fragile and unsustainable in law. The "emergency" power under Section 23 cannot be used to circumvent the "due process" of financial transparency.

**6.3. Determination of Question No. 3: On the Status of a Specialized Professional as "Unable to Maintain Herself".**

- 6.3.1. This point for determination invites a nuanced examination of whether a spouse, possessing the highest order of professional degrees (specifically a Specialist in Critical Care Medicine (MBBS, DNB) with a seasoned background as a Senior Registrar) can be legally categorized as "unable to maintain herself" within the beneficial framework of the P.W.D.V. Act.
- 6.3.2. It is a settled principle that the phrase "unable to maintain herself" does not contemplate a state of absolute destitution or beggary. However, judicial interpretation has evolved to

distinguish between a spouse who *cannot* work and one who *chooses* not to work despite being highly qualified. In the instant case, the Petitioner has produced prima facie evidence of the Wife's professional credentials, which the Wife does not deny; rather, she masks them under the shroud of current "unemployment."

6.3.3. In this context, the ratio in *Mamta Mamgain v. Pawan Kumar* [2023 SCC OnLine Del 6013] becomes highly pertinent. The Court therein observed that while a spouse is entitled to a standard of living similar to that of the matrimonial home, the court cannot ignore the professional independence of a spouse who is capable of earning. It held:

*"The law does not expect a highly qualified person to sit idle and remain a financial burden on the other spouse, especially when there is no physical or mental disability preventing them from working."*

6.3.4. Similarly, in *Shailja & Anr. v. Khobbanna* [(2018) 12 SCC 351], the Hon'ble Supreme Court clarified that "capable of earning" and "actually earning" are two distinct concepts. However, the Court also cautioned that if a spouse is well-qualified, she should not be allowed to suppress her capacity to gain an unfair advantage in maintenance proceedings.

6.3.5. Applying these principles to the present facts, the Opposite Party No. 2 is not merely "educated"; she is a Specialist Doctor in a high-demand field. The medical profession,

particularly Critical Care, does not suffer from the volatilities of typical labor markets. By portraying herself as "dependent on her ailing father," the Wife has presented a narrative of "fictional destitution." This Court finds that a woman who has served as a Senior Registrar in premier hospitals like Woodlands and R.N. Tagore possesses an inherent financial autonomy that is fundamentally at odds with the concept of "unable to maintain herself" for the purpose of claiming *personal* maintenance.

6.3.6. Furthermore, we must address the Wife's silence regarding her professional status in her initial application. A litigant who seeks equity must come with clean hands. By identifying herself simply as a "Doctor" without disclosing her specialized rank and previous lucrative emoluments, the Wife engaged in what this Court terms "strategic suppression." Such suppression vitiates the claim for discretionary ad-interim relief, as it prevents the Magistrate from balancing the equities properly.

6.3.7. This Court must also consider the duration of the professional hiatus. While a mother of a two-year-old child undoubtedly requires time for child-rearing, a specialist physician's total withdrawal from a profession that can be practiced part-time or through tele-consultation, especially when she claims to be

in financial dire straits, raises a doubt regarding the *bona fides* of her claim of "inability."

6.3.8. Consequently, this Court holds that a spouse possessing specialized, high-income professional qualifications cannot be categorized as "unable to maintain herself" merely by asserting current unemployment. While she may be entitled to maintenance for the child, her personal claim for maintenance must be strictly scrutinized against her "Earning Capacity." In the present case, the Wife's status as a Critical Care Specialist creates a legal presumption of self-sufficiency that has not been adequately rebutted in her pleadings.

**6.4. Determination of Question No. 4: On the Mandatory Consideration of "Earning Capacity" as a Material Factor at the Ad-Interim Stage.**

6.4.1. This point for determination investigates whether the "Earning Capacity" of a specialized professional must be considered as a material factor during the *ad-interim* stage, or whether such an inquiry should be deferred to the final trial. The Petitioner contends that allowing an interim order to stand in total disregard of the Wife's specialized qualifications would amount to sanctioning "legal extortion."

