

Form J(2)

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

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

C.R.R. 2156 of 2022

**Injaul Laskar
Vs.
The State of West Bengal & Anr.**

**For the petitioner : Mr. Sandipan Ganguly, Sr. Advocate
Mr. L.Vishal Kumar
Mr. Dipanjan Dutt**

For the State : Ms. Minoti Gomes

Heard on : 08.07.2022

Judgment On : 08.07.2022.

Bibek Chaudhuri, J.

1. Having heard learned senior counsel appearing on behalf of the petitioner and on perusal of the entire materials on record, this court is of the view that the instant revision can be disposed of here and now taking assistance of the learned Public Prosecutor in-Charge. In the event this court proposes to pass an order without affecting the interest of the opposite party no.2/wife.

2. Therefore, Ms. Minoti Gomes, learned Public Prosecutor in-Charge is requested to assist this court on the behalf of the State of

West Bengal. Appointment of Ms. Gomes be regularised by the Legal Remembrancer, Government of West Bengal.

3. Let me first record the factual aspect of the matter. Present status of the opposite party no.2 is the divorced wife of the petitioner. It appears from the record that the petitioner herself divorced her husband by executing a 'Khullanama' on 6th May, 2017. It was agreed by and between the parties that the petitioner/husband would pay a sum of Rs. 2,00,000/- to the opposite party no.2 towards her future maintenance. The said money was paid to the opposite party no.2.

4. During the subsistence of marriage the opposite party no.2 filed an application under Section 125 of the Code of Criminal Procedure and the learned Magistrate by his order dated 12th September, 2012 passed an order allowing a maintenance to the opposite party no.2 @ of Rs. 2000/- per month. After the said 'Khullanama' being executed and after receiving a sum of Rs. 2,00,000/- the opposite party no.2 filed an application under Section 125(3) of the Code of Criminal Procedure for execution of arrear maintenance for the period between August, 2017 and July, 2018 @ of Rs. 2,000/- per month, total being Rs. 24,000/-.

5. The said application was registered as Misc. Execution Case No. 348 of 2018 and is pending before learned Judicial Magistrate, 1st Court at Alipore.

6. After getting the notice of the said Misc. Execution Case the petitioner/husband has filed an application under Section 127 of the

Code of Criminal Procedure raising the question as to whether the amount for which execution case has been filed by the petitioner will be adjusted against payment of Rs. 2,00,000/- by the petitioner in favour of the opposite party no.2 on the date of execution of 'Khullanama'.

7. The grievance of the petitioner is that the said application under Section 127 of the Code of Criminal Procedure is kept pending by the learned Magistrate and on the other hand he issued warrant of arrest in the execution proceeding.

8. It is pointed out by Mr. Sandipan Ganguly, learned senior counsel for the petitioner that the petitioner moved the trial court with a request to hear out the application under Section 127 of the Code of Criminal Procedure before passing any coercive order in Misc. Execution Case. The said prayer was rejected.

9. Being aggrieved the petitioner moved in revision before the learned Sessions Judge. In revision the said revision was registered as Criminal Motion no.522 of 2018 and it was disposed of by the learned Additional Sessions Judge at Alipore by an order dated 27th February, 2020.

The reasons assigned by the learned Judge in revision is as follows:-

"I have gone through the impugned order, bestowed my anxious consideration upon the available materials on record.

A cursory glance at the order impugned reflects that it does not suffer from any apparent perversity or illegality rendering it capricious and warranting interference from this court.

In the result the instant revision fails.”

10. I am constrained to note that in a judgment or order reasons are backbone. It is the duty of the judicial officer to assign the reasons as to why he has decided to pass certain order. The learned Judge in the revisional court did not assign reason while rejecting the instant revision. He also did not consider as to whether the money paid by the petitioner is liable to be adjusted with the amount of money in execution case. As the learned revisional court dismissed the said criminal motion, it prompted the judicial magistrate to pass an order of warrant of arrest against the petitioner which is under challenge in the instant revision.

11. Thus, it is apparent how the wrong orders multiply legal proceedings due to failure on the part of a judicial officer in subscribing reasons.

12. Since the petitioner by filing an application under Section 127 of the Code of Criminal Procedure has prayed for adjustment of the amount which was paid to the opposite party at the time of divorce with the amount for realisation of which execution case has been filed, this court is of the view that the learned Judicial Magistrate, 1st Court at Alipore should first hear out the application under Section 127 of the

Code of Criminal Procedure filed by the petitioner and then ought to have passed an appropriate order in Misc. Ex. Case No.348 of 2018.

13. Accordingly the instant criminal revision is allowed on contest. The impugned order dated 31st May, 2022 is set aside. The warrant of arrest against the petitioner be recalled. Learned Judicial Magistrate, 1st Court at Alipore is requested to hear out and dispose of the application under Section 127 of the Code of Criminal Procedure first and then Misc. Ex. Case No. 348 of 2018.

(Bibek Chaudhuri, J.)