

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

Before:
The Hon'ble Mr. Justice Jay Sengupta

C.R.R. 2274 of 2019

Amitava Dey
Vs.
The State of West Bengal & Anr.

For the Petitioner : Ms. Joyita Ray

Heard on : 03.03.2021

Judgement on : 03.03.2021

Jay Sengupta, J. :

This is an application challenging an order dated 30.07.2019 passed by the learned Additional Chief Judicial Magistrate, Barasat, North 24 Parganas in M. Case No.194 of 2018 under Section 125 of the Code.

Learned Counsel appearing on behalf of the petitioner submits as follows. The opposite party no.2 had filed an application under Section 125 of the Code claiming maintenance allowance from the present petitioner. Besides, an application under the provisions of the Protection of Women from Domestic Violence Act is also pending. The petitioner's case is that no marriage was properly solemnised between the parties and it was never consummated and as such, the petitioner is not liable to pay any interim maintenance allowance under Section 125 of the Code. Accordingly, an application was made before the

learned Magistrate for dismissing the case on the ground of non-maintainability. It was erroneously turned down.

I have heard the submissions of the learned Counsel appearing on behalf of the petitioner and have perused the revision petition.

It is not legally tenable for a learned Magistrate to recall a process after he has issued the same, whether in a proceeding under Section 125 of the Code or in any other case. Therefore, the application for non-maintainability was misconceived and was quite rightly rejected by the learned Trial Court.

The grounds taken by the petitioner as referred to above pertain to disputed questions of fact and thus, cannot be decided in a revisional application.

Moreover, the pendency of a proceeding under the provisions of the Protection of Women from Domestic Violence Act is not a bar on any proceeding initiated under Section 125 of the Code.

In view of the above, I do not find any merit in this revisional application. Accordingly, the same is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)