

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1417 of 2019

Indranil Adhikari

Vs

Smt. Arunima Adhikary & Anr.

For the Petitioner : Mr. Partha Pratim Das,
Mr. Monajit Chakraborti,
Mr. Dev Kumar Sharma.

For the Opposite Party No.1 : None.

For the State : None.

Hearing concluded on : 05.09.2023

Judgment on : 29.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against the Judgment and Order dated 23.04.2019 passed by Smt. Sarbani Mallick, First Additional District & Sessions Judge at Howrah, in Criminal Appeal No. 67/2018.
2. The petitioner/husband's case is that the opposite party no.1 filed an Execution Case No. 281 of 2015 for the execution of the order dated 23.02.2015 passed by the Court of Learned 5th Judicial Magistrate at Howrah in the Misc. Case No. 170/2014 under Protection of Women from Domestic Violence Act, 2005, exparte directing the respondent no. 1 to pay maintenance of Rs. 5,000/- (Rupees five thousand only) per month from the date of order and also a compensation of Rs. 50,000/- (Rupees fifty thousand Only).
3. The petitioner after receiving the notice of the said execution case appeared and was regularly paying maintenance and the opposite party no.1 used to file further application in the said Execution Case for adding further arrears of maintenance.
4. That during the pendency of the said Execution Case, the petitioner suffered an unfortunate serious bus accident on 18.08.2017 and due to which both of his leg suffered fractured injury and was hospitalized for considerable period of time and operation was done in his both legs but was unsuccessful and he could not regain his normal health and life, unabling him to join his duty/employment. The petitioner is at present is

a bed ridden person and unable to stand on his own and walk. He was referred to a Medical Board and a Handicap/Disability Certificate was issued in favour of the petitioner.

5. It is stated that the Doctor of the Medical Board issuing disability certificate, **certified that disability is not likely to respond to any sort of treatment and disability was 60% and petitioner cannot travel without assistance of an escort.**
6. It is further stated that the petitioner is not an able bodied person and unable to join his duty at the British Biological where he used to work as a Sales/Marketing executive and for that reason **the petitioner has already filed one Misc. Case No. 127 of 2018 for revocation/cancellation of the said maintenance order, which is pending before the Court of the Ld. 5th Judicial Magistrate at Howrah.**
7. On 25.04.2018, the petitioner filed one adjournment application with a prayer for time to make payment, annexed with a Medical Certificate dated 20.04.2018, in the said execution case, but the same was rejected by the Court of Ld. 5th Judicial Magistrate at Howrah and directly a warrant of arrest has been issued against the petitioner.
8. That being aggrieved and dissatisfied with the order dated 25.04.2018 the petitioner preferred one Criminal Appeal being No. 67/2018 under Section 29 of the Protection of Women from Domestic Violence Act, before the Court of Ld. District Judge at Howrah.

9. Subsequently the said Criminal Appeal No. 67/2018 was transferred to the Court of Ld. First Additional District & Sessions Judge at Howrah for disposal and was disposed of vide Judgment and Order dated 23.04.2019 and operative part of the Order is:-

“The impugned order dated 25.04.2018, passed by the Ld. Judicial Magistrate; 5th Court Howrah in Misc. Execution Case No. 281/2015 is hereby set aside.

Let the warrant of arrest against the appellant/husband be recalled at once subject to payment of 25% of the arrear maintenance amount in that execution case in favour of the respondent/wife”.

10. Being aggrieved by and dissatisfied with the judgment and order dated 23.04.2019 passed by Smt. Sarbani Mallick, Ld. First Additional District & Sessions Judge at Howrah, in the Criminal Appeal No. 67/2018, the petitioner has preferred the instant revisional application.
11. **Mr. Partha Pratim Das, learned counsel for the petitioner** has submitted that the Ld. Trial Court/Executing Court and First Appellate Court failed to appreciate the provisions of the Rule 6(5) of the Protection of Women from Domestic Violence Rules, 2006 and provisions of Section 125(3) of the Criminal Procedure Code, 1973 in its proper perspective.
12. That both the Courts failed to appreciate the fact that the petitioner is not an able bodied person and has no earning capacity.

13. The Ld. Appellate Court should have considered the disability/handicap certificate and on that basis, should have set aside the said order dated 25.04.2018 without putting any condition of payment of 25% arrears of maintenance but failed to do so.
14. The impugned order dated 25th April, 2018 passed by the Trial Court/Executing Court is illegal, bad in the eye of law, perverse and without jurisdiction and as such is liable to be set aside unconditionally.
15. The impugned order dated 25.04.2018 is also liable to be set aside and the entire proceeding of the Misc. Execution Case No. 281/2015 pending before the Court of Ld. 5th Judicial Magistrate at Howrah is liable to be quashed.
16. **In spite of the opposite party being represented on earlier occasions, they have failed to appear at the time of hearing.**
17. The Contention of the petitioner is that he has met with an accident and has in support filed a copy of the disability certificate dated 27.10.2018, wherein it appears **that the petitioner/husband has been diagnosed with 60% permanent disability (left foot) and he cannot travel with assistance of escort.**
18. But the present revision is against the order of the appellate court in an appeal against an order passed by the Magistrate in a Misc Execution Case in a proceeding under the Protection of Women from Domestic Violence Act.

19. An execution is filed to execute the order in a principle case. The court while taking steps to execute an order of a court only proceeds to execute the order and does not decide the validity of the order.
20. The order which was being executed is dated 25.04.2018 in an execution proceedings being Misc Execution Case No. 281/2015.
21. The disability certificate has been issued on 27.10.2018.
22. Admittedly there is no dispute regarding the disability of the petitioner. It is also noted that till his accident, the petitioner had been paying maintenance diligently.
23. But any prayer for modification etc in such proceedings due to subsequent developments and change in circumstances is to made by a separate proceedings (herein Misc 127 of 2018 filed by the petitioner praying for revocation and cancellation of the maintenance order is pending before the learned Judicial Magistrate, 5th Court, Howrah) as per the relevant provisions of law, which the court is to consider in accordance with the guidelines of the Supreme Court is such proceedings (*Rajnesh Vs Neha, (2021) 2 SCC 324*).
24. **The order under revision is thus modified to the extent that the direction for payment of 25% of the arrear maintenance is set aside.**
25. **The learned Judicial Magistrate, 5th Court, Howrah is directed to dispose of Misc Case 127 of 2018 within a period of 6 months from the date of this order in accordance with law.**

- 26. CRR 1417 of 2019 is accordingly disposed of.**
- 27.** All connected applications, if any, stands disposed of.
- 28.** Interim order, if any, stands vacated.
- 29.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 30.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)