

Crl. Revision No. 34 of 2025
CNR - WBML010028072023

Present : Shri Subhankar Sen
Sessions Judge, Malda.

Order no. 07 dated 24-04-2026

Both parties are present by filing hazira.

Date is fixed for hearing of the application filed by the petitioner/wife/revisionist under Section 5 of the Limitation Act.

Written objection has been filed by the opposite party no. 1/husband.

Heard the Ld. Advocate of both the parties.

Considered.

Having heard the Ld. Advocate for the petitioner/revisionist/wife in the perspective of the present application under Section 5 of the Limitation Act, it appears that she had filed an application for maintenance under Section 125 Cr.P.C. registered as 38M/2021, for herself and her minor son against the husband/O.P. No. 1, wherein the Ld. Trial Court has been pleased to grant interim maintenance allowance to the tune of Rs. 10,000/- for both herself and her minor son on 24.08.2021.

The said case was subsequently fixed for hearing on 30.03.2023 and on that date the petitioner/revisionist/wife having failed to turn up before this Court, was directed to show-cause by 19.04.2023, as to why the said application under Section 125 Cr.P.C. should not be dismissed. But on 19.04.2023 neither the petitioner/revisionist/wife nor her Ld. Advocate appointed by DLSA, Malda, took no step and as such the said application under Section 125 Cr.P.C. was dismissed for default. So, on 18.09.2023 the record was put up at the instance of the petitioner/revisionist/wife who filed an application seeking restoration of the said case and the said application was fixed for hearing on 04.11.2023 and ultimately the said application was disposed of on 12.03.2024 at the instant of both the parties and after hearing both of them, recording an order of rejection observing, inter alia, that the said restoration application was not supported by affidavit and the name of the O.P. no. 1 as reflected in the said restoration application was found to be incorrect. However, direction was given upon the petitioner/revisionist/wife to file a separate Misc. Case for restoration of the said case which was dismissed for default vide order dated 19.04.2023. But without filing a separate Misc. Case for restoration of the said case being No. 38M/2021 or challenging the said order dated 12.03.2024 she has straight way came up before this Revisional Court by challenging the said previous order dated 19.04.2023 on 21.09.2023 whereas the certified photo-copy of the order was received by her on 03.07.2025 and lastly the instant Revisional Application was filed on 19.07.2025.

From the aforesaid facts, it is crystal clear that the petitioner/revisionist/wife had applied for certified copy on 21.09.2023, whereas the impugned order challenged by her was passed on 19.04.2023, i.e., almost after a lapse of 5 months. As a reason of delay

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caused therein, she took plea in her application under Section 5 of the Limitation Act that the engaged Legal Aid Advocate for the petitioner/revisionist/wife did not take any step on 19.04.2023 despite the fact that her interim maintenance application was allowed by the Ld. Trial Court on 24.08.2021. It is her further plea that after having knowledge about such order of dismissal, the engaged LADC applied for the certified copy of the impugned order on 21.09.2023 which was delivered after a span of almost 2 years. Therefore, there has been a total delay of 2 years and deducting the period of getting the certified copy there has been a total delay of 5 months and 18 days which is not intentional.

