

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 2915 of 2022

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CRR 2093 of 2022

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CRR 1316 of 2022

Arindam Mitra

-Vs-

Subhosree Mitra (nee Ghosh)

For the Petitioner: Mrs. Anasuya Sinha, Adv.,
 Ms. Pallavi Priyadarshee, Adv.

For the opposite party: Ms. Subhosree Ghosh, Adv.

Heard on: 14 November, 2022.

Judgment on: 05 December, 2022.

BIBEK CHAUDHURI, J. : –

1. The petitioner is the opposite party/husband in Case No.ACM 42 of 2007 under Section 125 of the Code of Criminal Procedure. ACM 42 of 2007 was finally disposed of vide judgment dated 3rd September, 2021 by the learned Additional Chief Judicial Magistrate Alipore, South 24 Parganas directing the petitioner/husband to pay maintenance allowance at the rate of Rs.30,000/- per month in favour of the opposite party/wife and Rs.20,000/- per month to her minor child, total being Rs.50,000/- per month along with one time litigation cost at the rate of Rs.30,000/- per month.

2. It is contended on behalf of the petitioner that the opposite party has exercised beneficial legislation under Section 125 of the Cr.P.C in securing benefits for herself to which she is otherwise not entitled to in accordance with law. It is contended by the petitioner that the opposite party/wife is a practicing Advocate and she has her independent source of income. Therefore, she is not entitled to get any maintenance allowance from the opposite party. It is further contended by the petitioner that the learned Magistrate in his impugned judgment clearly held that trial of the maintenance case, i.e., ACM 42 of 2007 was delayed mainly due to dilatory tactics adopted by the petitioner. In spite of such finding the learned Magistrate committed error in granting litigation cost to the tune of Rs.30,000/- in favour of the opposite party. Petitioner further contends that the learned Magistrate acted illegally and with material irregularity in granting maintenance allowance in favour of the opposite party from the date of filing of the application. It is also alleged by the petitioner that the opposite party/wife filed false affidavit-of-assets and liabilities only to get maintenance allowance from the petitioner. The trial court failed to invoke the provisions of Order X of the Code of Civil Procedure or 165 of the Evidence Act for assessing the truthfulness of the affidavit filed by the opposite party/wife. It is also stated by the petitioner that the aforesaid maintenance case was once dismissed for default. Subsequently, on the application filed by the opposite party the same Misc Case was restored.

3. The aforesaid maintenance case was disposed of by the learned Additional Chief Judicial Magistrate at Alipore on 3rd September, 2021.

During the pendency of the said maintenance case, the opposite party/wife filed an application for execution under Section 125(3) of the Code which was registered as M. Execution Case No.455 of 2019 praying for realization of arrear maintenance from December, 2017 to July 2019.

4. By filing CRR No.1316 of 2022 the petitioner had sought for clarification as to whether the petitioner would go on paying maintenance allowance which was granted in favour of the opposite party prior to final disposal of the maintenance case or once a final order is passed by the learned trial court the same has to be followed. The said revision is also pending for disposal.

5. The petitioner also filed CRR No.2093 of 2022 before this Court challenging legality, validity and propriety of an order dated 21st May, 2022 passed in Misc Execution Case No.400 of 2021. The impugned order relates to a direction upon the petitioner to start making payment of arrear maintenance in the aforesaid Misc Execution Case with effect from 24th June, 2022. The petitioner raised an issue as to whether an execution for realization of maintenance allowance beyond 12 months can be filed by the opposite party in favour of the specific provision contained in Section 125(3) of the Cr.P.C.

6. With the consent of the parties mentioned above, all three revisions are taken up for hearing together.

7. I have heard Mrs. Anasuya Sinha, learned Advocate for the petitioner. I have also heard Ms. Subhosree Ghosh the opposite party herein who has presented her case in person.

8. It is submitted by Mrs. Sinha that the petitioner does not have any objection to pay maintenance allowance for the minor daughter of the parties. However, the petitioner has reservation against the final order passed by the learned Magistrate in ACM 42 of 2007 directing the petitioner to pay maintenance at the rate of Rs.30,000/- per month to the opposite party. Learned Advocate for the petitioner submits that the learned Magistrate while assessing the quantum of maintenance failed to consider that the opposite party works as an Advocate and she has independent source of income. The learned Magistrate has also failed to appreciate that affidavit-of-assets filed by the opposite party/wife contained false statement with regard to her income.

