

Sr. 44
15-07-2021
Subha.
Court no. 34

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE
(Via Video Conference)**

CRR 1242 of 2012

In Re : **Nachera Bibi**

.....Petitioner.

In the matter of : An application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure.

The present revisional application has been preferred against the judgement and order dated December 15, 2011 passed by the learned Additional Sessions Judge, Fast Track Court-IV, Krishnagar, Nadia in connection with Criminal Motion No. 151 of 2010.

I have perused the judgement and order so passed by the learned Sessions Court by exercising its revisional jurisdiction. The following part of the order of the learned Sessions Court which is as follows is against the settled principles of law.

*“In the instant case the opposite party being the divorced Muslim woman she could only get the benefit of the 1986 Act, and when she has already opted the her Protection of Right by filing the application being Misc. Case No. 451(iv) of 97 under Sec.3 of the said Act, the proceeding under Sec. 125 Cr. P.C cannot be proceeded with”.
is against the settled principles of law.*

The decision of a court under the provisions of The Muslim Women (Protection of Rights on Divorce) Act, 1986 do not debar a right from preferring an application under Section 125 of the Code of Criminal Procedure as the purpose of each of the Act and provisions are completely different.

Having regard to the fact which weighed with the learned Sessions Court for setting aside of the order of the learned Magistrate, I am of the view that the same is erroneous and is liable to be set aside.

Accordingly, the judgement and order dated 15th December, 2011 passed in Criminal Motion No. 151 of 2010 is, hereby, set aside. The learned Magistrate is directed to proceed and conclude the proceedings under Section 125 of the Code of Criminal Procedure, if the same has not been already concluded.

Thus, the revisional application being CRR 1242 of 2012 is allowed.

All pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

(Tirthankar Ghosh, J.)