

14.09.2021
tkm/ct 29
sl no. 7

**C.R.R. No. 189 of 2010
(Via video conference)**

In Re : Sanjit Dey

.....petitioner

The matter is fixed today for hearing.

On call, none appears for the petitioner and OP no. 2.

The petitioner-husband has preferred this criminal revision praying for quashing of the proceeding being Execution no. 15 of 2008 arising out of case no. 32/94 TR no. 72/1994 pending before the court of 5th Judicial Magistrate at Sealdah, Calcutta under section 125 Cr.P.C.

The contention of the petitioner in the application is that an order for maintenance was passed against him in favour of the wife and daughter. The petitioner could not pay entire maintenance amount and prayed for some time. The learned Magistrate granted five days' time to the husband and directed to appear before the court on 11.2.2010 for further payment. The petitioner also contended that he filed an application under section 127 Cr.P.C in the year 2009 due to change of circumstances but learned Magistrate without disposing of the application, v/s 127 of Cr. P.C. passed final order of maintenance. Being aggrieved with the proceeding under section 125 Cr.P.C, the petitioner has prayed for quashing of the proceeding.

Perused the application and the impugned order. I find that the Misc. case under section 125 Cr.P.C. was disposed of after

exhaustive hearing. Parties to proceed under section 125 Cr.P.C can file application for alteration of maintenance amount depending upon change of circumstance of the parties. Therefore, I find no reason to interfere with the impugned order passed by the learned Magistrate based upon evidence.

Criminal revision is accordingly disposed of with a direction to the learned Magistrate to take into account any application under section 127 Cr.P.C. filed by the petitioner-husband and dispose of the same in accordance with law so that the quantum of maintenance granted to the opposite party/wife may be modified on the basis of his finding.

Let copy of this order be sent to the court of 5th Judicial Magistrate, Sealdah for information.

Urgent photostat certified copy of this order be given to the parties upon compliance of requisite formalities.

(Ananda Kumar Mukherjee, J.)