

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1012 of 2022

Sambhunath Panda.

....

Petitioner

-versus-

Pragyan Parimita Das.

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER
22.07.2022

Order No.

01.

1. This matter is taken up through Hybrid mode.
2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order dated 14.03.2022 passed by the learned J.M.F.C., Dhamnagar in Execution Misc. Case No.7 of 2019 issuing D.W. along with conditional N.B.W.(A) against him.
3. Heard the learned counsel for the petitioner.
4. As it appears, the petitioner-husband was saddled with an interim order of maintenance in a proceeding under Section 23 of the PWDV Act initiated by the opposite party-wife. The same having not been paid, when step for execution was taken

to levy the said order of maintenance vide Execution Misc. Case No.7 of 2019. In the said execution case the very order of maintenance was challenged to be illegal and consequentially the execution case. But, the trial Court taking note of the law laid down in the case of **Bhupinder Singh vrs. Daljit Kaur**, reported in AIR 1979 S.C. 442 rejected such prayer and posted the case for execution of the D.W. and conditional N.B.W.(A) to levy the maintenance ordered. In the case of **Bhupinder Singh (supra)** it has been categorically held that subsequent compromise or cohabitation is not a valid defence to the execution of the order of maintenance unless until the order is modified in accordance with Sections 125(4), 125(5) and 127 of Cr.P.C. This Court also in a series of decisions rendered in such cases have also reiterated the aforesaid view. Since the order of maintenance has not been demolished, rescinded or modified, the petitioner cannot wriggle out the execution on the ground of compromise and the execution filed to levy the maintenance ordered cannot be questioned. In view of the same, I see no illegality and infirmity in the impugned order.

5. At this stage, learned counsel for the petitioner submits that the petitioner is ready and willing to pay the maintenance as ordered on installment basis and till then, the D.W. and the conditional NBW(A) issued against the petitioner be stayed.

6. Considering the aforesaid submission of the learned counsel for the petitioner, it is directed that if the petitioner deposits Rs.24,000/- (rupees twenty-four thousand) by 22nd of August, 2022 before the Court below and deposits rest of the

amount on the said date in succeeding two months, the Court in seisin over the matter shall not execute the D.W. and NBW(A) issued against him in this case. However, failure to comply with the same by the petitioner, D.W. & conditional NBW(A) issued against the petitioner shall be executed.

7. With the aforesaid order, this CRLMC stands disposed of.

8. Urgent certified copy of this order be granted on proper application.

MRS

