

CRR 3720 of 2008

In the matter : Biswanath Moule

Mr. Sukumar Ghosh  
Ms. Moumita Ghosh . ... for the petitioner

Mr. Bidyut Kr. Ray  
Ms. Rita Dutta ... for the State

Challenge in this revisional application is to the order passed by learned Judicial Magistrate, 1<sup>st</sup> Court, Diamond Harbour in Misc.Ex. Case No. 134 of 2007.

The fact of the case in brief is that Smt. Dharitri Moule depicting herself as neglected wife of the petitioner namely, Biswanath Moule filed an application under Section 125 of the Code of Criminal Procedure seeking maintenance and the learned Trial Court having considered the petition was pleased to grant a sum of Rs.1,500/- towards maintenance of Smt. Dharitri Moule and Rs.1,500/- toward the maintenance of her minor daughter. But Sri Biswanath Moule failed to comply with the order deliberately. Smt. Dharitri Moule by filing an application under Section 125 (3) of the Code of Criminal Procedure brought the inaction of her husband to the notice of the learned Trial Court; the petition was registered as Misc. Ex Case No. 134 of 2007 and the learned Judicial Magistrate was pleased to issue warrant of arrest to ensure compliance of the said order. The said order has been challenged by the petitioner in this proceeding.

Mr. Ghosh, learned counsel for the petitioner submits that instead of taking coercive measure at the very first instance learned

Trial court should have issued distress warrant to ensure compliance of the order of maintenance.

A husband incurs the obligation to maintain his wife, who does not have sufficient source of sustenance; and a father has the duty to maintain minor child.

The petitioner, in this case not only neglected to maintain his wife and child, but also refused to pay the money in compliance with the order of the Court. Such action is an affront to humanity, and infringement of right to life as guaranteed under article 21 of the Constitution. In order to secure such right of the wife and minor child of the petitioner, Ld. Trial Court issued warrant of arrest against him; instead of taking any soft stand. Taking into consideration the plight of the lady and child, I do not find any reason to interfere with the impugned order. However, it is always open to the petitioner to surrender before the Learned Magistrate and comply with the order to avert arrest.

In my view ends of justice would be met if the petition is dismissed, which I accordingly do.

The Criminal Revision along with connected application if any is thus disposed of.

Copy of the order be sent to Learned Judicial Magistrate 1<sup>st</sup> Court, Diamond Harbour for information.

(Siddhartha Roy Chowdhury, J.)