

CRR 4737 of 2025
With
CRAN 1 of 2025
Malay Bose
Vs.
Susmita Saha Ors.

Mr. Sandipan Ganguly, Sr. Adv.
Mr. Ayan Bhattacharjee, Sr. Adv.
Ms. Priyanka Sarkar

...For the Petitioner

Mr. Srijit Chakraborty
Mr. Sourya Mukherjee

....For the opposite Party

Mr. Suman De
Mr. Anindya Sunder Chatterjee

...For the State

1. The petitioner herein has assailed order dated 04.09.2025 and 03.11.2025 passed by the State Consumer Dispute Redressal Commission West Bengal, (hereinafter called as Commission) in connection with an execution proceeding arising out of consumer complaint case. In the order dated 04.09.2025., the said commission refused to place reliance on the medical documents, as it does not bear LTI of the patient/petitioner and therefore issued fresh warrant of arrest against the petitioner fixing 3rd November, 2025 for further order.

2. On 3rd November, 2025 the judgment debtor no.2 /petitioner herein was brought under arrest by the strength of aforesaid warrant of arrest and the commission observed as follows:-

“It appears that the execution and registration of deed of conveyance has not been executed. Furthermore, the matter of payment for compensation, cost and refund money are yet to be done.

The Ld. Advocate for the custody accused urged for enlarging him on bail but we think if the J. dr is enlarged on bail, it would frustrate the purpose of execution application.

Having such observation, the bail prayer is rejected. The J. Dr. be remanded to presidency Central Correctional Home. The Superintendent, Presidency Correctional Home is to take charge of the J. Dr. namely Sri Malay Bose from the said constable and to provide safety and security of the said J. Dr. and to provide necessary medical treatment to him till further order and to arrange for production of the said J. Dr. before this Commission on the date so fixed.

At this stage, the Ld. Counsel for the J. Dr prays for 10 days time.

Prayer is considered and allowed.

The superintendent, presidency Correctional Home is directed to produce Sri Malay Bose on 13.11.2025 at 10.30 A.M. for payment and compliance.”

3. Being aggrieved by the aforesaid orders Mr. Sandipan Ganguly learned Senior Counsel appearing on behalf of the petitioner submits that on the basis of a complaint Hon’ble commission passed an exparte order on 29th May, 2019 in favour of the complainant by directing *interalia* the petitioner to hand over the flat in habitable condition to the complainant and to execute and register the deed of conveyance in favour of the complainant and to refund Rs. 22,45,000/- plus Rs 1,55,410/- with 12% interest and to provide completion certificate newly constructed building along with compensation cost.

4. The opposite party no.2, herein filed execution application to execute the said order. In the meantime the commission issued the warrant of arrest against the petitioner placing no reliance upon petitioner’s medical documents vide aforesaid impugned order dated 04.09.2025 and on 03.11.2025 when the petitioner was brought under arrest by dint of warrant of arrest issued vide order dated 04.09.2025, the bail prayer of petitioner was rejected

and he has been remanded to judicial custody for a period of 10 days and the Superintended Presidency Correctional Home has been directed to produce the petitioner on 13.11.2025 at 10.30 a.m. for payment and compliance.

5. Mr. Ganguly contended that the petitioner is suffering from various ailments and his movement is completely restricted by his doctor and is bed-ridden. Mr. Ganguly argued that by no means the commission can take recourse to section 72 to take a short cut and coercive method for execution of its order and therefore, passing of such order is palpably illegal. The commission failed to appreciate that warrant of arrest cannot be issued for enforcement of its order. The commission though has the authority to issue warrant for detention of the judgment debtor in civil prison in accordance with the provision under the Code of Civil Procedure but it cannot issue warrant of arrest against the judgment debtor following part B of chapter VI of the Code of Criminal Procedure. Accordingly he prayed for setting aside the order and prays for release of the petitioner.

