

**A.F.R.**



**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.3213 of 2025**

(In the matter of an application under Section 528 of B.N.S.S., 2023 read with Section 482 of the Code of Criminal Procedure, 1973.)

*Dr. Deepak Padhi* .... *Petitioner (s)*

*-versus-*

*Gayatri Panda* .... *Opp. Party (s)*

Advocates appeared in the case through Hybrid Mode:

*For Petitioner (s)* : *Ms. Deepali Mohapatra, Adv.*

*For Opp. Party (s)* : *Mr. Bhawani Sankar Panigrahi, Adv.*

**CORAM:**

**DR. JUSTICE SANJEEB K PANIGRAHI**

**DATE OF HEARING:-17.03.2026**

**DATE OF JUDGMENT:-31.03.2026**

**Dr. Sanjeeb K Panigrahi, J.**

1. In this CRLMC, the petitioner seeks a direction from this Court to quash the proceeding initiated before the learned Judge, Family Court, Berhampur under Section 125 Cr.P.C./Section 144 BNSS, contending that in view of the decree of divorce and prior payments treated as permanent alimony, no further maintenance claim survives.

**I. FACTUAL MATRIX OF THE CASE:**

2. The facts of the case are as follows:



- (i) The marriage between the petitioner-husband and the opposite party-wife was solemnised on 05.12.2003 in accordance with Hindu rites and customs. Matrimonial discord arose shortly thereafter. It is the case of the petitioner that the opposite party left the matrimonial home on 15.01.2004 and did not return despite alleged efforts for restitution of cohabitation.
- (ii) In that backdrop, the petitioner instituted MAT Case No. 42 of 2006 on 22.06.2006 before the learned Civil Judge (Senior Division), Berhampur seeking dissolution of marriage. The proceeding was later transferred to the Court of the learned Judge, Family Court, Berhampur and renumbered as C.P. No. 38 of 2010. During pendency, the opposite party was granted pendente lite maintenance under Section 24 of the Hindu Marriage Act.
- (iii) Upon failure of the petitioner to comply with the maintenance order, his pleading in the matrimonial proceeding was struck off and the divorce petition came to be dismissed. The said development was assailed by the petitioner before this Court in MATA No. 38 of 2015.
- (iv) Independently, the opposite party initiated proceedings under Section 125 Cr.P.C. In Cr.P. No. 87 of 2015, the learned Judge, Family Court, Berhampur, by order dated 15.05.2015, awarded maintenance of ₹20,000/- per month in favour of the opposite party.



- (v) The petitioner challenged the said order before this Court in RPFAM No. 86/119 of 2017. In the meantime, upon compliance with arrears, the matrimonial proceeding was restored and remanded for adjudication on merits. The opposite party thereafter filed a counter-claim seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act.
- (vi) By judgment dated 30.05.2017, the learned Family Court dismissed the petitioner's prayer for divorce and allowed the counter-claim for restitution of conjugal rights. The petitioner preferred MATA No. 99 of 2017 and MATA No. 100 of 2017 challenging the said judgment.
- (vii) This Court, by order dated 14.07.2022, dismissed the petitioner's challenge to the maintenance order and affirmed the grant of maintenance under Section 125 Cr.P.C.
- (viii) Thereafter, by common judgment dated 21.11.2023 in MATA No. 99 of 2017 and MATA No. 100 of 2017, this Court reversed the Family Court's decision, granted a decree of divorce in favour of the petitioner on the ground of desertion, and observed that the amounts already paid by the husband would constitute permanent alimony.
- (ix) The opposite party approached the Supreme Court in Special Leave to Appeal (C) No. 1038 of 2024. From the record, it appears that the grievance raised therein was confined to issues relating to alimony/payment and not to the decree of divorce.



