

**(2008) 01 CAL CK 0028**  
**In the Calcutta High Court**  
**Case No : C.R.R. No. 521 of 2005**

Sri Khokan Bhunia

APPELLANT

Vs

Smt. Dipali Bhunia and Another

RESPONDENT

**Date of Decision :** 21-01-2008

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(3)

**Citation :** (2008) 1 CALLT 273 : (2008) 2 DMC 30

**Hon'ble Judges :** Kalidas Mukherjee, J

**Bench :** Single Bench

**Advocate :** Indrajit Mondal, for the Appellant; None, for the Respondent

**Final Decision :** Dismissed

## Judgement

Kalidas Mukherjee, J.—This revisional application under Article 227 of the Constitution of India is directed against the order No. 11 dated 31.10.2005 passed by learned Additional District and Sessions Judge, Fast Track Court, 1st Court, Tamruk in criminal revision No. 54 of 2004/ 422 of 2004 affirming thereby the order dated 01.06.2004 passed by learned S.D.J.M., Haldia in Misc. Execution case No. 3 of 2004.

2. The case, of the petitioner herein, in short, is that he was the opposite party in the case u/s 125 Cr.PC filed against him by the O.P. No. 1 herein. The learned Magistrate allowed the Misc. Case directing the petitioner herein to pay Rs. 800/- per month as maintenance to the O.P. No. 1 herein with effect from 28.03.1996. The petitioner herein preferred a revisional application bearing No. 273 of 1998 which was dismissed by learned Additional Sessions Judge, 4th Court, Midnapore. The petitioner herein thereafter preferred a revisional application before the Hon'ble High Court bearing CRR No. 1074 of 2002 which was also dismissed on 22.12.2003 for default. Thereafter, the petitioner filed an application for restoration of the said CRR No. 1074 of 2002 and the hearing of the said application is still pending. The O.P. No. 1 herein filed an application on

03.08.2000 for nonpayment of Rs. 3,200/- towards maintenance from 1.4.2000 to 31.7.2000. The learned Magistrate was pleased to issue D/W for realization of the said amount. On 4.9.2000 the O.P. No. 1 herein filed a petition before the learned Magistrate for issuance of warrant of arrest against the petitioner herein as nothing was recovered in execution of the D/W. The learned S.D.J.M. issued the warrant of arrest against the petitioner herein. The petitioner filed a petition to recall the warrant of arrest which was rejected by the learned Magistrate on 05.3.2001 fixing 04.4.2001 for E.R. of W/A. The petitioner preferred the Criminal Revision No. 185 of 2001 against the said order in the Court of learned Sessions Judge, Midnapore bearing No. 127 of 2004 which is pending before the learned Additional Sessions Judge, Fast Track Court, 1st Court, Tamluk. In January, 2004 the O.P. No. 1 herein filed the Misc. Execution Case No.3 of 2004 in the Court of learned S.D.J.M., Haldia claiming arrears of maintenance amounting to Rs. 70,500/- for the period from 28.3.1996 to 31.12.2003. The petitioner appeared in the said execution case and filed written objection. The objection filed by the petitioner herein in the said Execution Case was rejected by the learned S.D.J.M. on 1.6.2004. The petitioner filed a Revisional Application bearing No.54 of 2004/422 of 2004 challenging the order dated 1.6.2004 passed by the learned S.D.J.M., Haldia in Misc. Case No.3 of 2004. By the impugned order dated 31.01.2005 the learned Additional Sessions Judge dismissed the Revisional Application and affirmed the order dated 01.6.2004 passed by learned S.D.J.M., Haldia. Being aggrieved by the said order passed by the learned Additional Sessions Judge, Haldia, the instant application under Article 227 of the Constitution of India has been filed.

3. The learned Counsel appearing on behalf of the petitioner submits that in one execution petition the arrears of maintenance has been claimed for the period of eight years which is not permissible u/s 125(3) of the Cr.P.C. The learned Counsel further submits that although the Revisional Application against the order for maintenance u/s 125 Cr.P.C. was pending before the Hon''ble High Court, Calcutta, there was no bar on the part of the wife/O.P. No. 1 herein to file execution petition before the learned Magistrate for realization of arrears of maintenance, but, the execution petition was filed after the disposal of the Revisional Application by the Hon''ble High Court in connection with the Misc. Case u/s 125 Cr.PC claiming arrears of maintenance for the period of eight years. It is contended that the revision is not the continuation of the original proceeding u/s 125 Cr.P.C. and, as such, the claim for arrears of maintenance for the period of eight years is barred by limitation. It is submitted that the learned Additional Sessions Judge was not justified in affirming the order passed by the learned S.D.J.M., Haldia and thereby dismissing the Revisional Application. The learned Counsel has referred to and relied on the decisions reported in *Iftekhar Husain v. Hameeda Begum Jangam Srinivasa Rao Vs. Jangam Rajeswari and Another*, and *B.G. Shivananjappa Vs. Shantha alias Ushadevi and Another*, .

