

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

Present: - Hon'ble Mr. Justice Subhendu Samanta.

CRR 3689 of 2018

Sri Niranjana Tudu

Vs.

State of West Bengal & Anr.

**For the Petitioner : Mr. Soumik Ganguli,
Mr. Samir Kr. Adhikary,
Mr. Sourat Nandy,**

**For the State : Mr. Naryan Prasad Agarwal,
Mr. Pratick Bose,**

Judgment on : 22-09-2022

Subhendu Samanta, J.

The instant criminal revisional application has been preferred against the order dated 19.10.2018 passed by the Learned Judicial Magistrate, Jhargram in connection with M.R. Execution No. 16 of 2018 filed under Section 125(3) of the Code of Criminal Procedure 1973 arising out of Judgement and Order dated 17.5.2016 passed by the Learned Judicial Magistrate, in M.R. Case No.15 of 2015 under Section 125 of the Code of Criminal Procedure 1973.

The issue involved in this revisional application is whether an application filed under Section 125(3) of the Code of Criminal Procedure can be filed for claiming arrear maintenance more than 12 months. Admittedly, in the present case one application (M.R. Execution no.16 of 2018) was filed by the opposite party no.2 before the Learned Magistrate under Section 125(3) Code of Criminal Procedure on 3rd February 2018 claiming arrear maintenance for the months of

February 2015 to January 2018 i.e for 35 months.

An application challenging the maintainability of the said M.R. Execution case was filed by the present petitioner. The application was heard by the Learned Magistrate and was rejected by passing the impugned order.

Hence this criminal application.

Learned advocate for the petitioner submitted that the execution proceeding pending before the Learned Magistrate is not at all maintainable, as it was filed for claiming maintenance for 35 months. Section 125(3) of Code of Criminal Procedure does not permit the petitioner to claim maintenance more than 12 months. So, the execution case is bad in law and it is not maintainable. The impugned order of the Magistrate is also bad in law.

State placed his reliance upon the consideration of this Court.

Heard the Learned advocates perused the impugned order.

Section 125(3) of the Code of Criminal procedure is codified as follows:

“(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.”

The facts of the case indicate the order of maintenance was passed in M. R. case No.15 of 2015 on 17.5.2016 with a direction upon the petitioner to pay maintenance to the opposite party no.2 at the tune of Rs.5000/- per month and Rs.3,000/- per month for her minor son.

One revisional application was filed before the Learned Sessions Judge challenging the said order of maintenance. There was a stay of the execution of the maintenance order subject to payment of a part maintenance of Rs.2,500/- per month. The revisional application was finally dismissed on 19.12.2017.

In passing the impugned order Learned Magistrate is of view that since there was an order of stay and as the revisional application was disposed of on 19.12.2017, the limitation starts from 19.12.2017 so he has of view that the M.R. Execution case is maintainable which was filed within one year from the date of dismissal of the revisional application.

The first proviso of Section 125(3) stated – “no warrant shall be issued for the recovery of any amount due under the Section unless application be made to the Court to levy such amount within a period of one year from the date of which it becomes due”

The term of the first proviso of Section 125(3) of the Code of Criminal Procedure makes it clear that the claim of unpaid maintenance should be filed

within one year from the date on which it become due. Thus, one petitioner may file one application for claiming of the maintenance amount not beyond for 12 months.

Admittedly, in the instant case the petitioner claimed maintenance for 35 months which is not permissible in the eye of law. But at the same time it is to be looked into that the petitioner was not allowed to file any execution application by virtue of order of stay passed by the revisional Court.

After considering the peculiar facts and circumstances of this case, it appears to me that though the instant M.R. Execution petition no.16 of 2018 filed for claiming maintenance of 35 months but the same is not automatically bad in law as because the application is quite justifiable for the period of March 2017 to February 2018. Thus, in my view, the opinion of Learned Magistrate regarding the computation of period of limitation though not correct according to the perspective of law but the final finding of the Learned Magistrate regarding the maintainability of the M.R. Execution case No.16 of 2018 is quite justified in respect for the period of March 2017 to February 2018. It further appears to me that opposite party no.2 of the instant case has received some maintenance by virtue of the order of the revisional court and also by virtue of some prior M.R. Execution case.

In considering the facts and circumstances of the case the impugned order passed by the Learned Magistrate is hereby modified to the effect as mentioned above.

The petitioner is directed to pay the arrear maintenance since March 2017 to February 2018 to the petitioner within November 30, 2022 failing which the Learned Magistrate is free to take such coercive measures as provided in law.

Claim of opposite party no.2 regarding the arrear maintenance is not actually barred by law as she was prevented for applying such claim by the order of stay of the revisional Court. Thus, in considering the legislatures approach towards the needy wife in codifying the provision under Section 125(3) of the Code of Criminal Procedure and also considering the view of the authority of different High Courts and our Apex Court. I am of view that the alleged injustice upon the opposite party no.2 shall be cause if the process of the Code is followed. There exists no other provisions of law by which the aggrieved party (o.p.no.2) could have sought relief. Thus, I am satisfied that an order passed under the Code would be rendered ineffective. At this juncture, it is fit circumstances where inherent powers of High Court can be invoked. I think it appropriate for passing an order that the opposite party no.2 may file separate applications for claiming her maintenance deducting the amount of maintenance as had already been received by her and that application shall not be barred by the conditions or provisions of law enumerated under Section 125(3) of the Code of Criminal Procedure if it is file within 30th of November 2022. I make it clear that the applications for arrear maintenance (execution proceeding) must have to be filed for 12 months only.

Accordingly, the instant revisional application is disposed of.

All connected application, if any, is also dismissed or any order of stay passed by this Court is also vacated.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Subhendu Samanta, J.)