- (x) During pendency of the proceedings before the Hon'ble Supreme Court, various directions were issued regarding payment. The petitioner made payments from time to time, including towards arrears of maintenance and other sums as directed.
- (xi) The Supreme Court, by order dated 20.08.2024, disposed of the Special Leave Petition, recording that the grievance of the wife pertained to non-payment of alimony and noting that this Court had already granted divorce and treated prior payments as permanent alimony. No further substantive directions were issued.
- (xii) Subsequently, proceedings in the nature of miscellaneous and contempt applications were undertaken before the Hon'ble Supreme Court concerning compliance. By order dated 09.05.2025, the Hon'ble Supreme Court directed payment of an additional sum of ₹3,00,000/- and granted liberty to the parties to avail appropriate remedies before the competent forum.
- (xiii) It is the case of the opposite party that despite the subsisting maintenance order under Section 125 Cr.P.C., the petitioner did not continue payment at the rate of ₹20,000/- per month for the period subsequent to 21.11.2023. On that basis, the opposite party initiated the present proceeding before the learned Judge, Family Court, Berhampur under Section 125 Cr.P.C./Section 144 BNSS.



(xiv) The present petition has been filed by the husband under Section 482 Cr.P.C./Section 528 BNSS challenging the maintainability of the said proceeding, contending that in view of the decree of divorce, prior payments treated as permanent alimony, and orders of this Court and the Hon'ble Supreme Court, no further claim for maintenance survives.

## **II. SUBMISSION OF THE PETITIONER:**

3. Learned counsel for the Petitioner earnestly made the following submissions in support of her contentions:

- (i) The petitioner submits that the finding of desertion has attained finality up to the Supreme Court, and by virtue of Section 125(4) Cr.P.C., the wife stood disentitled to maintenance during subsistence of marriage; consequently, any continuation of such claim is legally untenable.
- (ii) It is contended that this Court's direction treating payments already made as permanent alimony, coupled with payments aggregating approximately ₹30 lakhs, brings finality to all financial claims between the parties.
- (iii) The petitioner argues that once permanent alimony has been determined and acted upon, no independent proceeding under Section 125 Cr.P.C./Section 144 BNSS is maintainable; any modification could lie only before the court which granted such



alimony, placing reliance on *Rakesh Malhotra v. Krishna Malhotra*<sup>1</sup>.

- (iv) It is further urged that the present proceeding constitutes an abuse of process, as it seeks to reopen issues already settled by superior courts under the guise of a claim for a limited post-decree period.
- (v) The petitioner submits that the earlier maintenance order stands merged in the final adjudication and cannot survive independently.

### **III. SUBMISSIONS OF THE OPPOSITE PARTY:**

- 4. Learned counsel for the Opposite Party earnestly made the following submissions in support of his contentions:
  - (i) A preliminary objection is raised that the present petition is premature, as the Family Court has merely issued notice and no adverse order has been passed.
  - (ii) It is contended that the proceedings before the Family Court are in pursuance of liberty expressly granted by the Hon'ble Supreme Court by order dated 09.05.2025.
  - (iii) The opposite party alleges suppression of material facts by the petitioner, particularly with respect to the said liberty granted by the Supreme Court.
  - (iv) On merits, it is submitted that the maintenance order dated 14.07.2022 has attained finality and continues to operate, as

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<sup>1</sup> (2020) 14 SCC 150



neither the decree of divorce nor subsequent orders have extinguished or modified the same.

- (v) Relying on settled law, it is contended that a divorced wife remains entitled to maintenance under Section 125 Cr.P.C., and the bar under Section 125(4) does not apply post-divorce, even where divorce is granted on the ground of desertion.
- (vi) It is further submitted that the petitioner's failure to continue payment of ₹20,000/- per month after 21.11.2023 justifies the present proceeding, which is in the nature of enforcement of an existing obligation rather than a fresh claim.

