

5.3.2021

ks.

Ct. 42, sl.29

CRR 393 of 2021

Sukanta Sarkar & Anr.

vs

State of West Bengal & Anr.

Mr. Somnath Banerjee,

Mr. P. Roy

... For Petitioner.

Mr. Soumyajit Das Mahapatra

... For the O.P.No.2.

Mr. Saibal Bapuli,

Mr. Arijit Ganguly

... For the State.

The impugned order dated 3rd February, 2021 passed by the learned ACJM, Barrackpore in connection with G.R. Case No.6264 of 2020 arising out of Nimta P.S. Case No.614 of 2020 dated 16th October, 2020 under Sections 420/406/506 IPC directing interim custody of seized articles to the private opposite party No.2, is the subject of challenge in this case.

Mr. Banerjee, learned Advocate representing the petitioner submits that the petitioner is the husband of his late wife, namely Sukla Sarkar. The married was admittedly held between the petitioner and her late wife on 14th March, 2005. Ultimately, the wife of the petitioner left this world on 16th February, 2020 leaving behind a daughter, who is now aged about 12 years. The daughter left by pre-deceased wife of the petitioner is now living with the petitioner, father.

The opposite party No.2 being the mother-in-law of the petitioner instituted a case under Sections 420/406/506 IPC under the behest of an order under Section 156(3) Cr.P.C. against petitioner/son-in law. During the course of

investigation, as many as 10 items were described as stridhan articles in the petition under Section 156(3) Cr.P.C. Some of the items have already seized by the Investigating Officer of this case. The private opposite party No.2/de facto complainant, mother-in-law proposes for return of such items describing it to be her stridhan articles. A report was called for from the Investigating Officer. After the report was submitted by the Investigating Officer, the petitioner/son-in-law raised his objection as regards return of stridhan articles to his mother-in-law, producing some documents which are also verified by the I.O. himself and a report was submitted accordingly. Since the documents furnished by the petitioner, son-in-law did not match with the relevant documents of jewellery shop, wherefrom the jewellery was proposed to be purchased earlier, the learned Magistrate declined to pass any order allowing return in favour of the petitioner, son-in-law with respect to the items seized, and ultimately the interim custody of the seized items were given in the custody of private opposite party No.2, mother-in-law.

Mr. Banerjee, learned Advocate representing the petitioner at the very threshold of this case restricts the claim of the petitioner to serial Nos. 9 and 10 of the list of stridhan articles, mentioned in the petition under Section 156(3) Cr.P.C. and thereby foregoing his right as against the other items mentioned therein.

Mr. Ganguly, learned Advocate representing the State submits that there lies nothing to be interfered with as the

documents produced were duly verified and upon verification of the same, the I.O. submitted his report disputing the genuineness of the documents produced by petitioner/son-in-law.

Mr. Das Mahapatra, learned Advocate representing the private opposite party No.2 challenges the submission of Mr. Banerjee contending that the documents produced by the petitioner were all fake documents, and the genuineness of the documents being disputed by the Jeweller himself, the articles were rightly given back to the mother-in-law/opposite party No.2 for the same being her stridhan articles.

Having considered the rival submission of the parties, it appears that fight in this case is between the mother-in-law and the son-in-law over some articles describing it to be stridhan articles of the mother-in-law. Admittedly, the daughter left behind by the deceased wife of the petitioner has now been living with her father/petitioner. The petitioner/son-in-law disputes with claim of stridhan articles of his mother-in-law thereby raising his counter claim as stridhan articles of his predeceased wife.

In view of the provisions contained in Section 15 of the Hindu Succession Act, 1956, the daughter of the deceased wife/mother is the first class heir, who is now minor, and now being maintained by her father/petitioner. With respect to restricted claim of Mr. Banerjee to the item Nos. 9 and 10, there was no documents produced in support thereof to

establish right of ownership, while offering a claim of return of stridhan articles.

Learned Advocate representing the private opposite party No.2 though disputed with the claim of Mr. Banerjee alleging that the documents produced by the petitioner to be fake, but the opposite party No.2/mother-in-law had no document in support of her claim of stridhan articles, at least with reference to item Nos. 9 and 10.

The claim of O.P. No.2/mother-in-law as regards return of stridhan articles cannot be allowed to be established for the weakness or defects, if any, of petitioner/son-in-law in his counter claim of return. The mother-in-law has to establish her case independently producing convincing and sufficient documents, if any.

Learned Magistrate by the impugned order has not taken care of, while disposing of the prayer for return of the seized items, if any documents were produced by the mother-in-law in support of her alleged claimed of stridhan articles. The order impugned is, thus, not sustainable. The order impugned is set aside with direction upon the learned Magistrate to hear out the matter afresh within four (04) weeks from the date of communication of this order, providing sufficient opportunity of hearing to either of the parties.

Learned Advocate for the private opposite party No.2 is at liberty to produce convincing and sufficient documents in support of establishing her claim, at least with respect item Nos. 9 and 10, that the same are absolutely the stridhan

properties of the mother-in-law/opposite party No.2, contrary to the claim of petitioner/son-in-law.

With this direction and observation, the instant revisional application stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all the formalities.

(Subhasis Dasgupta, J.)