

Item 11.06.
No. 2025

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

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Ct 22

CRR 3286 of 2024

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Sri Surajit Das

Vs.

The State of West Bengal & Anr.

Ms. Jharna Biswas,
Ms Susmita Biswas Chowdhury ... for the petitioner.

1. Affidavit of service filed by the petitioner be taken on record.
2. None appears on behalf of the opposite parties in spite of service of notice.
3. This revisional application has been filed assailing the order dated 20.05.2024 passed in connection with MR Case No. 19A of 2023, wherein Learned Additional Chief Judicial Magistrate, Jhargram disposed of an application under Section 125 of the Code of Criminal Procedure *ex parte*.
4. Learned counsel appearing on behalf of the petitioner has referred to certified copy of all the orders passed in the case by the Learned Additional Chief Judicial Magistrate, Jhargram. From the copy of the orders, it appears that on 31st March, 2023 one application under Section 125 of the Code of Criminal Procedure was filed

by the opposite party No.2 before the Court of Learned Additional Chief Judicial Magistrate, Jhargram and the case was registered as MR Case No. 19A of 2023 and necessary direction was given to issue show cause notice upon the opposite party. Requisites were put in and the case was fixed on 12.05.2023 for S/R and appearance. On 17.05.2023 no S/R was received and another date was fixed on 12.07.2023 for S/R and appearance. On 12.07.2023 no S/R was received and next date was fixed on 31.08.2023 wherein again S/R was not received and further date was fixed on 21.11.2023. Thereafter on all subsequent dates, S/R was not received and the case was fixed for *ex parte* hearing. Ultimately on 20.05.2024 Learned Trial Court took up the case *ex parte* and examined the petitioner as PW-1. Relying on the statement of the petitioner, Learned Trial Judge disposed of the application under Section 125 of the Code of Criminal Procedure allowing the maintenance to the tune of Rs.6000/- per month thereby directing opposite party to pay the same to the petitioner from the date of filing of the application under Section 125 of the Code of Criminal Procedure.

5. On careful perusal of the order impugned, I find that Learned Judge passed the order of maintenance only on the *ex parte* evidence of the petitioner without relying on any convincing documents with regard to the income of the opposite party. However, Learned Trial Judge relied

on the unchallenged testimony of the petitioner and allowed the application under Section 125 of the Code of Criminal Procedure.

6. In the aforesaid view of the matter, I am of the opinion, that opportunity should be given to the petitioner/husband to contest the application under Section 125 of the Code of Criminal Procedure filed by the petitioner.
7. Considering all facts and circumstances, the order dated 20.05.2024 passed in connection with MR Case No. 19A of 2023 stands set aside.
8. Learned Trial Judge is requested to fix a date for hearing of the application under Section 125 of the Code of Criminal Procedure and petitioner/husband has to appear on the date fixed by the Learned Trial Judge before the Court for hearing of the application under Section 125 of the Code of Criminal Procedure. In case of failure on the part of the petitioner/husband, Learned Trial Court shall take up the application under Section 125 of the Code of Criminal Procedure *ex parte* and dispose of the same in accordance with law.
9. With the aforesaid observation, the revisional application stands disposed of.
10. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.
11. All parties shall act on the server copy of this order

duly downloaded from the official website of this Court.

12. Petitioner is at liberty to communicate this order to the Learned Trial Court for information.

(Bibhas Ranjan De, J.)