6.4.2. In the traditional paradigm of maintenance, Courts were often reluctant to investigate the "earning potential" of a spouse at the threshold stage, focusing primarily on the "actual income"

of the husband. However, the modern judicial trend, as articulated by the Hon'ble Supreme Court, has moved toward a more symmetrical and realistic assessment of financial status.

6.4.3. The ratio in *Rajnesh v. Neha* [(2021) 2 SCC 324] specifically enumerates "Earning Capacity" as a critical criterion. In Section III of the said judgment, under the head "Criteria for Determining Quantum of Maintenance," the Apex Court held:

*"The Court must take into consideration... the educational and professional qualifications of the parties;... whether the applicant is educated and professionally qualified and what was the work profile of the applicant; whether the applicant was stay-at-home mother, or has been working and can get a job;... whether the applicant is capable of working and earning a salary."*

6.4.4. The use of the word "shall" in the context of these criteria makes it mandatory for the Magistrate to weigh these factors even at the *ad-interim* stage. If a spouse is a Specialist Doctor, her potential to earn is not a distant possibility but a present reality. To ignore this potential while saddling the husband with a substantial financial liability is to tilt the scales of justice unfairly. The P.W.D.V. Act is a protectionist measure for the vulnerable, not a mechanism for a professional to

withdraw from their social and financial responsibilities to become a "pensioner" of the other spouse.

6.4.5. Reference is also made to the decision in *Rupali Gupta v. Rajat Gupta [2016 SCC OnLine Del 4118]*, where the Court observed that a well-qualified spouse cannot be permitted to remain a "parasite" on the other when she has the capacity to sustain herself. The Court noted:

*"If a person is well-qualified and was working, the Court can certainly take note of her capacity to earn. A lady who is highly qualified... should not be allowed to sit at home and seek maintenance."*

6.4.6. In the present factual matrix, the Opposite Party No. 2 has served as a Senior Registrar in Critical Care. This is a niche field of medicine where demand is perennial and remuneration is high. By awarding ₹12,000/- for the Wife's personal maintenance without evaluating why a Critical Care Specialist is "incapable" of earning even a fraction of her previous salary, the Learned Magistrate failed to apply the "balancing test" of earning capacity.

6.4.7. While the Wife argues that she has to care for a minor child, this Court observes that in contemporary professional circles, especially among the "Engineer-Doctor" class, childcare is frequently managed through professional assistance or family support to allow both parents to maintain their career trajectories. A total professional abdication, coupled with a

demand for maintenance, must be justified by something more substantial than a mere statement of current unemployment.

6.4.8. Furthermore, the principle of "Equitable Distribution of Responsibility" suggests that when both spouses are highly qualified, the burden of maintenance cannot be placed solely on the husband's shoulders. The "earning capacity" is not merely an academic factor; it is a substantive check against the abuse of the court's process by a spouse who suppresses their potential to secure an inflated maintenance order.

6.4.9. Therefore, this Court holds that "Earning Capacity" is a mandatory material consideration at the *ad-interim* stage. The failure of the Learned Magistrate to calibrate the quantum of maintenance against the Wife's specialized professional status constitutes a failure to exercise jurisdiction in accordance with the principles of equity and the mandates of the Apex Court. The "earning potential" of a Specialist Doctor must be set off against her claim for maintenance to arrive at a "just and fair" figure.

**6.5. Determination of Question No. 5: On whether the Assessment of Quantum constitutes "Rational Guesswork" or "Arbitrary Discretion".**

6.5.1. This point for determination addresses the legal validity of the quantum fixed by the Court below is ₹20,000/- per month,

and whether such a figure was arrived at through a structured judicial process or represents a mere arbitrary "shot in the dark."

6.5.2. It is a settled legal proposition that at the *ad-interim* stage, a Court may engage in a degree of "rational guesswork." However, the term "Rational Guesswork" is a term of art; it implies an estimation based on existing, albeit incomplete, material on record. It does not authorize a Magistrate to conjure figures that are untethered from the socio-economic reality of the parties.

