

05.01.2024

Sl.No. 28

Ct. 32

Amalranjan

CRR 3698 of 2017

Sri Biswajit Adhikary

Vs.

Smt. Laxmi Adhikary and anr.

Nobody appears on behalf of either of the parties on call. Even on earlier occasion no one represented the petitioner, nor accommodation sought for.

This case pertains to the year 2017. The nature of prayer and to avoid further delay record is taken up for the purpose of disposal on merit.

The instant revisional application has been filed by the petitioner/husband under sections 401 read with section 482 of the Criminal Procedure Code, 1973, challenging the impugned order dated 27.4.2017 passed by the learned Additional Chief Judicial Magistrate, Arambagh in Misc. Exe. 32/2016 thereby the learned Magistrate issued a warrant of arrest against the petitioner/husband herein for recovery of arrear maintenance amount and another impugned order of rejection dated 18.10.017 passed by the Additional Chief Judicial Magistrate, Arambagh in Misc. Exe. 32/2016 for recalling of the order dated 27.4.2017 passed in Misc. Exe. 32/2016.

The brief facts of the case are relevant for the purpose of disposal of the case as follows.

The petitioner got married with the opposite party 1/wife about 20 years ago as per Hindu Rites and Customs and out of the said wedlock one female and one male child were born. Due to matrimonial dispute the opposite party/wife had filed an application under section 125 of the Criminal Procedure Code with a prayer for interim maintenance against the petitioner/husband herein before the learned Additional Chief Judicial Magistrate at Arambagh and it was registered as Misc. Case no. 11/2015 and the said Misc. case was disposed of on 30th July, 2016 by passing an order, inter alia, as follows:

“That the Misc. Case is allowed in part on contest with cost of Rs. 2,500/-.

The petitioner wife does get monthly maintenance allowance of Rs. 5,000/- with effect from 29.01.2015 and a cost of Rs. 2,500/- from the O.P.

The O.P. is hereby directed to pay to the petitioner wife Rs. 5,000/- as monthly maintenance allowance by the 10th day of each successive English Calendar month with effect from 29.01.2015 and a cost of Rs. 2,500/-.

The O.P. is also directed to pay the maintenance allowance and the cost to the petitioner wife within two months from the date of this order, failing which the petitioner wife will be at liberty to realize the entire amount of maintenance along with the current amount of maintenance allowance as well as the amount of cost by putting this order into execution.”

Thereafter the opposite party 1/wife filed an Execution Case when the petitioner fails to pay the maintenance before the learned Additional Chief Judicial Magistrate, Arambagh and the same was registered as Misc. Execution no. 32/2016 and in the said Misc. Case a warrant of arrest was issued against the present petitioner/husband for recovery of the dues of arrear maintenance. Thereafter the petitioner filed an application for recalling of the said order dated 24.04.2017 which was also rejected by the learned Magistrate vide order dated 18.10.2017 after hearing the parties.

It is the contention of the petitioner that he is incapable to pay the maintenance amount as directed by the learned Magistrate as his source of income from D.C.M. car had already been seized by the Financial company, and further the petitioner/husband was neglected by her while she was in her matrimonial home, she always took quarrel with the husband/petitioner with a trivial issues though he tried to adjust with his wife. Petitioner has no fault. She left the matrimonial home voluntarily and petitioner never neglected her while she was in matrimonial home. Accordingly, he filed this revisional application praying for setting aside the said impugned orders.

Upon perusal of the application together with annexures thereto, this court finds that due to non-payment of maintenance amount as allowed by the learned Magistrate to the wife, she filed a petition under section 128 Cr.P.C

praying for realization of arrear maintenance allowance of Rs. 1,10,000/- and Rs. 2,500/- as costs. Thereafter, a notice was served to the present petitioner and several opportunities were given to the petitioner to clear the arrear maintenance amount. But in spite of that the petitioner/husband did not pay the arrear maintenance amount and furthermore, the petitioner was found absent by filing a petition on several occasions praying for further time. As such prayer was rejected by the learned Magistrate and issued a warrant of arrest against the petitioner/husband herein after receiving NER regarding DW with nil seizure lists.

In such circumstances, the learned Magistrate has no option but to issue the warrant of arrest against the present petitioner to recovery the arrear maintenance amount in an Execution case 32/2016.

Subsequently, the petitioner filed an application for recalling of warrant of arrest on the ground stated therein and after hearing the parties, the learned Magistrate has also rejected the such prayer as he did not pay the arrear maintenance amount passed in Misc. Case 11/2015 filed under section 125 Cr.P.C for maintenance amount and the same was allowed on contest. In Misc. Execution Case, there is no scope to recall of warrant of arrest when there is sufficient and reasonable ground for non payment of arrear maintenance and cost. Furthermore, no arrear maintenance was paid by the petitioner/ husband though he obligation to pay the same.

In the light of above circumstances, this court does not find any sufficient reason to allow the instant revisional application as the revisional application by the petitioner/husband found devoid of merit.

Accordingly, the instant revisional application being **CRR 3698 of 2017** is dismissed without any order as to costs.

Interim order, if any, stands vacated.

Department is directed to send down the lower court records, if any, immediately.

Let the order be communicated to the Ld. Court below for information.

Liberty is granted to all parties to act in terms of the copy of this order downloaded from the official website of this court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties taking all legal formalities.

(Ajay Kumar Gupta, J.)