Whereas, the submission *per contra*, is that this application under Section 5 of the Limitation Act is not at all maintainable in law and the fact has been to the very reason that had she been purely aggrieved by the impugned order dated 19.04.2023, she would have definitely applied for the certified copy of the said impugned order to challenge the same in this Revisional Jurisdiction, but instead of doing so, she chose to prefer an application before the Ld. Trial Court to apply for restoration of the said case, i.e., 38M/2021 under Section 125 Cr.P.C. on 18.09.2023 i.e., after a lapse of 5 months and to say more specifically, after acquiring knowledge of the order of dismissal and she failed to aver within the four corner of her petition the specific date on which she acquired knowledge that the said application was dismissed on 19.04.2023. Pursuant the interim order of maintenance, being passed by the Ld. Trial Court, she had filed an Execution Case on 17.01.2023 and the next date was fixed on 28.02.2023 for SR and Appearance and on and from 28.02.2023 to 04.07.2025 the petitioner/revisionist/wife used to appear before the Ld. Trial Court and receive the maintenance from opposite party no. 1 and the said Execution Case was ultimately dropped on full satisfaction by the Ld. Trial Court on 06.01.2025. Therefore, it is very surprising that during the entire period she did not have knowledge that the said original Case being 38M/2021 was dismissed on 19.04.2023. So, what has been stated in the application under Section 5 of the Limitation Act, are absolutely false and far from the actual state of affair. More so, after the expiry of 5 months she could file the petition for restoration of the said original Case being No. 38M/2021 which was ultimately dismissed on 12.03.2024, giving direction upon the petitioner/revisionist/wife to file a separate Misc. Case for restoration of the original case. But notwithstanding, she had actually taken a chance that till the receipt of the certified copy applied for she would proceed with the restoration of the Case No. 38M/2021 and she would prefer the instant revisional application and that too, without challenging the said subsequent order dated 12.03.2024 rejecting the restoration application. She has only challenged the order dated 19.04.2023 which is not a valid one in this Revisional Jurisdiction. So, he has prayed for rejection of the same on the ground of non-maintainability of the said revisional application.

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Having heard both sides as aforesaid it is very clear that the petitioner/revisionist/wife had filed an Execution Case on 17.01.2023 for realization of the order of interim maintenance passed by the Learned Trial Court upon the opposite party no. 1/husband to pay a sum of Rs. 5,000/- per month towards the petitioner/revisionist/wife and Rs. 5,000/- for her minor son from the date of order i.e., on and from 24.08.2021 and she had been receiving the said interim maintenance until the said Execution Case was disposed of by the Ld. Trial Court upon full satisfaction on 06.08.2025. Therefore, it can safely be inferred that till 04.07.2025 she had due access to the case record and that she and her Ld. Advocate appointed by the DLSA were all along present in the case record. Consequently, it is very hard to swallow that she did not have the constructive knowledge that the said case was dismissed on 19.04.2023.

Secondly, it is also surprising that she did not specify the date as to when for the first time she came to know about the said order of dismissal of her Case being No. 38M/2021 for the first time to apply for the certified copy of the impugned order to prefer the instant Criminal Revisional Application.

Thirdly, she preferred the restoration application on 18.09.2023 which was ultimately rejected by the Ld. Trial Court vide order dated 12.03.2024 directing her to file a separate Misc. Case for restoration of her case under Section 125 Cr.P.C. But without availing the said remedy she preferred this revisional application on 19.07.2025, but the instant revisional application does not include the said last order dated 12.03.2024 of the dismissal of her restoration application by the Ld. Trial Court as if she is not aggrieved by the said order dated 12.03.2024 despite the fact that her restoration petition was also rejected by the Ld. Trial Court. This Court fails to understand as to what prompted the petitioner/revisionist/wife not to challenge the said subsequent order dated 12.03.2024 along with a previous order dated 19.04.2023.

It is known to all that before the Court of equity everyone must come in clean hands but she did not specify the date of her acquiring knowledge regarding the order of dismissal dated 19.04.2023 in her application under Section 5 of the Limitation Act. The fact remains that both the orders (19.04.2023 and 12.03.2024) stand in the same footing, i.e., to say that by both the orders her rights have been prejudiced but she did not challenge the order dated 12.03.2024 in this revisional application. There has been catena of Judicial Precedents that the Court should be very liberal while dealing with an application under Section 5 of the Limitation Act provided, there are merits in the main application because, the ground of delay is a mere technicality which should not stand on the way of giving substantive relief to the parties. Similarly, there have been many other Judicial Precedents which refer that no application under Section 5 of the Limitation Act should be allowed which tends to defeat

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the interest of the other side of the case due to the malintention or harassing tendency of the petitioner.

