

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 711 of 2021

**Sujit Kumar Dey
-Vs.-
The State of West Bengal & Anr.**

For the petitioner: Mr. Amitabha Ghosh

For the opposite party No.2 : Ms. Nabanita Chatterjee

Heard & Judgment on: 20.06.2022

Bibek Chaudhuri, J.

The instant criminal revision arises assailing the legality, validity and propriety of the order passed in Criminal Motion No.156 of 2019 by the learned Additional Sessions Judge, 2nd Fast Track Court, Alipore, 24 Parganas (South) on 28th November, 2019.

The background of the instant proceeding is as follows:-

The opposite party No.1 being the wife of the petitioner filed an Execution Case for realization of a sum of Rs.42,000/- towards arrear

maintenance allowance. In the trial Court the petitioner produced series of documents since 2011 showing payment of maintenance allowance /alimony pendente lite to his wife.

The learned Magistrate rejected the application filed by the present petitioner with a cost of Rs.10,000/- stating the ground that he was not in a position to understand the statement of accounts filed by the petitioner. It is also recorded that the petitioner paid the said money towards alimony pendente lite. However, the learned Magistrate did not consider that the suit for divorce was dismissed for non-prosecution long ago.

The petitioner challenged the said order dated 18th March, 2019 passed by the learned Judicial Magistrate, 4th Court at Alipore in revision which was registered as Criminal Motion No. 156 of 2019. The learned Judge by passing an order affirmed the order passed by the learned Magistrate and dismissed the said Criminal Motion No.156 of 2019.

In the instant revision, the petitioner has challenged the legality, validity and propriety of the order passed by the learned Additional Sessions Judge, 2nd Fast Track Court at Alipore in Criminal Motion No.156 of 2019.

Having heard the learned advocate for the petitioner and on careful perusal of the materials on record that an application cannot

be disposed of with cost on the ground that the learned Judge failed to understand the statement of accounts submitted by the petitioner. It is the duty of the learned trial Judge to understand the statement of account with the help of the learned counsel for the petitioner. It is also the duty of the learned trial Judge to come to a specific finding as to whether the amount for which the execution proceeding has been filed was already paid by the petitioner or not. Therefore, I do not find any reason for rejection of the petitioner's application with a cost of Rs.10,000/-. I also do not find any reason to allow Criminal Motion No.156 of 2019 affirming the order passed by the trial Court.

Both the orders per se suffer from illegality, irregularity and deserves rejection. Therefore, the instant criminal revision is allowed on contest, however, without costs. The order dated 18th March, 2019 passed by the learned Judicial Magistrate, 4th Court, Alipore in Execution Case No.503 of 2018 is set aside. The order dated 28th November, 2019 passed in Criminal Motion No.156 of 2019 is also set aside.

The learned Judicial Magistrate is directed to ascertain as to whether the petitioner has already deposited the entire amount for which the execution case is filed. For this purpose, the petitioner shall file a fresh statement of accounts showing payment of 42,000/- in installment within 15 days from the date of communication of this

order to the trial Court. The learned Magistrate, 4th Court at Alipore is directed to dispose of the execution case filed by the opposite party No.1 on the basis of fresh statement of accounts filed by the petitioner within one month from the date of receipt of such statement of accounts.

The instant revision is, thus, disposed of with the above order on contest, however, without costs.

(Bibek Chaudhuri, J.)