

Form J(2)

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

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

CRR 1817 of 2022

**Debanshu Bardhan
Vs.
Susmita Sarkar**

**For the petitioner : Mr. Dipanjan Dutt, Adv.,
Mr. Kausik Dey, Adv.,
Ms. Mohini Majumder, Adv.,
Mr. Raghav Munshi, Adv.**

For the State : Ms. Puspita Saha, Adv.

**Heard &
Judgement on : 01.07.2022.**

Bibek Chaudhuri, J.

Petitioner is given liberty to correct the cause title.

Judgment and order dated 2nd March, 2021 passed by the Learned Additional Sessions Judge, Fast Track, 4th Court at Barrackpore in Criminal Revision No. 405/2019 thereby enhancing the quantum of maintenance allowance from Rs.10,000/- to Rs.40,000/- is under challenge by the petitioner.

It is contended by the petitioner that the opposite party was legally married wife of the petitioner. Subsequently, due to marital discord a suit for divorce was initiated and marriage was dissolved by a competent Civil Court by passing a decree for divorce. The opposite party is no longer the married wife of the petitioner. After the decree of divorce being passed, the petitioner has married for the second time. In the said wedlock, the second wife of the petitioner gave birth to two daughters. At this stage, the first divorced wife of the petitioner filed an application under Section 125 of the Code of Criminal Procedure praying for maintenance allowance from the petitioner.

Trial Court passed an order of maintenance at the rate of Rs.10,000/- per month. The said order was challenged by the opposite party with a prayer for enhancement of quantum of maintenance in Criminal Revision No. 405/2019. The Learned Revisional Court by its judgement dated 2nd March, 2021 enhanced maintenance from Rs.10,000/- to Rs. 40,000/-. The petitioner has challenged the said order. It is submitted by the petitioner that the petitioner has not received any notice of the revision from the revisional Court. However, the Learned revisional Court held that notice was served upon the petitioner taking presumption of Section

27 of the General Clauses Act and proceeded with the matter and directed the petitioner to pay maintenance at the rate of Rs.40,000/- per month.

Mr. Dutt submits before me that the petitioner did not get an opportunity to contest the revisional application as well as the maintenance proceeding before the Court of the Learned magistrate all through *ex parte* order was passed. The petitioner also did not receive any notice of the revisional proceeding which is apparent from the postal track report that the notice of the revisional proceeding was returned with postal endorsement 'insufficient address'.

Considering the entire facts and circumstances of the case, this Court is of the view that the instant matter can be disposed of here and now.

Ms. Puspita Saha, Learned Public Prosecutor-in-Charge is requested to assist this Court. Appointment of Ms. Puspita Saha be regularized. The petitioner is directed to serve a copy of the application to the Learned Advocate for the State.

It is not in dispute that the revisional application was disposed of *ex parte*. This Court is not unmindful to note that even a divorced wife who has not married for the second time is entitled to get

maintenance from his ex-husband. However, the petitioner had right to challenge the finding as regards quantum of maintenance.

In view of such circumstances, the impugned order dated 2nd March, 2021 passed by the Learned Additional Sessions Judge, Fast Track, 4th Court at Barrackpore is set aside. Since the petitioner has appeared before this Court no notice is required to be served by the opposite party to the petitioner. The petitioner is directed to appear before the Learned revisional Court within a fortnight. The Learned revisional Court is directed to rehear Criminal Revisional No. 405/2019 and after providing audience to the petitioner the revisional application being No. 405/2019 is directed to be disposed of. With the above order, the instant criminal revision is **disposed of**.

There shall be no order as to costs.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)