In the instant case, the certified copies of the orders placed before me are satisfactory enough to hold that the Ld. Trial Court, vide order dated 12.03.2024 was pleased to pass an order directing her to file a separate Misc. Case seeking restoration of the said application under Section 125 Cr.P.C. which was dismissed by the Ld. Trial Court earlier, vide order dated 19.04.2023, as the said application filed by the petitioner/revisionist/wife on 18.09.2023 seeking restoration was technically not correct. Therefore, despite such order she did not avail the same to look for the desired relief. In this regard, I must say that it is ultimately the choice of the aggrieved party to decide as to which order is prejudicial to the interest of his/her case to be challenged in the upper forum. But, while doing so he/she cannot approbate or reprobate at the same time while deciding as to which order is to be challenged and which one is not, especially when it appears that both the orders in the instant case, have been prejudicial to the interest of her case. The subsequent order passed by the Ld. Trial Court had prescribed the desired remedy to get substantial justice, but without availing the same, she had filed the instant revisional application to get the self-same relief which is nothing but the harassing and vexation attitude of the petitioner and the same cannot be termed as a bonafide one or clean one.

By the subsequent order dated 12.03.2024, the Ld. Trial Court had indeed afforded an opportunity to the petitioner/revisionist/wife to file restoration of her application under Section 125 Cr.P.C., considering the golden principal that proceeding under Section 125 Cr.P.C. is a quasi civil in nature and therefore, restoration of the main application pursuant to its earlier order of dismissal does not seem to be an improper one.

In this regard, the Ld. Advocate for the petitioner/revisionist/wife has drawn the attention of this Court to the unreported judgment passed by *the Hon'ble High Court of Judicature of Allahabad in connection with a case registered as 27618 of 2022 filed under Section 482 of the Cr.P.C.* On perusal of the said judgment the following ratio decidendi is gathered, as follows :

“Sri Rajesh Kumar Dubey, learned counsel for applicants submits that applicants have not filed any recall application as there is a dispute whether such application would be maintainable or not.

This Court in Akhilesh Kumar vs State of U.P. and another, Application u/s 482 No. 22884 of 2017 decided on 01.08.2017 has held that :-

“I have considered the rival submissions made by the learned counsel for the parties and gone through the entire record.

In the cases relied upon by the learned counsel for the applicant it has been held that

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the order dismissing the application under Section 125 Cr.P.C. in non-prosecution cannot be restored as the restoration application is not maintainable. But this Court in Kehari Singh Vs. State of U.P. and another reported in 2005 Cr.L.J. 2330 has clearly held that if the petition under Section 125 Cr.P.C. is dismissed in default due to non appearance of the petitioner, the restoration application moved to restore the petition can be allowed recalling the dismissal order exercising the implied powers. Similar view was taken by the Bombay High Court in Sau. Mandakini B. Pagire Vs. Bhausahab Genu Pagire and another reported in 2009 Cr. L.J. 70. In Sau. Mandakini (Supra) Bombay High Court has held that proceedings of maintenance under Section 125 Cr.P.C. are quasi civil in nature and order dismissing the maintenance application can be recalled in exercise of inherent powers of criminal court. Provisions contained under Section 362 Cr.P.C. is not attracted in this respect as it is not the review of the judgment and order.

Although specific provision for moving restoration application in case petition under Section 125 Cr.P.C. is dismissed for non appearance is not provided in Section 125 and 126 Cr.P.C. but there is specific provision that if ex-parte maintenance application is allowed the person against whom maintenance order has been passed may apply for recall of the order. If these provisions are minutely analysed in consonance with the questions raised in this matter and also case laws relied upon by the learned counsel for the applicant, it is evident that there is no express prohibition under the Code of Criminal Procedure in allowing the restoration application moved for setting aside the order dismissing the petition.”

In view of above, this application is disposed of with liberty to applicants to move application to recall order dated 05.10.2021 in Case No. 306 of 2016 (Smt. Vandana and another vs. Ramkesh) under Section 125 Cr.P.C., Police Station-Narahat, District-Lalitpur and if such an application is moved, the same shall be decided by learned trial Court in accordance with law.”