4. None appeared on behalf of the O.Ps.

5. From the facts as discussed above it is clear that the maintenance was granted by the learned Magistrate on 28.3.1996 @ Rs. 800/- per month and because of the subsequent Revisional Applications up to the Hon"ble High Court, there was no finality with regard to the order for maintenance passed by the learned Magistrate. I am unable to accept the contention of the learned Counsel appearing on behalf of the petitioner, in as much as, the order of learned Magistrate was under challenge up to Hon"ble High Court and it was only after the disposal of the Revisional Application by the Hon"ble High Court, the matter for granting maintenance reached its finality. Thereafter the wife/petitioner u/s 125 Cr.PC filed the Misc. case to execute the order of maintenance for realization of the arrears of maintenance. Moreover, from the averment made in para 8 to 11 of the instant application under Article 227 of the Constitution of India it appears that on 03.8.2000, the O.P. No. 1 herein filed an application for non-payment of Rs. 3,200/- for the period from 01.4.2000 to 31.4.2000 and the D/W was issued by the learned Magistrate. It is also in the instant application that on 4.9.2000 the O.P. No. 1 filed a petition for issuing W/A as nothing was recovered in execution of the D/W. On 5.3.2001 the petitioner herein filed a petition for recalling the W/A. The learned Magistrate on 5.3.2001 rejected the petition for recalling W/A and fixed 4.4.2001 for the E.R. of W/A and the petitioner herein filed a Revisional Application against the said order of learned Magistrate which is still pending. Nowhere it has been stated that any payment was made towards the arrears of maintenance. In the decisions reported in *Iftekhhar Husain v. Hameeda Begum* and *B.G. Shivananjappa Vs. Shantha alias Ushadevi and Another*, it was held that there was no stay granted either by learned Sessions Judge or by the Hon"ble Court and under the circumstances there was no bar on the part of the wife to file execution petition for realization of arrears of maintenance. In absence of any order to stay, it was held in the aforesaid decisions that the amount of maintenance beyond the period of twelve months could not be recovered. In the decision reported in *Jangam Srinivasa Rao Vs. Jangam Rajeswari and Another*, it was held that no application for execution of maintenance order could be entertained for a period exceeding twelve months immediately preceding the date of application and the amount recoverable under the criminal M.P. No. 397 of 1988 has been recovered. I find that the facts of the aforesaid cases are not similar to that of the instant one and, therefore, the same are not applicable in different facts of the instant case. In the instant application under Article 227 of the Constitution of India there is no averment as to whether there was any order of stay with regard to the execution either from the learned Sessions Judge or the Hon"ble High Court. There is also no averment in the instant application as to whether any payment was made towards arrears of maintenance at any stage. Therefore, the ratio of the aforesaid decisions will not be applicable in the different facts and circumstances of the instant case.

6. From the averment made in the instant application it is clear that the previous claim for maintenance remained unrealized as nothing could be recovered and, as such, prayer was made for issuance of W/A. Unrealized amount in the

previous application cannot operate as bar for claiming that amount in the subsequent application. In this context the expression "from the date on which it became due should be construed as from the date on which it became recoverable. In view of the facts and circumstances of the instant case, the application for recovery of maintenance made in January, 2004 after the dismissal of the Revisional Application on 22.12.2003 before the Hon"ble High Court, is to be treated as within one year under the proviso to Section 125(3) Cr.PC.

7. The learned Additional Sessions Judge did not commit any illegality or material irregularity in passing the impugned order and, therefore, there is no ground to interfere with the same.

8. In the result, the application under Article 227 of the Constitution of India fails and the same stands dismissed.

Let a copy of this order be sent to the learned Court below immediately. Urgent xerox certified copy, if applied for, be handed over to the parties as early as possible.