

**(2001) 07 CAL CK 0056**

**Calcutta High Court**

**Case No:** C.R.R. No. 1291 of 2001

Shyamaprasad Dutta

APPELLANT

Vs

Sujata Dutta (Smt.)

RESPONDENT

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**Date of Decision:** July 13, 2001

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 125(3)

**Citation:** (2002) 1 ILR (Cal) 61

**Hon'ble Judges:** Debiprasad Sengupta, J

**Bench:** Single Bench

**Advocate:** H.K. De, Golam Mustafa and Iqbal Hossain, for the Appellant; Jaharlal Roy, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

debiprashad Sengupta, J.

1. This revisional application is directed against an order dated April 6, 2001 passed by the learned Additional Chief judicial Magistrate, Alipore in Mat. Execution case No. 7/2001 directing the present Petitioner to pay Rs. 91,000.00 by May 25, 2001, in default distress warrant to be issued against the Petitioner.

2. it appears that the present opposite party-no. 1/ wife on: June 26, 1995 filed an application u/s 125 Code of Criminal Procedure in the court of learned Chief Judicial Magistrate, Alipore being criminal miscellaneous Case no, 280/95 claiming maintenance for herself and her son. On such application the learned Magistrate by an order dated December 11, 1996 directed the present Petitioner to pay Rs. 1500.00 for the wife herself and Rs. 1,500.00 for the minor son as maintenance. Challenging such order the Petitioner preferred a revisional application before this Court being C.R.R. No. 3742 of 1997. this Court admitted the revisional application and called for records of the case. The said revisional application came up for final hearing before this Court and by an order dated November 30, 2000 this Court

dismissed the said revisional application and affirmed the order passed by the learned Magistrate as aforesaid.

3. it appears that the present Petitioner in November, 1994 filed a suit praying for decree of divorce which was numbered as Matrimonial Suit No. 1081 of 1994 in the Court of District Judge at Alipore: The present opposite party No. 1/wife filed an application in the said Matrimonial Suit praying for maintenance during the pendency of the suit and in the said case the: learned Judge by an order dated April 3, 1997 directed the Petitioner to pay Rs. 3,000.00 per month to the opposite party No. 1 for her maintenance and her son with effect from September 21, 1995. In a Civil Revisional Application being Company, No. 3234 of 1997 the Petitioner challenged the order of alimony passed in-Matrimonial Suit as aforesaid and on such application the learned Single Judge of this Court directed the Petitioner to pay Rs. 1,000.00 per month. The said revisional application being C:0. No. 3234 of 1997 came up for final disposal before this Court and the learned Single Judge of this Court by an order dated January 22, 2001 disposed of the said Civil revisional application directing the present Petitioner/husband to pay Rs. 3,000.00 per month for the maintenance of herself and her son.

4. The criminal revisional application came up for final hearing before this Court and His Lordship Hon"ble Justice Moloy Kr. Basu by his order dated November 30, 2000 dismissed the said criminal revisional application and affirmed the order passed by the learned Magistrate. The present opposite party No. 1/wife thereafter filed an application for execution of the order of maintenance and for realization of the arrear amount of maintenance for the period December 11, 1996 to January 2001. According to the present opposite party No. 1/wife she was entitled to get an amount of Rs. 1,47,000.00 from the opposite party and since out of the said amount the O.P. has paid Rs. 56,000.00, she is now entitled to get Rs. 91,000.00 as arrear amount of maintenance. By filing the written statement the present Petitioner/husband contested the said application and submitted that the wife can claim maintenance only for a period of 12 months in view of the provisions of Section 125(3) of Code of Criminal Procedure. The learned Magistrate by the impugned order directed the present Petitioner to pay Rs. 91,000.00 being the arrear amount of maintenance to the present opposite party No. 1/wife. Challenging such order the Petitioner has come up before this Court in revision.

5. Mr. Himangshu De, the learned Advocate appearing for the Petitioner/husband submits that the execution case was not maintainable since in the said proceeding the wife/O.P, has claimed for arrear amount of maintenance for a period beyond 12 months which is not permissible under the law in view of the provisions of Section 125(3) Code of Criminal Procedure. It is the further submission of the learned Advocate of the Petitioner that the Petitioner is going on paying an amount of Rs. 1,000.00 per month towards the maintenance of the present opposite party/wife as per the direction of this Court passed in civil revisional jurisdiction. But I am unable

to accept such submission made by the learned Advocate of the Petitioner because at the time of disposing of the Civil revisional application this Court by an order dated January 22, 2001 directed the present Petitioner/husband to pay Rs. 3,000.00 per month. So in view of such order the Petitioner is to make payment of maintenance @ Rs. 3,000.00 per month as alimony to the wife and her son. So far as the claim of the present opposite party No. 1/wife for arrear amount of maintenance for a period beyond 12 months is concerned, I am of the view that since the criminal revisional application being C.R.R. No. 3742 of 1997 was pending before this Court and the same was disposed of on November 30, 2000. The learned magistrate was justified in entertaining such prayer of the wife for a period beyond 12 months. It appears that the criminal revisional application as aforesaid was disposed of on November 30, 2000 and the order of this Court was communicated to the learned Magistrate on February 22, 2001. The present O.P./wife filed application for realization of the arrear amount on January 21, 2001 and on such application the Miscellaneous Execution proceeding was initiated. It also appears from the order sheet of this Court in C.R.R. No. 3742 of 1997 that this Court directed the lower court records of the 125 proceeding to be brought before this Court by special messenger at the cost of the Petitioner. It further appears that such cost for special messenger was deposited by the Petitioner in this Court and the lower court records were received by this Court on August 30, 1999. Since the lower court records were called for and the same was before this Court till the disposal of the criminal revisional application the wife/ O.P. did not get any opportunity to file any application for realization of the arrear amount of maintenance and she filed such application for arrear maintenance on January 20, 2001 after the said revisional application was disposed of by this Court on November 30, 2000. In my considered view the application filed by the opposite party was very much within time and her claim for arrear maintenance beyond 12 months is quite justified and maintainable. When the high Court in revision passes any order the expiry of time limit before the expiry of one year, the amount must be held as having become due only when such revisional application is disposed of and the period of one year starts from the date when such revisional application is disposed of as it has already been observed hereinabove that the wife/O.P. did not get any opportunity by filing any application for realization of the arrear amount of maintenance due to pendency of the revisional application and due to the fact that lower court records were called for by this Court in connection with the said revisional application, I am of the view the claim of the wife for the period beyond 12 months is quite justified and maintainable.

6. I have heard the learned Advocate of the Petitioner as also the learned Advocate appearing for the O.P./ wife. I have perused the impugned order passed by the learned Additional Chief Judicial magistrate, Alipore. In view of the discussion made above I am of the view that the said order does not suffer from any illegality and I do not find any reason to interfere with the same. The present revisional application accordingly fails and the same is dismissed.