

Form J(1)

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

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

C.R.R. 1051 of 2023

***Debdip Pain
Vs.
The State of West Bengal & Anr.***

For the petitioner : Mr. Gunjan Sinha @ Kanishk Sinha

Heard on : 05.04.2023.

Judgment On : 05.04.2023.

Bibek Chaudhuri, J.

The petitioner has invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure praying for quashing of a proceeding under Section 125 of the Code of Criminal Procedure registered as A.C.M. Case No.762 of 2022 pending before the learned Judicial Magistrate, 3rd Court at Alipore.

In support of the contention of the petitioner, it is submitted by the learned Advocate for the petitioner first that the learned Advocate for the petitioner has not stated his enrolment number in the affidavit appended with the application under Section 125 of the Code of Criminal Procedure and thereby violated the direction given by a Co-ordinate Bench to the fact that in all affidavits enrolment number of

the Advocate shall be stated/recorded. Secondly, it is submitted by the learned Advocate on behalf of the petitioner that the opposite party herein filed the instant application under Section 125 of the Code of Criminal Procedure in the year 2022, stating, *inter alia*, that the petitioner repeatedly requested to opposite party to provide maintenance for the petitioner and her minor son but the opposite party refused and deliberately neglected the same. Petitioner also sent the Advocate's notice on 22nd October, 2019 to the opposite party through speed post on 23rd October, 2019 seeking maintenance for the petitioner and her minor son. According to the learned Advocate for the petitioner, this averment is absolutely false because no notice was sent to the petitioner. On the contrary, an Advocate's reply dated 22nd October, 2019 was sent to the learned Advocate for the petitioner against the notice which was served by the present petitioner in favour of the opposite party. As the petition contains wrong averment, it should be quashed. Thirdly, in another proceeding under the Protection of Women from Domestic Violence Act, the petitioner made similar prayer of maintenance for herself and her minor son. Thus, two proceedings for maintenance cannot continue. Fourthly, in a proceeding under Guardian and Wards Act, the petitioner was directed by the learned Additional District Judge, 13th Court at Alipore to provide maintenance to the child according to

the needs of the child to be paid every month by way of sending materials, i.e., food, clothing, medicines and study materials etc.

Having heard the learned Advocate for the petitioner, this Court is of the view that none of the above objections raised by the learned Advocate for the petitioner is tenable under the law. Let me assign the reason. Affidavit of the petition under Section 125 of the Code of Criminal Procedure was sworn on 14th September, 2022. It is true that the learned Advocate for the petitioner has not stated his enrolment number.

For laches on the part of the Advocate, a litigant should not suffer. In the instant case also the petitioner cannot suffer for omission on the part of the learned Advocate for the petitioner in writing down his enrolment number. This is a mere irregularity and this irregularity may be rectified directing the learned Advocate for the petitioner to file a supplementary affidavit stating his enrolment number. Secondly, the learned Advocate for the petitioner refers to a letter dated 22nd October, 2019 written to the present petitioner by the learned Advocate for the opposite party herein. On perusal of the letter, it is found that the said letter was issued in reply to the notice sent by the learned Advocate for the petitioner to the opposite party herein. In the said letter, the present petitioner was requested to provide maintenance @ Rs.20,000/- per month for his wife and their

minor child. Thus, in the said letter maintenance allowance was prayed for.

The legal position with regard to filing of applications under several statutes as for example, under the Code of Criminal Procedure, under Protection of Women from Domestic Violence Act, under Section 24 of the Hindu Marriage Act, under Section 28 of the Specific Marriage Act etc. by the wife is not barred. However, it enjoins a duty in the Trial Court to consider as to whether the quantum of maintenance which the learned Trial Judge intends to award to the petitioner and her minor child can be adjusted in another proceeding under the above-mentioned statutes. Pendency of a petition under Section 23 of the Protection of Women from Domestic Violence Act cannot be a ground for quashing of a proceeding under Section 125 of the Code of Criminal Procedure. Lastly, this Court likes to record that the learned Additional Sessions Judge, 13th Court at Alipore did not direct the present petitioner to pay any maintenance allowance. The learned Court below directed the petitioner to provide food, clothing, medicine expenses and educational expenses for their minor child. If the petitioner at all pays any amount towards the said purpose, it would be adjusted against the maintenance allowance passed either in the proceedings

under Section 125 of the Code of Criminal Procedure or in the proceedings under Section 23 of the PWDV Act.

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

Since the application under Section 125 of the Code of Criminal Procedure is pending in the Trial Court, the learned Judicial Magistrate is directed to take all possible steps to dispose of the application expeditiously.

(Bibek Chaudhuri, J.)

***Mithun De/
A.R. (Ct).
SI No.13.
D/L.***