

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

I.A No: CRAN/1/2021, CRAN/2/2022, CRAN/5/2022

In

CRR 158 of 2022

Sekhar Satyanarayan Halder

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Sabir Ahmed, Adv.,
 Mr. Abdur Rakib, Adv.,
 Mr. Mujibar Ali Naskar, Adv.,
 Mr. Apan Saha, Adv.

For the Opposite Party No.2:-

Mr. Sabyasachi Banerjee, Adv.,
Ms. Aafreen Parveen, Adv.,
Mr. Vivek Sharma, Adv.

For the State: Mr. Debabrata Chatterjee, Ld. A.P.P.,
 Ms. Mausumi Sarkar, Adv.

Heard on: 27 June, 2022.

Judgment on: 09 September, 2022.

BIBEK CHAUDHURI, J. : –

1. The petitioner has challenged legality, validity and propriety of an order dated 23rd December, 2021 passed by the learned Additional Sessions Judge, Fast Track 3rd Court at Barasat in Criminal Revision No.196 of 2021 in connection with Misc Execution Case No.17 of 2021 arising out of Case No. M-28 of 2018.

2. The impugned order dated 23rd December, 2021 passed by the learned Additional Session Judge, Fast Track, 3rd Court at Barasat in Criminal Revision No.196 of 2021 states that the order of issuance of warrant of arrest passed by the learned Judicial Magistrate, Bidhannagar was not a revisable order on the ground that the warrant of arrest issued against the petitioner is a procedural order, interlocutory in nature and therefore the Criminal Revision No.196 of 2021 was dismissed.

3. On factual score, it is ascertained that the opposite party No.2 is the legally married wife of the petitioner. The opposite party No.2 put two orders of maintenance and monetary relief passed in her favour in a proceeding under Section 125 of the Code of Criminal Procedure and in another proceeding under Section 23 of the Protection of Women from Domestic Violence Act in execution. Both the said two execution cases are pending before the Executing Court of the learned Magistrate. On further scrutiny, it is ascertained that in the year 2018 the opposite party No.2 filed an application under Section 125 of the Cr.P.C before the learned Judicial Magistrate at Bidhannagar which was registered as M-28 of 2018. By an order dated 5th October, 2020, the learned Magistrate passed an order of interim maintenance in favour of the opposite party No.2 directing the petitioner to pay interim maintenance allowance at the rate of Rs.40,000/- per month from the date of the order. The present petitioner challenged the aforesaid order by filing a revisional application before this Court which was registered as CRR No.1732 of 2020. During the pendency of the said revisional application the trial court passed ex-

parte final order on 19th January, 2021 directing the petitioner to pay maintenance at the rate of Rs.45,000/- per month to the opposite party No.2 in addition to an order of monetary relief granted in favour of the opposite party No.2 in a proceeding under the Protection of Women from Domestic Violence Act which was registered in the court of the learned Magistrate as C Case No.4970 of 2018.

4. It is alleged by the petitioner that the learned Magistrate disposed of the application under Section 125 of the Cr.P.C ex-parte vide order dated 5th October, 2020 despite there being a resolution of the Bar that no adverse order should be passed in the absence of any of the parties to the proceeding due to Covid pandemic.

5. Further case of the petitioner is that upon an application under Section 12 read with other relevant provisions under the Protection of Women from Domestic Violence Act, which was registered as C. Case No.4970 of 2018 on 10th October, 2018, the Magistrate passed an interim order dated 26th March, 2019 directing the present petitioner to pay a sum of Rs.25,000/- per month towards monetary relief in addition to the sum equivalent to the EMI of repayment of the bank loan in connection with the flat where the opposite party No.2 has been residing at present. The said order dated 26th March, 2019 was assailed in an appeal by the petitioner before the learned District & Sessions Judge, North 24 Parganas at Barasat which was registered as Criminal Appeal No.34 of 2019. The said appeal is presently pending for disposal.

6. It is submitted by the petitioner that it was not possible financially for the petitioner to pay such huge amount of monetary relief in addition to the money equivalent to monetary relief.

7. As the petitioner failed to make payment in pursuance to the order passed in C Case No.4970 of 2018, the opposite party No.2 preferred an Execution Case being C. Ex Case No.5 of 2020. On 2nd July, 2020 the opposite party No.2 filed an application praying for issuance of warrant of arrest against the petitioner. In the said execution proceeding, the learned Magistrate passed an order directing the petitioner to pay a sum of Rs.50,000/- in default, warrant of arrest would be issued against him. Subsequently, similar order was passed on 25th August, 2020 and the petitioner was compelled to pay a sum of Rs.45,000/-. In such manner, the learned Magistrate compelled the petitioner to pay monetary relief in favour of the opposite party No.2 on the threat of warrant of arrest being executed against him.