6.5.3. In the present case, the Wife's application asserted that the Petitioner, a CESC Engineer, earns ₹2,10,000/- per month. The Petitioner, conversely, produced a pay slip indicating a net take-home salary of approximately ₹70,000/- after mandatory deductions. The Learned Magistrate, without calling for an authenticated salary certificate or a breakdown of the Petitioner's liabilities, such as the Home Loan EMI for the very flat the Wife claims as her shared household, proceeded to fix the maintenance at ₹20,000/-.

6.5.4. This Court finds that the assessment suffers from a "double-ended failure":

I. The Magistrate failed to account for the obligatory deductions and pre-existing liabilities of a middle-class

salaried professional. Maintenance must be carved out of the "disposable income," not the "gross salary."

II. The Magistrate failed to deduct or set off the imputed income of a Specialist Doctor. Even if the Wife was currently out of work, the principle of equity required the Court to ask why a Critical Care specialist has zero income, especially when the Petitioner alleges she is engaged in private consultations.

6.5.5. Reliance is placed on the ratio in *Kalyan Dey Chowdhury v. Rita Dey Chowdhury [(2017) 14 SCC 200]*, where the Hon'ble Supreme Court observed that 25% of the husband's net salary is generally considered a "just and proper" benchmark for maintenance. In the present case, if the Petitioner's net income is indeed ₹70,000/-, an award of ₹20,000/- (approximately 28.5%) might appear statistically within range. However, this benchmark assumes the Wife has no independent earning capacity.

6.5.6. The "rationality" of a guesswork is tested by the transparency of the calculation. The impugned order provides no window into the Magistrate's mind. It does not explain how the Court reached the figure of ₹12,000/- for the Wife and ₹8,000/- for the child. When the claimant is a Specialist Doctor, the "need-based" assessment must be weighed against her "capacity-

based" potential. By ignoring the Wife's professional status, the Magistrate's "guesswork" became arbitrary, as it proceeded on the flawed premise that the Wife is a "destitute dependent" rather than an "empowered professional."

6.5.7. Furthermore, the assessment ignored the "Standard of Living" criterion in a lopsided manner. While maintenance should ensure the Wife lives in a style similar to the matrimonial home, it should not result in a situation where the Husband is reduced to penury while the Wife, possessing superior qualifications, remains a silent spectator to his financial depletion.

6.5.8. Consequently, this Court holds that the assessment of ₹20,000/- was not a result of "rational guesswork" but was an arbitrary exercise of discretion. It was based on a unilateral and unverified income claim by the Wife and a total disregard for the Husband's actual disposable income and the Wife's specialized professional status. Such an assessment, made in a vacuum of financial disclosure, cannot withstand judicial scrutiny.

## **6.6. Determination of Question No. 6: On the Isolation of the Minor Child's Welfare from the Professional and Personal Disputes of the Parents.**

6.6.1. The final point for determination invites this Court to consider whether the maintenance for the minor daughter, Devanshi,

should be shielded from the contentious debates surrounding the Wife's "Earning Capacity" and the procedural lapses of the Court below. This inquiry is rooted in the principle of *Parens Patriae*, where the Court acts as the ultimate guardian of the interests of the child.

6.6.2. It is a settled principle of law that the maintenance of a child is an absolute and non-delegable obligation of the father, irrespective of the marital discord or the independent income of the mother. Even if this Court finds that the Wife, as a Specialist Doctor, is disentitled to *personal* maintenance due to her high earning potential, such a finding can have no bearing on the child's right to be maintained by her father.

6.6.3. In this regard, the ratio in *Jagdish Jugtawat v. Manjulata [(2002) 5 SCC 422]* and reiterated in *Rajnish v. Neha*, makes it clear that the child is entitled to a standard of living that is commensurate with the social and economic status of both parents. In the present case, we are dealing with a child born into a family of a Mains Engineer and a Specialist Doctor. The upbringing of the child, including her nutritional, medical, and early educational needs, must reflect the "Doctor-Engineer" standard of life.

6.6.4. While the Petitioner-Husband has assailed the award of ₹12,000/- to the Wife as being a result of "material suppression," he has notably maintained a stance of financial

responsibility toward the daughter. This Court acknowledges the Petitioner's submission that he is willing to provide for the child. However, the quantum of ₹8,000/- awarded by the Learned Magistrate for the child must be scrutinized for its adequacy rather than its excess.

