

Court No. 19

29.09.2020

(SL 5)

(S. Banerjee)

CRR 1148 of 2020

CRAN 1 of 2020
(Old No. CRAN 4671 of 2020)

Brindaban Biswas
Versus
The State of West Bengal & Anr.

Mr. Anindya Bose, Ld. Advocate
Mr. Diptendu Mandal, Ld. Advocate

... for the petitioner

Mr. P. K. Datta, Ld. APP
Mr. Santanu Deb Roy, Ld. Advocate

... for the State

The learned advocate for the petitioner undertakes to affirm and properly stamp the petition as per the rules within one month of resumption of normal functioning of the court. The petition is taken up through video conference on the basis of such undertaking.

The impugned notice issued under Section 41(A) of CrPC requiring petitioner/revisionist to ensure his appearance on 18th August, 2020, is the subject of challenge in this revisional application.

Mr. Bose, learned advocate for the petitioner, submits that the instant prosecution is very purposive as the opposite party no. 2/wife had voluntarily left her matrimonial home and after leaving the matrimonial home, she gave reasons to the petitioner serving a notice desiring to have divorce from the petitioner/husband. It is further submitted by Mr. Bose that the instant prosecution is not permissible in view of the notice being communicated to the petitioner/husband conveying the desire of the opposite party/wife for a divorce on mutual consent.

The further challenge as regards the notice is that the impugned notice is undated and thus reasonable time to ensure appearance was not given.

Mr. Datta, learned advocate representing the State, submits that the petitioner deliberately avoided to ensure his presence before the investigating agency on the stipulated date. It is thus submitted that the petitioner has violated the directions of the notice.

Upon perusal of the notice, it appears that it is undated by the authority, which issued the notice under Section 41(A) of CrPC. It is thus a great question of doubt if sufficient and reasonable time was provided to the petitioner to ensure his presence before the notice issuing authority in compliance with Section 41(A) of CrPC.

Having heard the learned advocates for both sides, the court is of the view that the revisional application may be disposed of by passing the following directions, even without securing the presence of the opposite party/wife. Notice upon the opposite party State is thus dispensed with.

Since the petitioner has expressed his inclination to ensure his presence before the investigating agency, subject to furnishing a reasonable time in the meantime to make a strict compliance thereof, the court is of the view that reasonable time may be given so that he may not be put in trouble to ensure his presence before the investigating agency in compliance of Section 41(A) of the CrPC.

The petitioner is directed to ensure his presence on 9th October, 2020 before the investigating officer of Canning Women Police Station in connection with FIR No. 74 of 2020 dated 11.07.2020 under Sections 498A/406 and 326 of Indian Penal Code and Section 14 of the Domestic Violence Act.

In the meantime, no coercive action should be taken against the petitioner till the date, he ensures his presence on the stipulated date.

The court makes it clear that in the event of his failure on the date so stipulated, or on any subsequent occasion, as per demand of the investigating agency, the immunity from arrest will not be available to the petitioner. The court is of the firm believe that with this order the opposite party/wife will not be prejudiced in any manner whatsoever.

With the observations as above the revisional application, along with the connected application, is disposed of.

Petitioner is directed to make communication of this order to the investigating officer concerned.

(Subhasis Dasgupta, J.)