

(Through video conference)

04 13.09.2021
Dd

CRR 266 of 2010

In the matter of : **Morjem Hossain**
Vs
Marina Bibi & Anr.

The criminal revision is listed today for hearing as contested application. On repeated calls, counsel for the petitioner and the opposite party members are not found available.

The case was earlier adjourned on 09.09.2021 for extending accommodation to the petitioner and the opposite parties. But, today none appears for them.

The application under Section 401 of the Criminal Procedure Code has been directed against Execution Case No. 126 of 2009 of the 1st Court of Learned Judicial Magistrate, Jangipur, Murshidabad arising out of M.R. Case No. 168 of 2003 of the same Court.

The contention of the petitioner, as it appears from the application for criminal revision is that Opposite Party no.1/wife had filed an application under Section 125 of the Criminal Procedure Code praying for maintenance for herself and her minor daughter from the present petitioner/husband in MR. Case no. 168 of 2003. Learned Magistrate by a judgment and order dated 19.10.2006 allowed the application under Section 125 of Cr.P.C. in favour of the dependant wife and daughter and granted a

monthly maintenance of Rs. 1,500/- to the opposite party/wife and Rs. 1,200/- to the minor daughter and the arrear maintenance was allowed to be paid in equal instalments of Rs.100/- per month. The petitioner has further contended that the Magistrate granted maintenance in favour of the opposite party/wife and her child without appreciating the fact that the opposite party/wife had her own earnings and also failed to consider the earning of the husband. Furthermore, petitioner was willing to take back his wife and live with her but the wife denied to return and she also filed a case under Section 498A of the Cr.P.C. against him after leaving her matrimonial home voluntarily. She also filed an Execution Case against the present petitioner/husband for arrear maintenance of Rs.30,800/-. According to the present petitioner, opposite party no. 1 had reached an amicable settlement with the husband and had returned to his house but after sometime she again left and filed this application for execution.

The petitioner herein has prayed for setting aside the impugned order passed in MR Case 168 of 2003/T.R. No. 39 of 2004 and Execution Proceeding No. 126 of 2009 arising out of the judgment.

Perused the application for revision, the impugned judgment, materials in the case record and the notice in connection with Execution Case No. 126 of 2009. The application for criminal revision has been filed on 1.2.2010 and the judgment in M.R. Case No. 168 of 2003 appears to have been passed on 19.10.2006 in contesting form. There is no scope for examining

the merits of the judgment passed in the misc. case after lapse of so many years. No order has been passed in Execution Case relating to the recovery of arrear maintenance of Rs. 30,800/- now pending before Judicial Magistrate, 1st Court, Jangipur. I find no merit in the present criminal revision challenging the judgement and order and the initiation of the maintenance case arising out of M.R. Case No. 168 of 2003. Hence, the criminal revision misc. case is dismissed ex parte on its merit.

Learned Magistrate is at liberty to dispose of the criminal Execution Case No. 126 of 2009, if the same is still pending. In the Criminal Revision order of stay granted for twelve weeks as per order dated 3.2.2010 has automatically vacated with passage of time.

Let a copy of this order be sent to learned First Court of Judicial Magistrate, Jangipur, District Murshidabad for information in Execution Case No. 126 of 2009.

(Ananda Kumar Mukherjee, J)