Therefore, in view of the ratio of the aforesaid judgment there is no doubt whatsoever, in the mind of the Revisional Court that an order of restoration setting aside the previous order of dismissal for default of the application under Section 125 Cr.P.C. can be made by the Ld. Trial Court. So, it can be said that to restore a dismissed application under Section 125 Cr.P.C. is not barred under Section 362 of the Cr.P.C.

On the other hand, Ld. Advocate for the opposite party no. 1 has referred to a judgment reported in 1995 Cri L J 2010 (Debendra Nath Das vs. Bibhuti Pal & Others) which also empowers the petitioner/revisionist/wife to challenge more than one order in a single Revisional Application under Section 397/399 Cr.P.C. which is as follows :-

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“Section 397 of the Code of Criminal Procedure provides for revision before the High Court or the Court of Sessions. Section 397 does not speak whether a revision challenging more than one order is permissible or not. But Rule 118 of the Criminal Rules and Orders, Vol. I, contemplates that a single revision challenging more than one order is permissible. Rule 118 reads as follows :

“(1) If any person makes any application for revision of any finding, sentence or orders, recorded or passed by any inferior Criminal Courts, before the Sessions Judge, he shall file along with his application certified copies of orders or judgment against which revision is sought.

(2) The certified copies of judgments and orders filed under Sub-rule (1) shall be retained with the revisional records.”

From a plain reading of the said Rule, it appears that a revision of any finding, sentence or orders, recorded or passed by any inferior Criminal Court, before the Sessions Judge, is permissible subject to the condition that the revision shall have to be filed along with the certified copies of the judgments and orders against which the revision is sought. Sub-rule (2) also provides for certified copies of judgments and orders which shall be retained with the revisional records. Though the Rule contemplates a revision against any finding or sentence, it speaks of a revision against orders. So, that clearly indicates that single revision is permissible challenging more than one order. In that view of the matter, I find that the order impugned is illegal and is liable to be set aside and the same is hereby set aside.”

Therefore, in the light of the aforesaid discussion, I am of the view that there is no bonafide in this application under Section 5 of the Limitation Act and in fact, the petitioner/revisionist/wife has actually approbated and reprobated at the same time by not complying with the order passed by the Ld. Trial Court on 12.03.2024 and has taken a chance to have both ends meet by filing this Revisional Application, despite opportunity was given to her to file a separate Misc. Case, seeking restoration for which the instant revisional application has been filed.

Lastly, this Court finds that in fact, she had due knowledge of the order of the dismissal dated 19.04.2023 and thereby filing this application seeking certified copy of the impugned order after a lapse of more than 5 months, when the record reveals that before the date of dismissal, she all along had been present before the Ld. Trial Court for getting the interim maintenance allowance on a regular basis and therefore, it may safely be inferred

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that she had due and constructive knowledge about the order of such dismissal. So, I do not find any merit in this Limitation Application and accordingly the same is dismissed and consequently, this Revisional Court has no scope to go into the merit of the Revisional Application and as such the Revisional Application itself is rejected on contest.

However, the said order of rejection would not debar the petitioner/revisionist/wife to file a separate Misc. Case before the Ld. Trial Court seeking restoration of the said Case No. 38M/2021 filed by her previously under Section 125 Cr.P.C. and pursuant to filing such application, if there be any, the Ld. Trial Court is requested to dispose of the same in accordance with law and after giving chance of hearing to both the parties by passing a reasoned and speaking order, as expeditiously as possible preferably, within a period of six months from the date of appearance of the parties before him.

Let a copy of this order be sent to the Ld. Judicial Magistrate 1st Court, Malda for information and necessary action.

Parties to the case are directed to appear before the Ld. Trial Court positively **by 14-05-2026**.

Dictated & Corrected by me,

Sessions Judge, Malda.

Sessions Judge, Malda.