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**(1990) 02 CAL CK 0020**  
**In the Calcutta High Court**  
**Case No : Criminal Revn. No. 722 of 1989**

|                                         |            |
|-----------------------------------------|------------|
| Sambhunath Jaiswal alias Sambhu Jaiswal | APPELLANT  |
| Vs                                      |            |
| Anjana Jaiswal and Others               | RESPONDENT |

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**Date of Decision :** 14-02-1990

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397, 401

**Citation :** (1990) 2 DMC 354

**Hon'ble Judges :** Amal Kumar Chatterji, J

**Bench :** Single Bench

**Advocate :** Tapandeb Nandy, for the Appellant; Dwijendra Nath Lahiri, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Amal Kumar Chatterji, J.—This revisional application is directed against an order passed by the learned Judicial Magistrate at Alipore u/s 125 Cr. P.C. calling upon the petitioner to pay to his wife, the Opposite Party No. 1 herein a total sum of Rs. 400/- per month on account of maintenance for herself and her child. The said opposite party had claimed maintenance on the ground that she was assaulted and driven out of her matrimonial home and was not provided with any maintenance although he had a decent income. The case was contested in the court below wherein it was contended that the petitioner had not assaulted her and did not drive her out but she left on her own and refused to come to his place inspite of best effort made by him. He also denied that he had a decent income.

2. The learned Magistrate on consideration of the testimony of witnesses examined on behalf of the parties has found that the, witnesses examined on behalf of the said opposite party were more acceptable and in view of evidence on the record regarding the means of the parties and in view of the fact petitioner was an able bodied man the learned Magistrate has directed him to pay maintenance as above.

3. On hearing the learned Advocates for both the parties and on perusal of the impugned order and the revisional application it appears that what has substantially been questioned is thus supposed misappropriation of evidence by the Court below which cannot be successfully canvassed before a court of revision. The finding of the learned Magistrate that the evidence adduced on behalf of the opposite party was acceptable cannot therefore, be assailed as it does not suffer from any infirmity nor has it been arrived at without taking note of any relevant material on record. Therefore, it must be held that the ground for granting maintenance as found by the learned Magistrate cannot be upset.

4. The learned Advocate for the petitioner has also contended that the amount of maintenance was unfair and excessive and grossly disproportionate to the income of the petitioner as appearing from the evidence on the record. Here again it seems that the learned Magistrate has considered all the relevant evidence on record which shows that the petitioner has a scrap shop although he has contended that he had transferred the same without executing any paper in respect of transfer and further he is now working as an employee in the shop of another although there is a discrepancy between his evidence and that of his employer regarding the salary. According to the petitioner, he draws a salary of Rs. 300/- per month but thus supposed employer examined as a witness on behalf of the petitioner stated that he draws a salary of Rs. 400/- per month. The learned Magistrate has taken note of this discrepancy and held that none should be believed on this point. This finding cannot be said to be unwarranted by the evidence on the record and cannot therefore, be disturbed in revision. If this finding stands coupled with the evidence that he has his shop, it is established that he has some income. Since the amount of income was a fact within his special knowledge it was incumbent upon him to establish it by giving evidence form which however he has refrain. In the circumstances, apart from the fact that the petitioner is an able bodied man, the order passed by the learned Magistrate granting maintenance at the rate of Rs. 400/- per month cannot be disturbed.

5. The learned Advocate for the petitioner has then pointed out that although the learned Magistrate has framed an issue whether the opposite party has income to maintain herself and her minor daughter, still no decision was recorded. Now, it appears that in the written objection, the petitioner has not stated that she has means to support herself and her daughter and did not even make any such allegations in his evidence nor was it suggested to the opposite party when she was examined as witness that she has means to support herself and her child. In the situation even though the learned Magistrate has not recorded a finding on this point still it does not appear that it has caused any failure of justice and therefore there need not be any revisional interference by this Court.

6. For the reasons stated above, I do not find any merit in this revisional application which is therefore, rejected.

7. All interim order stands vacated.

Let this order be communicated to the court below as early as possible.