

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 2726 of 2022

Sri Pijush Bhattacharjee
-Vs-
Smt. Rupa Bhattachajee

For the Petitioner: Mr. Rajat Dutta, Adv.,

For the Opposite Party: None

Heard on: 23 August, 2022.

Judgment on: 23 August, 2022.

BIBEK CHAUDHURI, J. : –

1. The petitioner has filed the instant revision praying for quashing of an execution proceeding arising out of an order passed in a proceeding under Section 125 of the Cr.P.C being Execution Case No.58 of 2020.
2. The petitioner is the husband of the opposite party. Their marriage was solemnized according to Hindu Rites and Ceremonies on 1st May, 2000. It is alleged by the petitioner that after marriage he found that his wife, the opposite party herein is a quarrelsome lady. She was absolutely indifferent in her family obligation. The petitioner was subjected to mental torture by her and finally he was deserted by his wife in 2005. When the petitioner found that the opposite party is not willing to lead happy and

normal conjugal life he filed a suit for divorce in the year 2010. The said suit was transferred to the learned Additional District Judge, 1st Court at Serampore for trial. In the said suit the opposite party/wife filed an application praying for alimony pendente lite under Section 24 of the Hindu Marriage Act. The trial court passed an order directing the petitioner to pay a sum of Rs.4500/- as alimony pendente lite per month on and from the month of May 2012 along with a lump sum litigation cost of Rs.3000/-. Challenging the quantum of alimony pendente lite the opposite party moved this court in Civil Revision vide CO No.2409 of 2012. A Coordinate Bench of this Court disposed of the said revision by an order dated 31st July, 2012. Directing the petitioner to pay alimony pendente lite at the rate of Rs.4500/- per month from the month following the date of filing of the application, under Section 24 of the Hindu Marriage Act. The petitioner has been going on paying the said amount of alimony pendente lite regularly.

3. In spite of receiving such alimony, the opposite party/wife filed an application under Section 125 of the Code of Criminal Procedure praying for maintenance before the learned Additional Chief Judicial Magistrate at Serampore. In the said application the opposite party suppressed the fact of receiving alimony pendente lite from the present petitioner. The application under Section 125 of the Cr.P.C was registered as M Case No.136 of 2012 and the said application was disposed of by the learned Judicial Magistrate, 3rd Court at Serampore by an order dated 30th December, 2013 directing the petitioner to pay maintenance allowance at

the rate of Rs.5000/- per month in favour of the opposite party. It is urged by the petitioner that the learned Judicial Magistrate while passing the order in the proceeding under Section 125 of the Cr.P.C did not consider existence of an order under Section 24 of the Hindu Marriage Act. The petitioner assailed the said order dated 30th December, 2013 passed by the learned Judicial Magistrate, 3rd Court at Serampore in M. Case No.136 of 2012 preferring a revisional application being Criminal Motion No.35 of 2014. The said revision was however dismissed for default. Subsequently, the opposite party filed an application under Section 128 of the Cr.P.C for execution of the order passed by the learned Judicial Magistrate, 3rd Court at Serampore in M. Case No.136 of 2012 claiming arrear maintenance during the period from January, 2015 to October, 2019 at the rate of Rs.5000/- per month, amount to Rs.2,90,000/-. The said application was registered as MC Execution Case No.285 of 2019. Again on 11th April, 2022 the opposite party filed another execution case under Section 128 of the Cr.P.C praying for arrear maintenance at the rate of Rs.5000/- per month during the period between November, 2019 to March, 2022 at the rate of Rs.5000/- per month, total amount being Rs.1,45,000/-. The said application was registered as M.C Execution Case No.58 of 2022. It is further alleged by the petitioner that in M.C Case No.285 of 2019, the learned Magistrate passed an order dated 4th February, 2020 issuing distress warrant against the petitioner. In the said proceeding the learned Magistrate passed another order dated 28th March, 2022 for execution of distress

warrant through the Officer-in-Charge, Netaji Nagar Police Station as well as the Officer-in-Charge of Patuli Police Station.

4. The grievance of the petitioner is that in spite of payment of alimony pendente lite at the rate of Rs.4500/- the learned Magistrate issued distress warrant against the petitioner. So is the instant revision.

5. I have heard the learned Advocate for the petitioner relying on the decision of the Hon'ble Supreme Court in **Rajnesh vs. Neha & Anr.** reported in **(2021) 2 SCC 324** that the learned Magistrate failed to appreciate that the opposite party obtained an order of maintenance in the aforesaid proceeding under Section 125 of the Cr.P.C without disclosing the fact that she has been receiving alimony pendente lite in a proceeding under Section 24 of the Hindu Marriage Act. Such disclosure is obligatory in view of the principle laid down in **Rajnesh**. It is also submitted by the learned Advocate for the petitioner that the wife can simultaneously claim maintenance under different enactments but the opposite party/husband is entitled to have adjustment of any amount in the nature of maintenance against the higher amount and the court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount.

6. Thus, it is contended on behalf of the petitioner that the petitioner is entitled to an adjustment of the amount which is being paid by the petitioner in favour of the opposite party towards alimony pendente lite against the maintenance allowance.

7. I have considered the submission made by the learned Advocate for the petitioner. I have also carefully perused the report of the Hon'ble Supreme Court in **Rajnesh's** case. It is no longer res integra that the petitioner is entitled to have an adjustment in respect of his obligation to pay the arrear maintenance allowance against maintenance allowance under Section 125 of the Cr.P.C. However, the said fact is required to be proved by the opposite party in the subsequent proceeding under Section 125 of the Cr.P.C. It appears from the order passed in Misc Case No.136 of 2013 dated 30th December, 2013 under Section 125 of the Cr.P.C that the opposite party contested the said proceeding by filing a written objection. In his written objection he did not aver that he was paying alimony pendente lite to his wife. In other words he did not pray for any adjustment of maintenance allowance as against payment of alimony pendente lite. The order dated 30th December, 2013 has already reached its finality. The petitioner did not challenge the said order of maintenance allowance passed against him in favour of his wife in any higher forum. As the petitioner did not claim any adjustment of maintenance allowance as against the alimony pendente lite, he cannot pray for such adjustment in the execution proceeding arising out of the order dated 30th December, 2013.

8. In view of the above discussion I do not find any merit in the instant revision and accordingly the revision is summarily dismissed.

(Bibek Chaudhuri, J.)