9. Ms. Subhosree Ghosh, the opposite party has confined her submission on her claim of arrear maintenance allowance. It is submitted by her that this Court should pass an order in the form of effective direction to pay arrear maintenance which has been granted by the trial court in the judgment dated 3rd September, 2021. I have carefully perused the impugned judgment passed by the learned Additional Chief Judicial Magistrate at Alipore in ACM 42 of 2007 on 3rd September, 2021.

10. The learned Magistrate took immense pain in elaborately discussing respective cases of the parties, evidence adduced by them and enunciations of judicial precedents on the subject. While assessing quantum of maintenance payable to the opposite party/wife for herself and her minor daughter the learned Magistrate elaborately discussed the requirement of the minor daughter of the parties on the basis of the

evidence adduced by the opposite party in the year 2017 to come to a finding that the minor daughter of the parties is entitled to maintenance at the rate of Rs.20,000/- per month.

11. The learned Magistrate also considered the monthly income of the petitioner, social status of the parties, economic requirement of the petitioner in relation to present market price and soaring cost of living and directed the petitioner to pay maintenance at the rate of Rs.30,000/- per men sem to the petitioner.

12. Relying on the decision in the case of **Rajnesh vs. Neha** reported in **(2021) 2 SCC 324**, the learned Magistrate granted maintenance allowance effectively from the date of filing of the application under Section 125 of the Cr.P.C.

13. On careful perusal of the impugned judgment, I do not find any illegality or material irregularity in the impugned order and accordingly CRR No.2915 of 2022 is liable to be set aside.

14. By filing CRR 2093 of 2022, the petitioner has raised a question as to whether the opposite party is entitled to arrear maintenance for a period beyond 12 months on which the arrear payable to the wife fell due.

15. Section 125(3) of the Code of Criminal Procedure runs thus:-

“(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term

which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him."

16. Careful reading of sub-Section (3) of Section 125 clearly shows that the said provision is applicable for every breach of order. When a final order is passed on 3rd September, 2021 upon an application under Section 125 of the Cr.P.C which was filed in the year 2007 granting maintenance allowance from the date of application, arrear maintenance and process for levying thereof commences from the date of passing of the final order.

17. Therefore, the opposite party is entitled to arrear maintenance at the rate that has been directed to be paid by the learned Magistrate in his order dated 3rd September, 2021 deducting the amount which has already been received by the opposite party No.1 towards interim maintenance.

18. It is found from the record of CRR No.2093 of 2022 that on the date of delivery of final judgment of ACM 42 of 2007 Misc Execution Case No.455 of 2019 was pending. Again after disposal of the application under

Section 125 of the Cr.P.C, the opposite party filed Misc Execution Case No.400 of 2021 claiming arrear maintenance against the petitioner.

19. It is needless to say that in view of the order dated 3rd September, 2021 passed by the learned Magistrate, the opposite party is entitled to receive entire arrear maintenance from the date of filing of the application under Section 125 of the Cr.P.C till the date of realization at the rate of Rs.50,000/- per month allowance deducting the amount which has already been paid by the petitioner.

20. In view of the above discussion CRR No.2915 of 2022 is dismissed on contest.

21. CRR 2093 of 2022 and CRR 1316 of 2022 are disposed of directing the learned Magistrate to take up execution cases filed by the opposite party together on a date to be fixed by him within three weeks from the date of communication of this order and calculate arrear maintenance till date payable by the petitioner in terms of the final order passed in ACM 42 of 2021. While calculating arrear maintenance, the learned Magistrate shall deduct the amount which has already been received by the opposite party towards maintenance allowance from the petitioner. By such process the learned Magistrate shall calculate the entire arrear maintenance payable by the petitioner in favour of the opposite party and direct the petitioner to pay such arrear maintenance by installments to be fixed by the learned Magistrate.

22. The petitioner is directed to go on paying/depositing current maintenance allowance in favour of the opposite party month by month

as per the direction made by the learned Magistrate contained in the order dated 3rd September, 2021.

23. The parties are at liberty to act on the server copy of the judgment.

24. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

25. Before I part with, I must record that the learned Advocate on Record on behalf of the petitioner submits that the opposite party regularly sends objectionable messages to her through Whats' App. Some of the messages cross the limit of vulgarity. She submits series of print outs of such messages before this Court and prays for protection.

26. I have perused the hard copies of the said messages. I am in conformity with the learned Advocate on record to hold that the said messages are vulgar, objectionable and obnoxious. These acts by the opposite party are clear instances of insult and intimidation.

27. The opposite party is directed strictly to restrain herself from sending such messages to the learned Advocate on record for the petitioner. If similar instances occur, the learned Advocate on record is at liberty to take legal action against the opposite party.

(Bibek Chaudhuri, J.)