

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2154 of 2022

With

CRAN 5 of 2023

Sri Biswambhar Mukherjee

Vs

Sarbamangala Mukherjee.

For the Petitioner : Mr. Amitabha Ghosh,
Ms. Sima Ghosh,
Ms. Nabanita Chatterjee,
Ms. Arpita Dhar.

For the Opposite Party : Mr. Debabrata Acharyya,
Ms. Debjani Saha.

Hearing concluded on : 06.03.2024

Judgment on : 19.03.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred against the order dated 27.04.2022 passed by the Learned Chief Judicial Magistrate, Suri, Birbhum, in Misc. Execution No. 34 of 2022.
2. The petitioner's case is that the opposite party/wife filed an application for maintenance under Section 125 Criminal Procedure Code vide M. Case 119 of 1995 against her husband/petitioner before the Learned Chief Judicial Magistrate, at Suri, Birbhum, with a prayer for maintenance in which Learned Court was pleased to allow maintenance to the extent of Rs.400/- for herself and Rs. 400/- for her daughter per month and the petitioner was paying that amount on regular basis.
3. It is further stated by the petitioner that thereafter wife/opposite party by suppressing the Learned Court order is M. Case 119 of 1995, filed a new Case before D.L.S.A. Suri, Birbhum being C.C. Petition No. 38/2018 where in it was decided that husband/petitioner will pay Rs. 5500/- in favor of wife in her bank Account by the 7th day of each month, from April, 2018 and accordingly the petitioner was paying that amount on regular basis.
4. Subsequently, the wife/opposite Party filed another Case before D.L.S.A. Suri, Birbhum being C.C. Petition No 43/2019 where in, it was decided that husband/petitioner will pay Rs. 7500/- in favor of wife in her bank

Account by 7th day of each month, from March, 2019 and accordingly the petitioner was paying that amount on regular basis.

5. Thereafter after prolonged discussion between both parties, they agreed for full and final settlement. Accordingly the permanent alimony for the opposite party/wife was fixed Rs.9,00000/- (Rs. Nine Lakh only) dated on 19.09.2020 which was paid in two phases, First Phase Rs. 3,29000/- by cash deposit in post office Savings Bank Account of opposite party dated on 19.09.2020 and second phase Rs. 5,71000/- (Rs. five lakh seventy one thousand only) through cheque in favor of Sarbamangala Mukherjee.
6. Thereafter, the petitioner received a court's summon in Misc. Execution Case No. 34 of 2022 (present case) pending before the Learned Chief Judicial Magistrate wherein the petitioner was directed to pay Rs. 4800/- per month as maintenance for the period from February 2021 to January 2022 and the next date was fixed on 11.03.2022.
7. The petitioner filed an application praying for rejection/dismissal of the said Execution Case on the ground that an amicable settlement had been arrived at between the parties and Rs.9 lakhs had already been paid to the opposite party in the year 2020. The Learned Magistrate on perusal of the materials on record and on hearing both sides was pleased to allow the prayer of the opposite party/wife directing the petitioner to make payment, hence the revision praying for setting aside/quashing of the said order.

- 8.** Heard the learned counsel for the petitioner and the opposite party perused the materials on record. The opposite party/wife herein has filed her affidavit-in-opposition stating therein that she is a cancer patient since 2016.
- 9.** It is further stated that in spite of specific direction by the court the petitioner never paid maintenance regularly.
- 10.** It is stated that, her signature on the receipt accepting Rs. 9 lakh was forced.
- 11.** It is stated that as per the instruction of the petitioner/husband, the amount has been deposited in monthly scheme and she gets only Rs. 4995 per month from the said deposit.
- 12.** It is further stated that petitioner/husband has got Rs.45,00,000/- as benefits being superannuated from the post of A.S.I., G.R.P., Government of West Bengal.
- 13.** Petitioner/husband also gets monthly pension of Rs. 40,000/-.
- 14.** Petitioner/husband also maintains a concubine at the home/residence of the petitioner. Subsequently the petitioner married the said lady Smt. Samapati Mukherjee.
- 15.** It is further stated that in spite of having sufficient means, the opposite party is not providing maintenance to the petitioner and their child who are his legally married wife and legitimate child respectively (at present aged 35 years and married).