8. Simultaneously in the proceeding under Section 125 of the Cr.P.C it was registered as M Case No.28 of 2018 the petitioner was directed to pay maintenance allowance of Rs.45,000/- per month by an ex-parte order dated 19th January, 2021. The said order dated 19th January, 2021 was challenged by the petitioner before the learned Sessions Judge, North 24 Parganas at Barasat by filing a revision being Criminal Revision No.35 of 2021. On 20th February, 2021 the learned Session Judge admitted the said revision for hearing and passed the following order:-

“The operation of the impugned order dated 19th January, 2021 passed in M. Case No.28/2018 under Section 125 of the Code of Criminal Procedure passed by the learned Judicial Magistrate, Bidhannagar, North 24 Parganas be stayed till the date fixed subject to condition that the petitioner shall go on paying the interim maintenance per month as before in any other case between the parties. On failure in making payment of the aforesaid interim maintenance in any month, the order of stay shall stand automatically vacated.”

9. It is the grievance of the petitioner that though final order was passed in M. Case No.28 of 2018 on 19th January, 2021, the opposite party No.2 filed Misc Execution Case No.17 of 2021 on 11th February, 2021 prior to completion of 30 days from the date of the exparte order of maintenance. Thus, M. Execution Case No.17 of 2021 was filed in violation of the provision of Section 128 of the Code of Criminal Procedure. It is further alleged by the petitioner that in spite of the order of stay dated 20th February, 2021 passed by the learned Sessions Judge, North 24 Parganas in Criminal Revision No.35 of 2021 being in force, the learned Magistrate proceeded with M. Execution Case No.17 of 2021. It is alleged by the petitioner that in spite of subsistence of the order of stay granted by the revisional court in Criminal Revision No.35 of 2021 the learned Magistrate issued warrant of arrest against the petitioner for non-payment of arrear maintenance in M Execution Case No.17 of 2021.

10. The learned Magistrate forced and compelled the petitioner to pay a sum of Rs.1,30,000/- in all on 4th October, 2021 and 8th October, 2021 under the threat of execution of warrant of arrest.

11. The case record reveals that on 16th November, 2021, upon an application filed by the opposite party/wife, the learned Magistrate passed an order issuing warrant of arrest against the petitioner for non-payment of arrear maintenance. The said order was passed by the learned Magistrate in the absence of the petitioner and after opening a skeleton record as the original record of M. Ex Case No.17 of 2021 was transmitted to the court of the learned Chief Judicial Magistrate, Barasat upon an application filed by the petitioner under Section 410 of the Code of Criminal Procedure praying for transfer of Misc Execution Case No.17 of 2021 to any other court of the Magistrate other than the learned Additional Chief Judicial Magistrate, Bidhannagar. It is also on record that the learned Magistrate passed an order of issuance warrant of arrest assigning the reason that this Court passed an order in CRR No.1533 of 2021 directing the learned Magistrate to expedite the hearing of the abovementioned execution case so that the opposite party-wife might receive unpaid maintenance allowance in accordance with law.

12. Order dated 16th November, 2021 was assailed in revision by the opposite party before the learned Sessions Judge, North 24 Parganas which was registered as C.R NO.196 of 2021.

13. Criminal Revision No.196 of 2021 was transferred to the court of the learned Additional Sessions Judge, Fast Track, 3rd Court at Barasat

for disposal. The learned judge in the revisional court dismissed the said revision vide order dated 23rd December, 2021 on the ground that an order of issuance of warrant of arrest is an interlocutory order and hence not revisable. The said order passed by the revisional court in Criminal Revision No.196 of 2021 is assailed in the instant revision.

14. Learned Advocates for the parties have submitted written notes of argument on conclusion of hearing of the instant revision.

15. Having heard the learned Advocates for the petitioner and the opposite party and on careful perusal of the written notes of arguments as well as the documents annexed with the supplementary affidavits, it is recorded at the outset that the opposite party filed an application praying for mandatory relief under Section 12 read with other cognate provisions of the Protection of Women against Domestic Violence Act on 10th October, 2018. The said application was registered before the learned Judicial Magistrate at Bidhannagar as C Case No.4970 of 2018. The petitioner entered appearance in the aforesaid proceeding and filed a written objection against the application under Section 12 of the said Act on 28th January, 2019. The trial court passed interim order of monetary allowance directing the petitioner to pay Rs.25,000/- per month and also the EMI in respect of the loan amount by which a flat was purchased by the petitioner where the opposite party has been staying. The said order was passed on 26th March, 2019. Against the order dated 26th March, 2019, the petitioner preferred an appeal before the learned Sessions

Judge at Barasat which was registered as CRA No.34/2019. The said appeal is pending for disposal.

16. The record further reveals that on 15th June, 2020 the opposite party No.2 filed C Execution Case No.5 of 2020 for realization of arrear monetary relief for the period between February to June, 2020 before the Additional Chief Judicial Magistrate at Bidhannagar. On 7th August, 2020 the learned Magistrate directed the petitioner to pay monetary allowance in favour of the opposite party, in default warrant of arrest issued against him, fixing 10.08.2020 for paying. Thus, the petitioner was compelled to pay Rs.50,000/- in favour of the opposite party on 10th August, 2020. On 16th September, 2020, despite Covid Pandemic, petitioner was directed to pay Rs.45,000/- in favour of the opposite party by 25th September, 2020.

