

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jay Sengupta

CRR 210 of 2021

MRS. ANJU DAS
Vs.
STATE OF WEST BENGAL & ANR.

For the Petitioner	: Mr. Abhijit Ray Mr. Shubham Gupta
For the State	: Mr. P. K. Dutta Mr. Santanu Deb Roy
Heard on	: 10 th February 2021
Judgment on	: 10 th February 2021

The Court:

Although, the application was filed in relation to different execution cases, learned counsel appearing on behalf of the petitioner / wife submits that petitioner would not like to press this application so far as the other execution cases are concerned except the Misc. Execution Case No. 74 of 2008.

Accordingly, the prayer of the petitioner for appropriate relief is dismissed as not pressed so far as the other execution cases are concerned except Misc. Execution Case No. 74 of 2008.

Affidavit of service filed on behalf of the petitioner is taken on record.

It appears that the notice had come back with an endorsement 'refused'. This amounts to good service.

Despite service, no one appears on behalf of the opposite party / husband

The learned counsel appearing on behalf of the petitioner submits as follows. The petitioner / wife was awarded monthly maintenance allowances by the learned trial court for herself and her minor daughter. On 08.02.2007 this Court in a revisional application being C.R.R. 1629 of 2006 directed the husband / opposite party to pay a sum of Rs. 2000/- per month for the wife and Rs.2000/- per month for the minor child as maintenance allowance under Section 125 of the Code. The husband did not pay any maintenance allowance. As a result, the petitioner was constrained to file execution cases for recovery of arrears of maintenance allowance. In the present execution case, like in the other execution cases, the husband did not appear and warrant of arrest had to be issued against the husband. In spite of several orders, the warrant of arrest could not be executed. The executing Court directed the Officer-in-Charge, Nilgiri Police Station, Orissa to execute the warrant of arrest, but the same was not done. An intimation was sent to the Superintendent of Police, Balasore, Orissa and to the Director General of Police, Orissa. But, no action was taken. Being frustrated, the learned Principal Judge had a copy sent to the Home Minister and the Chief Minister of Orissa for information.

I have heard the learned counsel for the petitioner and have perused the revision petition.

It is true that in his eagerness to have the warrant executed, a copy of the order was sent to the Home Minister and the Chief Minister, Orissa. This exercise does not seem appropriate. However, the situation demands that the warrant be executed forthwith.

As per Section 7 (2) (a) of the Family Courts Act, a Family Court can exercise the jurisdiction exercisable by a Magistrate of First Class under Chapter IX of the Code.

However, it does not appear that the learned Court, in clear terms, invoked Section 78 of the Code of Criminal Procedure, which he could have, for having the warrant of arrest executed.

Section 78 of the Code may be quoted as follows:

“78. Warrant forwarded for execution outside jurisdiction.- (1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.

(2) The Court issuing a warrant under sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be

arrested together with such documents, if any, as may be sufficient to enable the Court acting under Section 81 to decide whether bail should or should not be granted to the person.”

In view of the above, the learned Principal Judge, Family Court, Calcutta is requested to take necessary and effective steps to have the warrant / arrest executed against the husband / opposite party. The learned trial court shall be at liberty to have the warrant of arrest executed by invoking Section 78 of the Code.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta,J.)

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