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06.01.2025
GSD

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRR 465 of 2024

In the matter of: **Shadekul Sarkar**

.... Petitioner(s)

Mr. Partha Pratim Sarkar

... for the petitioner(s)

The petitioner has challenged the order dated 25.04.2023 passed by the learned Judicial Magistrate, 1st Court at Siliguri in M.R. Case No. 92 of 2019, wherein, the learned Court was pleased to allow the application under Section 125 of the Cr.P.C. *ex parte* thereby granting maintenance of Rs. 4,000/- per month to the o.p. no.2 and Rs.3,000/- per month to her minor son, aggregating to a sum of Rs.7,000/- per month.

The main grievance of the petitioner is that he was not afforded any audience and/or he could not participate in the proceedings as the same was by way of a surreptitious manner as also no notice of summons and/or process of law was received by him.

Having considered the reasons so assigned by the petitioner, I am of the opinion that as the Code by

itself incorporates Section 126 of the Cr.P.C. in such circumstances to be dealt with by the concerned Judicial Magistrate, this Court, at the first instance, will not invoke its revisional power to interfere with the ex-parte order so passed.

Accordingly, the petitioner is granted liberty to invoke the provision of Section 126 of the Cr.P.C.

If there is a delay, the same must be properly explained before the Court and the Judicial Magistrate *in seisin* of the matter would adjudicate the issues first in accordance with his/her discretion and, thereafter, if the petitioner is aggrieved, he would be at liberty to approach any higher forum.

With the aforesaid observations, CRR 465 of 2024 is disposed of.

Pending application(s), if any, is also disposed of.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

(Tirthankar Ghosh, J.)