

Form J(1)

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

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

CRR 4053 of 2022

**Nilmoni Das @ Nilmani Das
Vs.
The State of West Bengal & Ors.**

Mr. P. K. Bhattacharya
..for the petitioner

Mr. S. G. Mukherjee, Ld. P.P.
Ms. Debjani Sahu
...for the State

Item No. 103

Heard & Judgment on: 14.12.2022

Bibek Chaudhuri, J.

The petitioner being the husband of the opposite party No.3 has filed the instant revision under Section 482 read with Section 401 of the Code of Criminal Procedure praying for quashing of the order date

20th May, 2022 passed in Misc. Execution Case No.33 of 2016 pending before the learned Judicial Magistrate, 3rd Court at Burdwan as well as the ex parte order passed in Misc. Case No. 78 of 2013 allowing the opposite party No.3's prayer for maintenance under Section 125 of the Code of Criminal Procedure.

Having heard the learned advocate for the petitioner and on careful perusal of the averment made in the instant revision as well as the certified copy of the order, I find that the instant revision can be disposed of with the assistance of the learned P.P.-in-charge. Therefore, Ms. Debjani Sahu, learned P.P.-in-charge is requested to assist this Court on behalf of the State. The learned advocate for the petitioner is requested to serve a copy of the application to the learned P.P.-in-charge.

It is not in dispute that the opposite party No.3/wife filed an application under Section 125 of the Code of Criminal Procedure praying for maintenance allowance against her husband, the petitioner herein. The said application was registered as Misc. Case No.78 of 2013. The aforesaid Misc. case was disposed of by the learned Judicial Magistrate, 3rd Court at Burdwan ex parte. Subsequently the petitioner filed Misc. Execution Case No.33 of 2016 praying for realization of arrear maintenance by way of execution. As the petitioner failed to appear in the execution case and comply with

the order of payment of maintenance allowance in favour of the opposite party No.3. The learned Magistrate issued warrant of arrest on 20th May, 2022 against the petitioner.

By filing the instant revision the petitioner has prayed for setting aside of the order dated 20th May, 2022 on the ground that he is an agricultural labourer having no financial means to pay the maintenance allowance to his wife. In the instant revision the petitioner has also prayed for setting aside of the ex parte order of maintenance passed by the learned Judicial Magistrate, 3rd Court at Burdwan in Misc. Case No.78 of 2013.

I have heard the learned advocate for the petitioner. It is ascertained that the petitioner has not filed any application before the Magistrate praying for setting aside of the ex parte order passed in favour of the opposite party No.3. The learned Magistrate issued warrant of arrest in the execution case for non-appearance of the petitioner and non-compliance of the order of maintenance. The said order also cannot be set aside in the instant revision. The petitioner cannot pray for recalling of the order dated 20th May, 2022 passed in Misc. Execution Case No.33 of 2016 passed by the learned Magistrate without complying with the order passed in the execution case by the learned Magistrate.

In view of the above discussion, I do not find any merit in the instant revision. Accordingly, the instant revision is dismissed.

However, this order will not debar the petitioner to file any application for recalling the ex parte order of maintenance in the Court below.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties on usual undertakings.

(Bibek Chaudhuri, J.)