#### **IV. EXAMINATION OF THE LEGAL MATRIX:**

5. Heard learned counsel for the parties and perused the materials placed on record.
6. The present petition under Section 482 CrPC / Section 528 BNSS seeks quashing of a proceeding initiated before the learned Judge, Family Court, Berhampur under Section 125 CrPC / Section 144 BNSS for enforcement of maintenance for the period subsequent to 21.11.2023.
7. The material facts, to the extent relevant for the present controversy, are not in serious dispute. The parties married on 05.12.2003. In the maintenance proceeding under Section 125 CrPC, the opposite party-wife was granted maintenance at the rate of Rs.20,000/- per month by order dated 15.05.2015 in Cr.P. No.87 of 2015. The said order was assailed by the petitioner-husband in RPFAM No.86 of 2017, but ultimately stood affirmed by this Court by order dated 14.07.2022.



8. In the matrimonial litigation, the Family Court had initially dismissed the husband's prayer for divorce and allowed the wife's counter-claim for restitution of conjugal rights. However, by common judgment dated 21.11.2023 in MATA No.99 of 2017 and MATA No.100 of 2017, this Court granted a decree of divorce in favour of the husband on the ground of desertion and observed that the amounts already paid by the husband to the wife till that date in aggregate would also constitute her permanent alimony.
9. The wife challenged the matter before the Supreme Court in Special Leave to Appeal (C) No.1038 of 2024. The materials placed indicate that the controversy before the Hon'ble Supreme Court was confined essentially to the payment aspect. The Special Leave Petition was disposed of on 20.08.2024 without any further substantive modification of the High Court judgment. Thereafter, in further proceedings of a miscellaneous / contempt nature, the Supreme Court by order dated 09.05.2025 directed payment of a further sum of Rs.3,00,000/- and observed that the parties would be at liberty to avail such other legal remedies as may be available before the appropriate forum.
10. The wife now asserts that notwithstanding the subsisting maintenance order affirmed by this Court on 14.07.2022, the husband did not continue payment at the rate of Rs.20,000/- per month for the period after 21.11.2023. On that basis, she has approached the Family Court.



The husband, in turn, questions the very maintainability of that proceeding.

11. On the pleadings and submissions advanced, the controversy essentially turns on three questions:

- a) whether, after a decree of divorce on the ground of desertion, the bar under Section 125(4) CrPC or its counterpart under Section 144 BNSS can be invoked to defeat the wife's post-divorce claim for maintenance?
- b) whether this Court's observation in the matrimonial appeal that the amounts already paid would constitute permanent alimony, read with the subsequent proceedings before the Hon'ble Supreme Court, automatically extinguishes the earlier maintenance order under Section 125 CrPC as a matter of law?  
and
- c) whether at the present stage, when the Family Court has merely issued notice, this Court ought to exercise inherent jurisdiction to quash the proceeding at threshold?

12. Before dealing with the rival contentions, it is necessary to note the nature of the maintenance jurisdiction. Section 125 CrPC, and now Section 144 BNSS, is a measure of social justice intended to prevent destitution and vagrancy. It is a provision enacted for the protection of women, children and other dependants, and must receive an interpretation consistent with that remedial purpose.



13. Under the BNSS, the maintenance provision stands renumbered as Section 144. The Explanation continues to include within the expression "wife" a divorced woman who has not remarried. Likewise, the inherent power provision corresponding to Section 482 CrPC is Section 528 BNSS. The statutory framework in substance remains the same for present purposes.

14. The first limb of the petitioner's challenge rests on Section 125(4) CrPC. According to him, since the decree of divorce has been granted on the ground of desertion, the wife stood disentitled to maintenance, and therefore no post-divorce enforcement proceeding is maintainable.