6. Mr. Srijit Chakraborty learned Counsel appearing on behalf of the opposite party raised vehement objection against the submission made by the petitioner and he questioned the maintainability of the Application before this Bench contending that the orders impugned were passed under section 71 of the Consumer protection Act, 2019 (hereinafter called as Act of 2019) and as such if anyone is aggrieved by the order, he ought to have

preferred Civil Revisional Application or Writ Application before this Hon'ble Court but since this court is not assigned to deal with those matters, the application is not maintainable before this Bench.

7. Having considered submissions made on behalf of the both the parties, it appears to me that before going to further details let me reproduce section 71 and 72 of the Act of 2019.

“71. Every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under this Act.

“72. (1) Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973.

(3) Save as otherwise provided, the offences under sub-section (1) shall be tried summarily by the District Commission or the State Commission or the National Commission, as the case may be.”

8. From a plain reading of the aforesaid provisions it is quite clear.

That every order passed by commission has to be executed as if the order passed in a suit and the procedure laid down in order XXI of the Code of Civil Procedure (in short CPC) is applicable for the execution of such an order by the said commission or by the Civil court to which it is sent for execution. The Application for

execution of an order passed by the commission then has to be dealt with in accordance with the provisions of section 37 to 74 read with order XXI of CPC.

9. On the other hand the only condition for imposing penalty under section 72 is the failure or omission on the part of judgment debtor to comply with the order passed by commission. However, no guideline have been provided in the Act as the when a decree holder shall proceed under section 71 and when it shall proceed under section 72 of the Act. Considering the delays that are caused by the judgment debtor at the time of execution, Legislature in it's wisdom enacted section 72, so that a decree holder can also prosecute judgment debtor in case he fails to pay the decretal amount. Therefore, section 71 & section 72 are mutually exclusive and constitute independent remedies. The decree holder can avail any of them at his will and it cannot be said that decree holder is debarred from seeking other remedy, if he fails to recover the amount by availing one remedy. In short while section 71 visualises the enforcement of commission's order by a civil process, as if it is a decree or order made by a court of law, section 72 confers a quasi-criminal sanction for their enforcement by way of punishment with imprisonment or imposition of monetary penalties.

10. A co-ordinate Bench of this High Court in CRR 159 of 2024 in ***Abdul Mani Molla Vs. State of W.B. and another*** had held that the order passed by the commission may be executed by

putting the judgment debtor in civil prison or by attachment and sale of his property or by both. Warrant of arrest can be executed by the executing court to compel the attendance of the judgment debtor and cost of execution of the warrant of arrest as well as civil prison is required to be borne by decree holder upon assessment of the same by the commission. On the other hand section 72 of the Act envisages penalty for non compliance of the order of the commission meaning thereby that the commission is empowered to initiate proceeding under section 72 of the Act for penalty for non compliance of the order. The decree holder may take such recourse and for that purpose the commission shall have the power of a judicial magistrate of first class for the trial of offence under sub section (1) and on conferment of such power, the commission shall be deemed to be a judicial magistrate, first class for the purpose of the Code of Criminal Procedure, 1973.

11. In the instant case from the above quoted order dated 3rd November, 2025 it is apparent that the commission noted that in compliance with their order, the execution and registration of deed of conveyance has not been done and furthermore the matter of payment for compensation, cost and refund of money are yet to be made. Therefore, the commission is of the view that if the judgment debtor is enlarged on bail it would frustrate the execution application. So the commission remanded the petitioner in judicial custody for ten days at Presidency Correctional Home.

12. Therefore, the aforesaid order has been passed to recover

penalty and for compliance of the other part of the order of the commission, as envisaged under section 72 of the Act of 2019 and clearly commission has acted usurping the power of a Judicial Magistrate of first class under the Code of criminal procedure 1973 and remanded the petitioner for 10 days judicial custody. From the four corners of the order it has nowhere been reflected that the petitioner/ judgment debtor was put in civil prison for non compliance of the order while executing the decree following the provision laid down in the Code of Civil Procedure and furthermore there is nothing to show that the complainant has borne the cost of civil prison or there was any such assessment to that extent by the Commission. On the contrary the order dated 03.11.2025 is very specific that the said order was intended to be passed following the provision laid down in section 72 of the Act of 2019, which relates to quasi-criminal sanction for enforcement by way of imprisonment.

