

Form J(1)

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

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

**IA No.:CRAN/1/2022
in
CRR 1096 of 2022**

**Dipen Chatterjee
Vs.
The State of West Bengal & Ors.**

**For the petitioner : Mr. Mritunjoy Chatterjee, Adv.,
Mr. Sk. Nizamuddin , Adv.**

**For the opposite
Party : Mr. Debasis Kar, Adv.,
Mr. Husen Mustafi, Adv.**

For the State : Ms. Manisha Sharma, Adv.

Judgement on : 24.08.2022.

Bibek Chaudhuri, J.

An order dated 28th February, 2022 passed by the Learned Judicial Magistrate, 1st Court at Barrackpore in Misc. Execution Case No. 41/2020 arising out of Misc. Case No. 248/2018 under Section 125 of the Code of Criminal Procedure is impugned in the instant revision.

The proceeding under Section 125 of the Code of Criminal Procedure was disposed of by the Learned Magistrate directing the husband/present petitioner to pay maintenance @ Rs.

2,500/- per month in favour of his wife, opposite party no. 2 herein.

The opposite party no. 2 filed Misc. Execution Case No. 41/2020 praying for realization of arrear maintenance amounting to Rs.15,000/- for the period between 29th November, 2019 to 28th May, 2020 @ Rs,2,500/- per month.

It is contended by the present petitioner/husband that the claim amount was already paid by the present petitioner to the opposite party. Therefore, Misc. Execution Case No. 41/2020 ought to have been disposed of.

However, the Executing Court in the record of the above-mentioned execution case again directed the present petitioner to pay arrear maintenance allowance amounting to Rs.15,000/- from the period between September, 2021 to February, 2022.

It is submitted by Mr. Chatterjee, Learned Advocate for the petitioner that the Learned Magistrate cannot pass the order impugned dated 28th February, 2022 for recovery of arrear maintenance beyond the period for which the execution case was filed. It is contended by the Learned Advocate for the petitioner that the Learned Magistrate ought to have directed the opposite party to file separate execution case for realization of arrear maintenance for the period between September, 2021 to February, 2022.

Mr. Kar, Learned Advocate for the opposite party/wife has objected to such submission made by the Learned Advocate for the petitioner. It is submitted by Mr. Kar that in one execution proceeding filed for execution of an order passed under Section

125 of the Code of Criminal Procedure, prayer for realization of arrear maintenance for successive periods is maintainable.

In ***Shantha @ Ushadevi & Anr. -Vs.- B. G. Shivananjappa*** reported in ***(2005) 4 SCC 468***, the above issue came up for consideration before the Hon'ble Supreme Court, in paragraphs 7 and 8 of the said decision the Hon'ble Supreme Court held as follows:-

7. It is true that the amount of maintenance became due by virtue of the Magistrate's order passed on 20th January, 1993 and in order to seek recovery of the amount due by issuance of warrant, application shall be made within a period of one year from the date the amount became due. In the present case, the application, namely, Crl. Misc. Petition No. 47 of 1993 was filed well within one year. As no amount was paid even after the disposal of the matter by the High Court, the appellant filed I.A. 1 in Crl. Misc. Petition No. 47 of 1993 wherein the arrears due up to that date were calculated and sought recovery of that amount under Section 125 (3). Thus, I.A. 1 was filed even when Crl. Misc. Petition 47 of 1993 was pending and no action to issue warrant was taken in that proceeding. Crl. Misc. Petition of 47 of 1993 which was filed within one year from the date the amount became due was kept alive and it was pending althrough. The purpose of filing I.A. on 1st September, 1998 was only to mention the amount due upto date. The fact that the additional amount was specified in the I.A. does not mean that the application for execution of the order by issuing a warrant under Section 125(3) was a fresh application made for the first time. As already noticed, the main petition filed in the

year 1993 was pending and kept alive and the filing of subsequent I.A. in 1998 was only to specify the exact amount which accrued due upto that date. Such application is only supplementary or incidental to the petition already filed in 1993 admittedly within the period of limitation. The fact that only a sum of Rs.5,365/- representing the arrears of eight months was mentioned therein does not curtail the scope of Crl. Misc. Petition filed in 1993 more so when no action was taken thereon and it remained pending.

8. We are, therefore, of the view that in the peculiar circumstances of the case, the bar under Section 125(3) cannot be applied and the High Court has erred in reversing the order of Sessions Judge. It must be borne in mind that Section 125 Criminal Procedure Code is a measure of social legislation and it has to be construed liberally for the welfare and benefit of the wife and daughter. It is unreasonable to insist on filing successive applications when the liability to pay the maintenance as per the order passed under Section 125(1) is a continuing liability.

In view of the above observation made by the Hon'ble Supreme Court, I have no other alternative but to hold that in an execution proceeding the wife is entitled to pray for execution of arrear maintenance for successive period and she is not required to file separate execution proceeding in separate matters.

In view of such submission, the instant revision is **dismissed** on contest.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 01.