15. The Supreme Court in *Rohtash Singh v Ramendri*<sup>2</sup> explain that once marriage is dissolved, the divorced woman remains a wife for the limited purpose of maintenance by reason of the Explanation, and the husband remains under a statutory obligation if she is unable to maintain herself and has not remarried. It also recognized the distinction between the wife's entitlement during subsistence of marriage and her entitlement as a divorce wife after dissolution, and approves the proposition that desertion as a matrimonial ground is not by itself a bar to post divorce maintenance. The Court held as follows:

*"10. Claim for maintenance under the first part of Section 125 CrPC is based on the subsistence of marriage while claim for maintenance of a divorced wife is based on the foundation*

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<sup>2</sup>2000 3 SCC 180



*provided by Explanation (b) to sub-section (1) of Section 125 CrPC. If the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to maintenance allowance. The Calcutta High Court had an occasion to consider an identical situation where the husband had obtained divorce on the ground of desertion by the wife but she was held entitled to maintenance allowance as a divorced wife under Section 125 CrPC and the fact that she had deserted her husband and on that basis a decree for divorce was passed against her was not treated as a bar to her claim for maintenance as a divorced wife. (See: SukumarDhibar v. Anjali Dasi [1983 Cri LJ 36 (Cal)] .) The Allahabad High Court also, in the instant case, has taken a similar view. We approve these decisions as they represent the correct legal position.”*

16. This position was affirmed and developed in *Dr Swapan Kumar Banerjee v State of West Bengal*<sup>3</sup>. The Supreme Court held that the deeming fiction treating a divorced woman as wife for maintenance cannot be stretched to an illogical extent so as to deny maintenance on the theory that even after divorce she refuses to live with the ex-husband. The Court held as follows:

*“No doubt, as urged by Mr. Debal Banerjee, explanation II to Section 125 of the Cr.P.C. by deeming fiction includes a divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 of the Cr.P.C. The question is how we should read the provisions of sub-section (4) in this regard, especially when we deal with those women, against whom a decree for divorce has been obtained on the ground that they have deserted their husband. Once the relationship of marriage comes to an end, the woman obviously is not under*

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<sup>3</sup>2020 19 SCC 342



*any obligation to live with her former husband. The deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that the divorced wife is under a compulsion to live with the ex-husband. The husband cannot urge that he can divorce his wife on the ground that she has deserted him and then deny maintenance which should otherwise be payable to her on the ground that even after divorce she is not willing to live with him. Therefore, we find no merit in the contention of Mr. Debal Banerjee."*

17. In view of the above authorities, the legal position is clear that the decree of divorce on the ground of desertion does not, by itself, create a statutory bar to post-divorce maintenance. Therefore, the petitioner cannot succeed on the broad proposition that the present proceeding is inherently non-maintainable merely because the finding of desertion has attained finality.

18. The second limb of the petitioner's case is that this Court, while granting divorce by judgment dated 21.11.2023, observed that the amounts already paid by the husband would constitute permanent alimony, and therefore no further maintenance can survive. Reliance is placed on *Rakesh Malhotra* (supra), particularly the principle that once permanent alimony under Section 25 of the Hindu Marriage Act is fixed, the proper remedy for alteration is under Section 25 sub-section 2, and the route of Section 125 CrPC should not be used to claim additional maintenance. The Court held as follows:

*"Since the Parliament has empowered the Court under Section 25(2) of the Act and kept a remedy intact and made available to the concerned party seeking modification, the*



*logical sequitor would be that the remedy so prescribed ought to be exercised rather than creating multiple channels of remedy seeking maintenance. One can understand the situation where considering the exigencies of the situation and urgency in the matter, a wife initially prefers an application under Section 125 of the Code to secure maintenance in order to sustain herself. In such matters the wife would certainly be entitled to have a full-fledged adjudication in the form of any challenge raised before a Competent Court either under the Act or similar such enactments. But the reverse cannot be the accepted norm. In the circumstances, we allow these appeals, set aside the view taken by the High Court and direct that the application preferred under Section 125 of the Code shall be treated and considered as one preferred under Section 25(2) of the Act."*

19. There can be no quarrel with the principle laid down in **Rakesh Malhotra** (supra) that once permanent alimony under Section 25 of the Hindu Marriage Act has been fixed, the proper statutory route for variation, modification or rescission is under Section 25(2) and Section 25(3) of the Act, and that multiple parallel channels for claiming the same relief are to be discouraged. The decision emphasizes on the statutory channelization of remedies.

