

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
CRR 529 of 2025

In re : An application under Section 442 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita.

-And-

In the matter of : Rajat Nandi

Mr. Siddhartha Sarkar, Adv.,
Mr. Sourav Gupta, Adv.

... For the Petitioner.

Mr. Satadru Lahiri, Adv.,
Mr. Safdar Azam, Adv.

... For the Opposite Party No.1.

1. This revisional application has been filed challenging the order passed by the learned appellate Court on January 15, 2025 whereby the order dated September 16, 2016 passed by the learned Judicial Magistrate, 2nd Court, Basirhat, North 24 Parganas, granting an amount of maintenance to the tune of Rs.5000/- per month to be paid to the opposite party wife, was set aside with a direction to hear the entire matter afresh giving an opportunity to the present petitioner to file written statement and written objection. Further, liberty was granted to the Judicial Magistrate to consider and determine the monetary relief and other reliefs.

2. The learned advocate representing the petitioner argued that pursuant to the order of the appellate Court, the initial order granting maintenance of Rs.5000/- which was passed ex parte was set aside and, therefore, the question of paying further amount towards the execution of that order does not arise. Several execution cases filed by the opposite party wife during this period of time when the present petitioner took out an application before the wrong forum challenging the order passed by the learned Magistrate. Subsequently, filed a criminal appeal before the learned court of Additional District and Sessions Judge, Fast Track

2nd Court at Basirhat, North 24 Parganas. It is further submitted that by virtue of the orders passed by the various courts, he also paid an amount of Rs.2.71 lakh and is ready and willing to continue to comply with the order subject to the fact that he should be allowed to file his written statement and written objection and to place his case.

3. The learned advocate representing the opposite party/ wife, on the other hand, raises vehement objection and draws the attention of this Court to the ordering portion of the learned appellate Court whereby the appellant (present petitioner) was strictly directed to pay the monetary relief of Rs.5000/- per month to the opposite party wife from the date of initial order of September 16, 2016. According to the learned advocate, there has been an accumulation of arrear amount of more than rupees five lakh and the execution cases are pending where the petitioner is not appearing before the court as a result warrants are being issued.

4. Heard the submissions of both the learned advocates. Perused the materials on record. An application under Sections 12 and 23 of the Protection of Women from Domestic Violence (PWDV) Act, 2005 was taken out by the present opposite party before the court of Additional Chief Judicial Magistrate at Basirhat, North 24 Parganas in the year 2015. The learned Magistrate fixed the matter for exparte hearing though the notice returned unserved with the postal endorsement "not known". The application under Section 12 was heard ex parte and considering the fact and circumstances and considering the affidavit filed on behalf of the present opposite party wife, directed the present petitioner to pay an amount of Rs.5000/- per month as maintenance for the opposite party wife and also directed to pay a compensation including litigation cost of Rs.40, 000/- to the opposite party wife within six months from the date of the said order.

5. Being aggrieved by the said order, the present petitioner instead of filing a criminal appeal filed a revisional

application before the learned Additional District Judge which was disposed of being not maintainable. Thereafter, the present appeal was filed being the Criminal Appeal No.7 of 2018 before the court of Additional District and Sessions Judge, Fast Track 2nd Court, Basirhat, North 24 Parganas.

6. The learned appellate Court heard the matter in presence of both the learned advocates and passed the above order. Being aggrieved thereby, the present revisional application has been filed for passing necessary orders as well as stay of the execution proceeding.

7. The crux of the matter as can be gathered from the records is that the initial order was passed ex parte whereby the petitioner did not have an opportunity to place his case. The learned Magistrate heard the matter ex parte even though the notice was not properly served upon the present petitioner. The learned appellate Court though requested the learned Magistrate to hear afresh, directed the petitioner to continue with the payment of Rs.5000/- in terms of the order passed by the learned court of Magistrate so long the issue is decided by the learned Magistrate, after giving an opportunity of hearing to both the parties.

8. On close scrutiny of the entire facts and circumstances, it is evident that the present petitioner cannot escape from his liability to pay the amount of maintenance which was not only directed by the court of learned Magistrate, but by the appellate Court as well. The provision enumerated in the PWDV Act is a beneficial legislation and, therefore, in terms of Section 23 of the said Act, the Magistrate was entitled to pass even an ex parte order.

9. Be that as it may, since the matter is directed to be heard afresh giving an opportunity to the petitioner to file the written statement as well as written objection, this Court is also of the view that the petitioner must appear before the court to file written statement and written objection respectively.

10. Since there is an outstanding amount of Rs.5.75 lakh out of which Rs.2.71 lakh has already been paid and the petitioner is to pay the outstanding amount, the petitioner is given liberty to pay a further amount of Rs.1,00,000/- within a period of 45 days from this date and to pay further Rs.50,000/- within a month thereafter and to continue to pay Rs. 10,000 /-(Rs 5000/- towards the current maintenance along with an amount of Rs.5000/- towards the outstanding amount) till the balance amount of the outstanding amount is exhausted and such payment is to be made within 10th of each month. The parties are directed to file statement of accounts before the learned Magistrate.

11. The learned Magistrate is directed to accept the written statement and written objection to be filed by the petitioner and to hear afresh the matter after complying with the direction passed in the decision of the Hon'ble Supreme Court in Rajnesh Vs. Neha reported in (2021) 2 Supreme Court 324. Learned Magistrate is further directed to make all endeavors to dispose of the entire matter as early as possible.

12. It is made clear that since the petitioner has paid an amount of Rs 2.71 lakhs towards outstanding amount the order issuing warrant against him in connection with the execution cases will remain stayed for the present however in case of non-compliance of the order the Learned Magistrate will be at liberty to proceed further.

13. Accordingly, the revisional stands disposed of.

14. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

15. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]