16. In his affidavit-in-reply the petitioner has denied the statements of the opposite party and has reiterated his statements as made in the revisional application.

17. Learned counsel for the opposite party has relied upon the following rulings:-

a) Sri Laxmikanta Panja vs Smt. Susoma Rani Panja & Anr., (2002 C Cr LR (Cal) 798), decided on July 4, 2002,
the Calcutta High Court held:-

“5. Having heard the submissions of the respective parties, I am of the view that no cause for interference have been made out in the present application. Firstly, it is correct as pointed out by the learned Advocate for the O.P. that a compromise effected between the parties cannot have any binding effect upon any one. The decision sought by him (supra) is absolutely trite position and cannot be ignored. That apart by a necessary implication if the compromise petition is redundant the records of the original petition of Misc. Case No. 46/1993 under Section 125, Cr.P.C., i.e., the main petition becomes redundant to be looked into and as already the order has been put into execution, it is now only proper that the same reach its logical conclusion which have been pending since 1999 and already the learned S.D.J.M. has fixed the same for hearing. I do not feel this Court should interfere in the matter in the absence of any illegality. Accordingly, having found no merit in the revisional application, the same is dismissed.”

b) Ranjit Kaur vs Pavittar Singh, (1992 CRI. L.J. 262), Criminal Misc. No. 5684-M of 1990, D/- 29-5-1991, wherein it was held:-

*Criminal P.C. (2 of 1974) ,Ss. 125,127 (3)(c)-
Maintenance – Statutory right of wife- **Agreement***

contrary to such right- opposes public policy and is against clear intendment of provisions of S.125 – Cannot be given effect to.

18. The Calcutta High Court held that **a compromise does not have any binding effect in the matter of payment of maintenance. Execution proceedings is maintainable in spite of prior compromise.**
19. In ***Sanjeev Kapoor vs Chandana Kapoor & Ors., in Criminal Appeal Nos. 286 of 2020 (arising out of SLP (CRL.) No. 1041 of 2020), decided on February 19, 2020***, the Supreme Court held:-

*“17. Learned counsel for the appellant has also referred to judgment of this Court in **Mahua Biswas(Smt.) vs. Swagata Biswas and another, (1998) 2 SCC 359**. In the above case, in the proceedings under Section 125 Cr.P.C. parties compromised and started living together but later fell apart. An objection was raised by the husband that order of maintenance could not be revived with which High Court agreed. This Court revived the maintenance application by allowing the appeal. In paragraph 3 following was held:*

*“3. The matter can be viewed from either angle. It can be viewed that there was a genuine effort by the wife to rehabilitate herself in her matrimonial home but in vain. **The previous orders of maintenance in a manner of speaking could at best be taken to have been suspended but not wiped out altogether.** The other view can be that the maintenance order stood exhausted and thus she be left to fight a new litigation on a fresh cause of action. Out of the two courses, we would prefer to adopt the first one, for if we were to resort to the second option, it would lead to injustice. In a given case the wife may then be reluctant to settle with her husband lest she lose the order of maintenance secured on his neglect or refusal. Her husband on the other side, would jump to impromptu devices to*

demolish the maintenance order in duping the wife to a temporary reconciliation. **Thus, in order to do complete justice between the parties, we would in the facts and circumstances activate the wife's claim to maintenance and put her in the same position as before.** Evidently, she has obtained a maintenance order at a figure which was taken into account by the Court of the C.J.M. Taking that into account, we order the husband to pay to his wife and the daughter a sum of Rs 1000 each, effective from 1-10-1997. The sum of Rs 12,000 which was earlier ordered by this Court to be paid to the wife and her daughter as arrears of maintenance shall be taken to have been duly paid upto 30-9-1997, irrespective of the rate of maintenance. This streamlines the dispute between the parties. It is made clear that it is open to the parties to claim such other relief as may be due to him/her by raising a matrimonial dispute before the matrimonial court."