13. Now section 482 of the Cr.P.C./528 BNSS of the Code of Criminal Procedure reads as follows:-

482. Saving of inherent powers of High Court.

- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

12. Therefore when the impugned order was passed usurping the power of a Magistrate under the Code of Criminal Procedure, the instant application under section 482 before this Bench is very much maintainable.

13. Now let me consider the legality and the validity of the aforesaid impugned orders. Section 72 makes it clear that the commission is empowered to initiate a proceeding for non compliance of the order. A Co-ordinate Bench of this Court while disposing CRR 2955 of 2022 has also held that the provision of section 71 and 72 of the said Act of 2019 are not mutually inclusive. It is open for the decree holder after disposal of a case or appeal as the case may be either to put the order of the commission in execution or to pray for initiation for a proceeding for penalty for non compliance of order under section 72 of the Act of 2019. If the decree holder approaches the commission under section 72, the proceeding is to be treated as an “offence” for which the offender is liable for imprisonment and/ or fine and/ or both. It was also held by the said Bench of this Court that in an execution proceeding the commission having power of the executing court cannot take recourse to section 72 and take a short cut and coercive method for execution of its order. It was concluded by saying that in an execution application the commission cannot issue warrant of arrest for enforcement of its order. The commission of course has the authority to issue warrant of detention of the judgment debtor in civil prison in accordance with the provision under the Code of Civil Procedure, but it cannot issue the warrant of arrest against the judgment debtor following part B of chapter VI of the Code of Criminal Procedure.

14. The impugned orders in no uncertain terms makes it specific that the object of putting the petitioner behind the bar is to

compel the petitioner to carry out the order passed by the commission. Such coercive action of making judicial remand can be made if proceeding has been initiated under section 72 of the Act. Though the act does not prescribe any procedure to be followed in such proceeding but following the settled preposition of law, it can be said that, when a person has to be punished by imposing sentence, he shall be given a reasonable opportunity to defend himself and he cannot be put behind the bar without affording him a reasonable opportunity to defend himself. However in such proceeding in order to secure his presence, commission can issue warrant acting as a Magistrate but a fair and just procedure must be adopted by the commission while putting the person behind the bar for non compliance of the order and the principle of natural justice should be fully complied with.

15. *In Jolly George Varghese & another Vs. The Bank of Cochín* reported in **(1980) 2 SCC 360**, the Hon'ble Supreme Court considered the question as to whether such mode of execution should be retained on the statute book, particularly in view of the provision in the international covenant on civil and political rights, prohibiting imprisonment for a mere non-performance of contract. The court held that the high value of human dignity and the worth of the human person enshrined in article 21 read with Article 14 and 19 obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence. In the instant case it appears that the decree-holder had not approached the commission to initiate proceeding treating non-compliance of

the order as an “offence.”

16. Since in the instant case no such proceeding has been started treating the non compliance of the order as an “offence”, the order of issuance of warrant of arrest under the Code and also to put the petitioner behind the bar as a short cut and coercive method for execution of its order is seriously deprecated and liable to be set aside as it is palpably illegal.

17. In such view of the matter **CRR 4737 of 2025** is allowed.

18. The impugned orders dated 04.09.2025 and 03.11.2025 are hereby set aside. Since the arrest itself is illegal for non compliance of section 71/ 72 of the Act of 2019, I direct that the petitioner be set at free at once from the correctional home.

19. However, this order will not prevent the decree holder/complainant to execute the decree by initiating execution proceeding either under section 71 of the Act or by initiating proceeding treating the aforesaid non compliance as an “offence” under section 72 of the Act.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)

