

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

C.R.R. 764 Of 2019

Sri Debmalaya Chattopadhyay

Versus

Smt. Baisakhi Chowdhury (Chatterjee)

For the petitioner : Mr. Tapas Kr. Ghosh
Mr. Tanmoy Chowdhury
...Advocates

For the Opposite Party : Mr. Uday Sankar Chattopadhyay
Mr. Santanu Maji
Ms. Snigdha Saha
Mr. Pronoy Basak
...Advocates

Heard on : 14.09.2021

Judgment on : 01.10.2021

JAY SENGUPTA, J:

1. This is an application challenging an order dated 15.02.2019 passed by the learned Judicial Magistrate, 3rd Court, Purba Bardhaman in Misc. Case No. 175 of 2018, thereby rejecting the prayer of the petitioner for dismissal of an application under Section 125 of the Code on the ground of lack of jurisdiction and also seeking transfer of the proceeding from the

learned Trial Court to a learned Court of competent jurisdiction at Bolpur, Birbhum.

2. The marriage between petitioner/husband and the opposite party/wife took place on 12.03.2017. Thereafter, disputes arose between them.

3. The petitioner filed an application under Section 12 of the Hindu Marriage Act, 1955, being MAT Suit No. 55 of 2018, before the learned District Judge, Birbhum at Suri praying for a decree of nullity of marriage. The opposite party filed a revisional application praying for transfer of the suit to the Court of the learned District Judge at Purba Bardhaman. On 20.06.2018 this Court disposed of the application by transferring the matrimonial proceeding from the Court at Suri, Birbhum to the Court at Bolpur, Birbhum.

4. On 04.06.2018 the opposite party filed an application under Section 125 of the Code being Misc. Case No. 175 of 2018 presently pending before the learned Judicial Magistrate, 3rd Court, Purba Bardhaman. The petitioner filed an application before the learned Magistrate praying for dismissal of the case on the ground of lack of territorial jurisdiction. But, the same was dismissed by the impugned order.

5. Mr. Tapas Kr. Ghosh, learned counsel appearing on behalf of the petitioner, submitted as follows. The opposite party/wife actually stayed at Bolpur, Birbhum. This was what she had stated clearly in her application under Section 125 of the Code. That was also the place where her father resided. However, giving the address of her brother-in-law, she sought to

have a proceeding under Section 125 of the Code initiated at Purba Bardhaman. In fact, a matrimonial suit that was filed by the petitioner/husband at Suri, Birbhum was transferred to Bolpur, Birbhum by an order of this Court. In the said civil revision, this Hon'ble Court refused to accede to the prayer of the present opposite party and after taking into consideration the submissions of the respective parties, was pleased to transfer the case to Bolpur, Birbhum. There was no reason for which the present proceeding under Section 125 of the Code should be taken up at a different place.

6. Mr. Uday Sankar Chattopadhyay, Learned Counsel appearing on behalf of the opposite party/wife, submitted as follows. Although it was stated in the application under Section 125 of the Code that after being deserted by her husband, the wife took refuge at her father's place at Bolpur, it was also quite categorically mentioned, both in the cause title as also in the affidavit, that the temporary residence 'hal sakin' of the petitioner/wife was at Paschim Bardhaman. In fact, after being deserted by her husband, the petitioner was unable to meet both ends at her paternal home. That is why, she had to be put up at her brother-in-law's place at Paschim Bardhaman. The jurisdiction for a proceeding under Section 125 of the Code was not exactly similar to that of a matrimonial suit between a couple. Section 126 (1) of the Code used the expressions 'is' and 'resides'. Therefore, if the wife at present stayed, even temporarily, at a particular place, she would be entitled to initiate a proceeding under Section 125 of the Code or to continue the same at such place. On this reliance was placed on a decision of the Hon'ble

Apex Court in *Vijay Kumar Prasad Versus State of Bihar and others* (2004) 5 SCC 196 and on a decision of the Hon'ble Madras High Court in *K. Mohan Versus Balakanta Lakshmi*, 1983 CrLJ 1316. The decision of this Hon'ble Court passed on 20.06.2018 in CO 1175/2018 was arrived at "without going into the controversy between the parties". There was no finding whatsoever on what was the place where the lady was residing. As such, the said order could not come in the way of this Court to have a proceeding under Section 125 of the Code continue at a different place.

7. I heard the submissions of the Learned Counsels appearing on behalf of the parties and perused the revision petition.

8. It appears from the records that although the opposite party/wife in her application under Section 125 of the Code stated that after the unfortunate incidents happened at her matrimonial home, she was staying at her parents' place, both in the cause title of the application as well as in the affidavit portion, she clearly mentioned her temporary residence (hal sakin) to be at Udayan Palli, Galsi, District Purba Bardhaman, care of one Rathindra Nath Chowdhury. In the present application too, learned counsel for the petitioner asserted the same fact that the opposite party was presently residing at her brother-in-law's place at Purba Bardhaman, being unable to meet both ends at her paternal home. Moreover, simply because the petitioner had received a notice in another proceeding at her parent's place at Bolpur, it cannot preclude her from claiming that she was presently residing at Purba Bardhaman.

9. The decision of this Hon'ble Court passed on 20.06.2018 in CO No. 1175 of 2018 was clearly arrived at "without going into the controversy between the parties". There was no finding in the order passed by this Court that could prevent the opposite party from claiming that she presently resides at Purba Bardhaman.

10. Section 126 (1)(b) implies that a proceeding under Section 125 of the Code may be taken against any person in any district where he or his wife resides.

11. There is no element of permanence connected to the term 'resides'. Therefore, if a wife resides at a place for a reasonable length of time so as to claim such place at least as her temporary residence, she should be entitled to initiate or continue a proceeding under Section 125 of the Code at such place. On this, reliance is placed on a decision of the Hon'ble Apex Court in Vijay Kumar Prasad (supra) and on a decision of the Hon'ble Madras High Court in K. Mohan (supra).

12. Moreover, I find that the impugned order was a reasoned one and the learned Trial Court had rightly come to the conclusion that the proceeding could not be dismissed on the ground of lack of territorial jurisdiction.

13. In view of the above discussions, I do not find any merit in this application.

14. Accordingly, the revisional application is dismissed.

15. However, there shall be no order as to costs.

16. Learned Trial Court is requested to conclude the proceeding, as expeditiously as possible, without granting any unnecessary adjournment to any of the parties.

17. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J)

P. Adak