20. However, the present case is distinguishable. In **Rakesh Malhotra** (supra), permanent alimony had already been formally fixed under Section 25 of the Hindu Marriage Act, and the wife thereafter filed a fresh application under Section 125 of the Code seeking additional maintenance. Here, the sequence is the reverse. The Section 125 CrPC order was passed on 15.05.2015 and affirmed on 14.07.2022, well before the divorce decree dated 21.11.2023. The wife does not seek a



fresh or parallel grant but enforcement of a pre-existing, final order. Moreover, the observation that amounts already paid would constitute permanent alimony was not preceded by any formal adjudication under Section 25. Whether that observation amounts to a determination capable of extinguishing the earlier maintenance order is itself an open question for the competent court. *Rakesh Malhotra* (supra) prohibits parallel remedies; it does not permit extinguishment of a prior final order without proper adjudication.

21. The petitioner seeks to derive from that principle a still wider consequence, namely, that the earlier maintenance order under Section 125 CrPC automatically stood extinguished by reason of the matrimonial judgment dated 21.11.2023 and the subsequent proceedings before the Supreme Court. For the reasons already noted, this submission cannot be accepted at the present stage as a pure question of law capable of being concluded in inherent jurisdiction.

22. The document trail placed before this Court shows that the order of monthly maintenance at Rs.20,000/- under Section 125 CrPC was passed on 15.05.2015 and affirmed by this Court on 14.07.2022. The existence and finality of that order are not in dispute. Equally, this Court's subsequent judgment dated 21.11.2023 contains the observation that the amounts already paid would constitute permanent alimony. The question is whether, and to what extent, the latter has the legal effect of superseding, satisfying, adjusting, varying or extinguishing the former.



23. That issue cannot be examined in abstraction. It depends upon the precise scope of the matrimonial judgment, the nature and quantification of payments actually made, whether such payments satisfy the whole amount payable in law, and whether the conditions for cancellation, variation, adjustment or discharge stand fulfilled. These are matters that require examination in the statutory framework itself and by the Competent Court.
24. Significantly, the criminal procedure framework contains an internal mechanism for dealing with such situations. Under Section 146 BNSS, where in consequence of any decision of a competent civil court an order under Section 144 should be cancelled or varied, the court is empowered to cancel or vary it accordingly. Section 146 also contemplates situations where a divorced woman has received the whole of the sum payable on divorce under personal or customary law and provides for the circumstances in which cancellation may follow.
25. Thus, the statute itself envisages that where a later civil or matrimonial adjudication bears upon an earlier maintenance order, the matter is to be worked out through the mechanism of cancellation, variation or adjustment before the competent court. The husband's plea of satisfaction, discharge and extinguishment is therefore not left remediless; but it is a plea to be examined through the statutorily prescribed route.
26. In that light, *Rakesh Malhotra* (Supra) does not advance the petitioner's case to the extent of justifying quashing of the proceeding



at inception. At best, it supports the proposition that the Family Court must examine whether the wife's present claim is in substance an impermissible attempt at parallel recovery, or whether the existing maintenance order continues to operate unless duly varied or cancelled in accordance with law. That is an issue for adjudication before the competent forum and not for premature interdiction under Section 482 CrPC / Section 528 BNSS.

27. This brings the Court to the third question, namely, whether the present case warrants exercise of inherent jurisdiction at threshold. The governing principles are well settled. *In State of Haryana v. Bhajan Lal*<sup>4</sup>, the Supreme Court held that the power to quash is exceptional in nature and is to be exercised sparingly, where the proceeding is manifestly barred by law or where its continuance would amount to abuse of process.