6.6.5. In the high-inflationary environment of a metropolitan city like Kolkata, an amount of ₹8,000/- per month for a child of two years can hardly be termed as "exorbitant." It covers the bare essentials of specialized paediatric care, clothing, and the high-quality diet required at this developmental stage. This Court finds that while the Wife's personal maintenance is subject to the "Earning Capacity" test, the child's maintenance is subject only to the "Husband's Capacity to Pay."

6.6.6. This Court emphasizes that a child should not be made a "litigational casualty" in the professional crossfire between a husband and a wife. Even if the mother is a specialist physician capable of earning a six-figure salary, the father, an Engineer with a steady income, cannot seek a "pro-rata reduction" in his liability toward the child on that ground. The duty to maintain the child is joint and several, but the primary burden on the father remains steadfast.

6.6.7. Furthermore, the Petitioner's allegation regarding the "Adulterous Narrative" or the "Bohemian Allegations" of the Wife may be relevant for determining the Wife's entitlement

to maintenance under Section 125(4) Cr.P.C. or the P.W.D.V. Act, but it is wholly irrelevant to the child's claim. A child's right to live with dignity is an independent statutory and natural right that survives the death of the parents' relationship.

6.6.8. Accordingly, this Court holds that the maintenance for the minor child must be isolated from the controversies surrounding the Wife's professional status and the procedural irregularities of the impugned order. While the order regarding the Wife's maintenance may be vulnerable to set-aside or remand, the award of ₹8,000/- for the daughter is found to be just, reasonable, and commensurate with the socio-economic profile of the parties.

## **7. LEGAL FINDINGS AND RATIO DECIDENDI**

**7.1.** Upon a comprehensive evaluation of the questions of law and fact agitated in this lis, this Court distils the following legal propositions as the *ratio decidendi*:

- (i) An *ad-interim* maintenance order passed in manifest defiance of the mandatory disclosure regime established in *Rajnish v. Neha* is not merely an error of discretion, but a jurisdictional perversity. The exchange of financial transparency is a constitutional requirement under Article 141, the bypass of which renders the resulting quantification legally fragile.

- (ii) The statutory phrase "unable to maintain oneself" must be strictly scrutinized against the latent earning potential of highly qualified professionals. The law does not permit the beneficial umbrella of the P.W.D.V. Act to be utilized as a subsidy for voluntary professional inertia or to facilitate "professional parasitism" by those possessing specialized, high-demand skills.
- (iii) Professional or personal disputes between parents cannot mitigate the father's absolute, non-delegable duty to provide for the minor child's dignity and sustenance. The child's right to "financial oxygen" remains independent of the mother's professional standing or the procedural infirmities of the primary claim.

## **8. CONCLUSION**

**8.1.** The factual and legal conclusions of this discussion, articulated with the judicial rigor and linguistic precision characteristic of this Court's seasoned jurisprudence, are rendered as follows:

- a) The factual matrix of the present dispute reveals a stark departure from the conventional narrative of the indigent wife. This Court finds that the parties do not reside on the periphery of economic survival but

are entrenched in the professional elite, a CESC Engineer and a Specialist in Critical Care Medicine. A pivotal finding of this Court is the material suppression by the Opposite Party No. 2, who, by cloaking her specialized DNB qualifications and her seasoned registrarship under the generic label of "Doctor," sought to project a façade of destitution. This Court further notes a manifest procedural leap by the Learned Magistrate, who, in a display of uncharacteristic haste, quantified the financial liability on the very day of the DIR filing, thereby precluding a transparent assessment of the Petitioner's actual disposable income and the Wife's substantial earning potential.

