

Form J(1)

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

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

CRR 1806 of 2022

**Tapati Das Halder
Vs.
Joydeb Das & Anr.**

**For the petitioner : Mr. Saibal Mondal, Adv.,
Mr. Sarthak Mondal, Adv.**

Judgement on : 01.09.2022.

Bibek Chaudhuri, J.

The petitioner has filed the instant criminal revision assailing an order dated 24th December, 2021 passed by the Learned Sessions Judge, North 24-Parganas admitting a criminal revision with certain condition/stipulation.

It is pertinent to mention that the petitioner is the legally married wife of the opposite party no. 1. On the allegation that she and her minor child born in the wedlock of opposite party no. 1 were refused and neglected to be maintained by the opposite party no. 1. The said application under Section 125 of the Code of Criminal Procedure was registered as M. Case No. 207/2020. The aforesaid case was disposed of by the Learned Judicial Magistrate, 2nd Court at Barasat directing the opposite party to pay interim maintenance allowance at the rate of

Rs.10,000/- per month for the petitioner and Rs.6,000/- per month for her minor son from the date of application till the disposal of Case No. M. 207/2020.

The interim order of maintenance was subject-matter of challenge before the Learned Sessions Judge in Criminal Revision No. 249/2021.

The Learned Sessions Judge, North 24-Parganas at Barasat while admitting the aforesaid criminal revision passed an order of stay of the operation of the impugned order dated 8th November, 2021 passed in M. Case No. 207/2020 subject to the condition that the petitioner/revisionist shall go on paying the amount of Rs.5,000/- per month for the minor child till the disposal of the aforesaid revisional application.

The said order passed by the Learned Sessions Judge, North 24-Parganas on 24th December, 2021 in Criminal Revision No. 249/2021 is under challenge in the instant criminal revision.

The only grievance of the wife/petitioner is that at the time of granting stay, the Learned Sessions Judge failed to consider that the wife/petitioner had no source of income and if no interim relief is granted she will lead a life of starvation.

Indisputably, Criminal Revision No. 249/2021 is now pending for disposal. The order dated 8th November, 2021 passed by the Learned Magistrate granting interim maintenance in favour of the petitioner at the rate of Rs.10,000/- per month is the subject-matter of scrutiny in the said criminal revision pending before the Learned Sessions Judge, North 24-Parganas.

Having heard the Learned Advocate for the petitioner and on careful consideration of the entire materials-on-record, this

Court finds that the impugned order dated 24th December, 2021 passed by the Learned Sessions Judge, North 24-Parganas in Criminal Revision No. 249/2021 is *per se* invalid and without jurisdiction because the Learned Judge while granting stay of operation of the order dated 8th November, 2021 passed by the Learned Magistrate failed to consider that pending disposal of Criminal Revision No. 249/2021 the husband/petitioner ought to have directed to pay some amount of maintenance in favour of the wife/petitioner.

Therefore, without prejudice to the rights and contentions that may be raised by the parties in Criminal Revision No. 249/2021, the order dated 24th December, 2021 passed by the Learned Sessions Judge, North 24-Parganas is modified in the following manner:-

The operation of the impugned order dated 8th November, 2021 in connection with M. Case No. 207/2020 under Section 125 of the Code of Criminal Procedure passed by the Learned Judicial Magistrate, 2nd Court at Barasat, North 24-Parganas shall remain stayed subject to payment of a sum of Rs.6,000/- payable for the maintenance of the wife/petitioner and Rs.5,000/- per month for her minor child from the date of passing of the order in M. Case No. 207/2020 till the disposal of Criminal Revision No. 249/2021.

The Learned Sessions Judge, North 24-Parganas is further directed to dispose of the instant revision within three months from the date of communication of this order.

The instant revision is, accordingly, **disposed of**.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 41.