28. In the present case, the Family Court has only issued notice. No final or coercive order has yet been passed. The petitioner has full liberty to raise all objections available in law before that forum, including objections founded on the divorce decree, the observation regarding permanent alimony, the payments already made, the plea of satisfaction or adjustment, and the statutory consequence flowing from Section 146 BNSS or any other applicable provision.

29. At this stage, this Court is not persuaded that the proceeding is ex facie barred by law. The wife relies on an existing maintenance order

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<sup>4</sup>1992 Supp (1) SCC 335



which admittedly has not been set aside. The husband disputes its continued enforceability in view of subsequent events. That dispute is not illusory; nor is it one that can be resolved by a bare application of law divorced from factual examination. It would therefore be inappropriate to convert the inherent jurisdiction of this Court into a substitute for first-instance adjudication on matters which the statute itself entrusts to the maintenance court.

**30.**This Court is also mindful of the fact that maintenance jurisdiction operates in the field of social welfare. Where the dispute is whether an earlier final maintenance order survives, stands satisfied, or requires variation in view of subsequent matrimonial adjudication, the proper course is to permit the competent court to examine the matter on its own statutory terms rather than foreclose the inquiry at threshold.

**31.**In that view of the matter, no case is made out for interference under Section 482 CrPC / Section 528 BNSS. The challenge founded on Section 125(4) CrPC is contrary to settled law. The challenge founded on permanent alimony and alleged extinguishment of the maintenance order raises issues of adjustment, variation and satisfaction which are to be urged before the Family Court in the manner known to law.

**32.**It is clarified that this Court has expressed no opinion on the merits of the rival claims as to whether the payments already made by the petitioner satisfy the wife's entitlement wholly or partly, whether the maintenance order survives in full, or whether any cancellation,



variation or adjustment is warranted. All such issues are left open for consideration by the learned Judge, Family Court, Berhampur.

33. That said, this Court is conscious that the litigation between the parties has traversed multiple forums over nearly two decades, commencing from the institution of the matrimonial proceeding in 2006, passing through maintenance proceedings, matrimonial appeals, revision petitions, and proceedings before the Supreme Court. The parties cannot be left to continue in this state of indefinite contestation. In the interest of bringing finality to the financial disputes between the parties, and to make sure that the statutory remedies available to both sides are pursued with expedition, the following directions are issued:

- a) The petitioner, if so advised, shall be at liberty to file an application for cancellation or variation of the maintenance order under Section 127 CrPC/ Section 146 BNSS before the learned Judge, Family Court, Berhampur within a period of six weeks from the date of this order. It shall be open to the petitioner to raise all contentions available in law, including those founded on the decree of divorce, the observation regarding permanent alimony, and the payments already made.
- b) In the event such application is filed, the learned Judge, Family Court, Berhampur shall, to the extent permissible and convenient, consider the same along with the pending proceeding initiated by the opposite party and endeavour to



dispose of both matters by a common order after affording due opportunity of hearing to both sides.

- c) Considering the protracted history of the litigation, the learned Judge, Family Court, Berhampur is requested to accord priority to the matter and endeavour to dispose of the same within a period of six months from the date of first appearance of both parties, subject to the exigencies of the board and without prejudice to the right of either party to a fair and adequate hearing.
- d) Both parties are expected to cooperate in the expeditious disposal of the proceedings. Neither party shall seek unnecessary adjournments, and in the event of non-cooperation by either side, the learned Judge, Family Court shall be at liberty to draw such adverse inference or pass such order as may be warranted in accordance with law.

34. Accordingly, the CRLMC stands dismissed.

35. The interim order staying the proceedings, if any, is vacated.

**(Dr. Sanjeeb K Panigrahi)**  
**Judge**

*Orissa High Court, Cuttack,  
Dated the 31<sup>st</sup> March, 2026/*