- b) On the legal plane, this Court affirms that the availability of a statutory appeal under Section 29 of the P.W.D.V. Act does not operate as an absolute fetter upon the inherent powers of this Court under Section 482 of the Cr.P.C., particularly where the impugned order originates from a "procedural vacuum." The total defiance of the disclosure regime mandated in *Rajnish v. Neha* transmutes a discretionary interim order into a jurisdictional nullity. The Doctrine of Earning Capacity must be treated as

a mandatory equitable check; the legislative intent of "inability to maintain" cannot be stretched to subsidize voluntary professional inertia. The P.W.D.V. Act, while a shield for the vulnerable, cannot be permitted to serve as a mechanism for "professional parasitism."

c) Finally, this Court establishes a sharp jurisprudential distinction between parental dispute and the welfare of the progeny. While the Wife's personal maintenance is subject to the rigors of the "Earning Capacity" test and procedural propriety, the maintenance of the minor child remains a sacrosanct, non-delegable obligation of the father. The findings conclude that while the award to the Wife must be remanded for a fresh, transparent adjudication of her professional potential, the child's right to sustenance must be isolated from the litigational crossfire, ensuring that the fracture of the matrimonial tie does not result in the financial dereliction of the minor daughter.

**8.2.** In consideration of the findings arrived at and the legal propositions discussed hereinabove, this Court is of the opinion that the impugned order dated 01.06.2022 cannot be sustained in its entirety, as it suffers from a foundational

departure from the procedural mandates of the Apex Court and fails to account for the specialized professional status of the claimant spouse.

## **9. ORDERS AND DIRECTIONS**

**9.1.** Consequently, in the exercise of the inherent powers of this Court, the Revisional Application being C.R.R. No. 3578 of 2022 is hereby disposed of by modifying the impugned order dated 01.06.2022 passed by the Learned Judicial Magistrate, Bongaon, in C. Case No. 123 of 2021.

**9.2.** The direction of the Learned Magistrate awarding ₹12,000/- per month as *ad-interim* maintenance to the Opposite Party No. 2 (Wife) is hereby set aside. The matter is remanded to the Learned Magistrate for a *de novo* consideration of the Wife's entitlement and the quantum of her maintenance, subject to the following conditions:

- a. The Learned Magistrate shall, within two weeks from the date of communication of this order, direct both parties to file their respective Affidavits of Assets and Liabilities strictly in the format prescribed by the Hon'ble Supreme Court in *Rajnish v. Neha*.
- b. In evaluating the Wife's claim, the Learned Magistrate must specifically adjudicate upon her "Earning Capacity" as a Specialist in Critical Care Medicine (MBBS, DNB). The Court below must determine whether her current

state of unemployment is an involuntary consequence of matrimonial cruelty or a strategic withdrawal from the workforce to maximize maintenance claims.

- 9.3.** The award of ₹8,000/- per month toward the maintenance of the minor daughter, Devanshi, is hereby upheld and affirmed. This Court holds that the child's right to sustenance is independent of the mother's professional status. The Petitioner is directed to continue the payment of this amount by the 7th day of each succeeding month.
- 9.4.** Any arrears accumulated specifically toward the child's maintenance from the date of the application shall be liquidated by the Petitioner in four equal monthly installments, the first of which shall commence from June 2026.
- 9.5.** Any amount already paid by the Petitioner toward the Wife's personal maintenance (the ₹12,000/- component) pursuant to the stayed order shall be kept in abeyance and shall be subject to adjustment against the final quantum, if any, determined by the Learned Magistrate upon remand.
- 9.6.** Considering that this is a matter involving "financial oxygen" for the parties, the Learned Magistrate shall conclude the re-determination of the *ad-interim* maintenance as early as possible from the date of receipt of the Affidavits of Assets and Liabilities, without granting any unnecessary adjournments to either side.

- 9.7.** The parties are directed to maintain the peace and refrain from making inflammatory allegations that deviate from the core issue of maintenance. The Learned Magistrate shall proceed with the inquiry uninfluenced by any observations made by this Court on the factual merits of the allegations of cruelty, which are subject to trial.
- 9.8.** There shall be no order as to the cost.
- 9.9.** All connected applications stand disposed of.
- 9.10.** Let a copy of this order be communicated to the Learned Court below forthwith.
- 9.11.** The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.
- 9.12.** Case diary, if any, be returned forthwith.
- 9.13.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

***(Uday Kumar, J.)***