17. It is pertinent to mention that all such orders were passed during pendency of CRA 34 of 2019.

18. Subsequently, on 17th December, 2020 the opposite party filed a fresh execution case before the learned Judicial Magistrate at Bidhannagar which was registered as C Execution Case No.12 of 2020.

19. Parallely the opposite party filed an application under Section 125 of the Code of Criminal Procedure on 12th November, 2018. The said proceeding was registered as M Case No.28 of 2018 in the court of the learned Judicial Magistrate at Bidhannagar. On 5th October, 2020 the learned Judicial Magistrate, Bidhannagar passed an exparte order of interim maintenance in favour of the opposite party directing the petitioner to pay Rs.40,000/- per month. The petitioner challenged the

said order of interim maintenance by filing a revisional application being CRR No.1732 of 2020 before this Court.

20. In the mean time, M. Case No.28 of 2018 was finally disposed of by the learned Magistrate *ex parte* vide order dated 19th January, 2021 directing the petitioner to pay maintenance at the rate of Rs.45,000/- per month.

21. CRR No.1732 of 2020 came up for hearing before a Coordinate Bench on 3rd March, 2021 when this Court disposed of the said revision holding the same to be infructuous as final *ex-parte* order of maintenance was already passed in M. Case No.28 of 2018 by the learned Magistrate on 19th January, 2021.

22. The petitioner, on the other hand, filed CRR 1533 of 2021 before this Court praying for a direction for expeditious disposal of M. Execution Case No.17 of 2021 filed for execution of the order of maintenance at the rate of Rs.45,000/- per month. The said revisional application was disposed of on 16th August, 2021 with a direction upon the learned Judicial Magistrate, 1st Court, Bidhannagar, North 24 Parganas to expedite the execution case so that the unpaid is paid to the petitioner in accordance with law.

23. It is also recorded that the petitioner filed an application under Section 410 of the Cr.P.C before the learned Chief Judicial Magistrate at Barasat seeking for transfer of M. Execution Case No.17 of 2021 from the court of the learned Judicial Magistrate, 1st Court at Bidhannagar to any other court of competent jurisdiction.

24. The record of M. Execution Case No.17 of 2021 was transmitted to the court of the learned Additional District Judge, Fast Track, 3rd Court, Barasat.

25. On 16th November, 2021 date was fixed for hearing of C. Execution Case No.12 of 2020 arising out of C. Case NO.4970 of 2018 being a proceeding under the PWDV Act.

26. The learned Magistrate taking advantage of the order of expeditious disposal of M. Execution Case No.17 of 2021 in CRR No.1533 of 2021, opened up a skeleton record and issued warrant of arrest against the petitioner.

27. The petitioner challenged the said order of issuance of warrant of arrest before the learned Sessions Judge in CR No.196 of 2021. The learned Revisional Court dismissed the said revision on the ground that the order impugned is an interlocutory order and is not revisable.

28. It is unfortunate to note that the entire course of action as detailed out hereinabove prima facie shows undue proactiveness on the part of the learned Judicial Magistrate, Bidhannagar in passing various orders in C. Case No.4970 of 2018, M. Case No.28 of 2018, C. Execution Case No.5 of 2020, C. Execution Case No.12 of 2020 and M. Execution Case No.17 of 2021. It appears that immediately after filing the execution petition, the opposite party is directed to make payment within 2/3 days. It is not in dispute that against interim order passed by the learned Judicial Magistrate in the proceeding under the PWDV Act the petitioner preferred an appeal being CRA No.34 of 2019. The said appeal is pending till date.

In spite of pendency of the appeal, the learned Magistrate went on passing one order after another compelling the petitioner to make interim monetary relief in favour of the petitioner.

29. The learned Judge in the Revisional Court failed to consider that an order of issuance of warrant of arrest is not an interlocutory order because execution of warrant of arrest directly affects the fundamental right and personal liberty of a person. It appears from the order dated 16th November, 2021 passed in C. Execution Case No.12 of 2020 that the learned Magistrate used the order passed by this Court in CRR No.1533 of 2021 dated 16th August, 2021 for expeditious disposal of M. Execution Case No.17 of 2021 and issued warrant of arrest in connection with C. Execution Case No.12 of 2020 and M. Execution Case No.17 of 2021.

30. The said order is per se illegal and a glaring instance of over jealousy of the learned Magistrate in favour of one party, in the instant case the opposite party.

31. In view of such circumstances the instant revision is allowed on contest.

32. Impugned order dated 16th November, 2021 in M. Execution Case No.17 of 2021 is set aside.

33. The M. Execution Case No.17 of 2021 shall be stayed till the disposal of Criminal Revision No.222 of 2021 challenging the order of rejection of an application under Section 410 of the Cr.P.C filed by the petitioner before the learned Chief Judicial Magistrate, Barasat.

34. Let a copy of this order be sent to the learned Sessions Judge at Barasat for her perusal and to consider as to whether both the cases mentioned above should be withdrawn from the files of the learned Judicial Magistrate, Bidhannagar. The revision is thus disposed of.

(Bibek Chaudhuri, J.)