23. The closer look of Section 125 Cr.P.C. itself indicates that the Court after passing judgment or final order in the proceeding under Section 125 Cr.P.C. does not become functus officio. The Section itself contains express provisions where order passed under Section 125 Cr.P.C. can be cancelled or altered which is noticeable from Section 125(1), Section 125(5) and Section 127 of Cr.P.C.....

24. In Section 125 Cr.P.C. uses the expression used is **"as the Magistrate from time to time direct"**. The use of expression 'from time to time' has purpose and meaning. It clearly contemplates that with regard to order passed under Section 125(1) Cr.P.C., the Magistrate may have to exercise jurisdiction from time to time. Use of expression 'from time to time' in is exercise of jurisdiction of Magistrate in a particular case. Advanced Law Lexicon by P.Ramanatha Aiyar, 3rd edition defines 'time to time' as follows: -

"Time to time. As occasion arises"

* * * *

29. It has come on the record that after passing of the above order on settlement, the appellant according to his own case has paid only an amount of One Lakh Rupees, i.e. maintenance of four months after May 2017. The arrears from July, 2015 to April 2017 has not been paid by the appellant within six months which was time allowed by the Court. **When the appellant did not honour its commitment under settlement, can the wife be left in lurch by not able to press for grant of maintenance on non-compliance by the appellant of the terms of settlement. The answer is obviously 'No'. Section 125 Cr.P.C. has to be interpreted in a manner as to advance justice and to protect a woman for whose benefit the provisions have been engrafted.**

30. We have noticed the judgment of this Court in **Mahua Biswas (Smt)(supra)** where this Court had activated the wife's claim of maintenance to put her at same position before parties compromised in proceeding under Section 125 Cr.P.C. Although learned counsel for the appellant submits that the judgment of this Court in **Mahua Biswa (Smt)** is not applicable, we do not agree with the submission. In the above case, order was passed by the Magistrate giving maintenance of token amount against which she moved to the High Court for revision where it was noticed that matrimonial case between the parties had stood compromised and one of the terms was that wife would go and live with her husband. The wife went to live with husband but later the spouse fell apart. Husband contended that the orders of maintenance could not be revived as there had arisen a fresh cause of action. The High Court had set aside the order of maintenance leaving the wife to approach again the Criminal Court for appropriate relief. This Court allowing the appeal had activated the wife's claim of maintenance and put her in the same position as before. The above judgment clearly indicates that this Court adopted the Course which avoided injustice to the wife.

31. We, thus, are of the considered opinion that the order passed in present case by Family Court reviving the maintenance application of the wife under Section 125 Cr.P.C. by setting aside order dated 06.05.2017 passed on settlement is not hit by

the embargo contained in Section 362 Cr.P.C. The submission of learned senior counsel for the appellant that Section 362 Cr.P.C. prohibit the Magistrate to pass the order dated 05.01.2019 cannot be accepted.

32. The High Court did not commit an error in rejecting the application filed by appellant under Section 482 Cr.P.C. The inherent powers of the High Court given under Section 482 Cr.P.C. are to be exercised to secure the ends of justice. The Family Court in passing order dated 05.01.2019 has done substantial justice in reviving the maintenance application of the wife which need no interference by the High Court in exercise of its jurisdiction under Section 482 Cr.P.C.”

20. Considering the said facts and circumstances and materials on record, this court finds that the order under revision being in accordance with law requires no interference by this court and accordingly revisional application is liable to be dismissed.
- 21. CRR 2154 of 2022 is accordingly dismissed.**
22. All connected applications, if any, stand disposed of.
23. Interim order, if any, stands vacated.
24. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
25. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)