

Form J(1)

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

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

**IA No.: CRAN/2/2022
in
CRR 2281 of 2022**

**Joydip Raha
Vs.
The State of West Bengal & Anr.**

**For the petitioner : Mr. Sarada Prasad Ray, Adv.,
Mr. Bikram Banerjee, Adv.**

**For the opposite
Party no. 2 : Mr. Debajyoti Deb, Adv.,
Mr. Somdyuti Parekh, Adv.**

Judgement on : 15.11.2022.

Bibek Chaudhuri, J.

This case has chequered career. Let me state the factual background leading to filing of the instant revision by the opposite party/husband.

The wife of the present petitioner filed an application under Section 125 of the Code of Criminal Procedure praying maintenance against herself and her minor son. In the said proceeding upon an application for interim maintenance the Trial Court passed an order directing the opposite party to pay interim maintenance at the rate of

Rs.5,000/- per month. As the present petitioner/husband failed and neglected to pay such amount the said order was put to execution vide Misc. Execution Case No. 66/2013.

It is contended on behalf of the opposite party that the said Misc. Execution Case No. 66/2013 was dropped on full satisfaction by the Learned Trial Judge vide order dated 22nd February, 2022. In the meantime, final order in the maintenance proceeding was passed by the Trial Court on 24th December, 2020 directing the present petitioner to pay maintenance at the rate of Rs.12,000/- for his wife and Rs.10,000/- for his minor son, total being Rs.22,000/-. The husband/present petitioner was directed to pay the maintenance allowance from the date of filing of the application, i.e. from 21st July, 2012. The petitioner/wife initially filed an execution case being Misc. Execution Case No. 9/2021 claiming arrear maintenance allowance for 101 months. The said execution case was dismissed on the ground that in accordance with the provision under Section 125(3) of the Code of Criminal Procedure the petitioner cannot claim maintenance for more than 12 months by filing execution case.

Subsequently, the wife/petitioner/opposite party herein filed Misc. Execution Case No. 240/2021 stating, *inter alia*, that the petitioner is entitled to get arrear maintenance from the date of filing of the application, i.e. from 21st July, 2012 to 21st March, 2021 and total amount of Rs.16,08,000/- fell due. Said claim was filed deducting the amount which the petitioner received in Misc. Execution Case No. 66/2013 towards realization of arrear interim maintenance.

This Court while admitting the instant revision which is filed by the husband/petitioner challenging an order of issuance of warrant of arrest against the petitioner, admitted the instant revision on

condition that the petitioner shall deposit a sum of Rs.2,00,000/- in favour of the opposite party by two monthly installments.

The instant matter appeared in the list on mentioning by the wife/opposite party. It is submitted on behalf of the opposite party that the petitioner has not complied with the order dated 22nd September, 2022 and the order of stay which was granted by this Court should be vacated.

Learned Advocate for the petitioner has raised vehement objection against the prayer made on behalf of the opposite party/wife. Learned Advocate for the petitioner submits that in Misc. Execution Case No. 66/2013 the petitioner paid excess amount to the tune of Rs.82,000/-. Moreover, in a suit for divorce the wife/opposite party filed an application under Section 24 of the Hindu Marriage Act. Said application was allowed directing the petitioner to pay alimony *pendente lite* at the rate of Rs.10,000/- per month for the wife + Rs.10,000/- per month for the minor son and one time litigation cost at the rate of Rs.30,000/-. The petitioner defaulted any payment which prompted the opposite party/wife to file Misc. Execution Case No. 4/2019 and the Learned Additional District Judge, 7th Court at Alipore passed an order directing attachment of salary of the opposite party/judgement debtor/petitioner herein to the extent of alimony *pendente lite* and litigation cost.

Under the backdrop stated above and on due consideration of the submission made by the Learned Advocates for the parties, one thing is absolutely clear that the petitioner is a wilful defaulter. He did not pay alimony *pendente lite* for which the wife had to file execution proceeding. He did not pay maintenance allowance for which execution case was filed and warrant of arrest is pending

against him. It is further ascertained from the submission made by the Learned Advocate for the opposite party that order dated 11th August, 2022 passed in Misc. Execution Case No. 4/2019 is under challenge before this Court at the instance of the petitioner by filing a civil revision.

This Court by a detailed order directed the petitioner to pay a sum of Rs.2,00,000/- towards arrear maintenance vide order dated 22nd September, 2022. The petitioner has not complied with the said order. Therefore, I do not find any reason to extend the order of stay of operation of the impugned order and stay granted vide order dated 22nd September, 2022 is vacated.

As the petitioner challenged the order of issuance of warrant of arrest by the Learned Magistrate in Misc. Execution Case No. 240/2021 and when this Court vacated the order of stay against operation of the impugned order, nothing remains in the instant revision. Accordingly, the instant revision is also dismissed on contest.

The Learned Executing Court is directed to consider as to whether salary of the petitioner has been attached to the extent of alimony *pendente lite* and it is paid to the account of the opposite party/wife or not. Secondly, the Learned Magistrate will consider whether the petitioner is entitled to any adjustment with regard to payment of maintenance allowance/alimony *pendente lite*.

However, the above direction will not operate as a stay of operation of the impugned order dated 8th April, 2022.

(Bibek Chaudhuri, J.)

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