

D/L41.
August 5,
2021
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C.R.R. No.2530 of 2019
(Via Video Conference)

Smt. Santoshi Mahara
Versus
The State of West Bengal and Another

Mr. Tapan Datta Gupta,
Mr. Parvej Anam.
...for the petitioner.

Mr. Sujoy Sarkar.
...for the opposite party no.2.

The present revisional application was preferred against the judgment and order dated 29.05.2019 passed by the learned Sessions Judge, Birbhum in Criminal Revision No.17 of 2018 wherein the learned Sessions Judge was pleased to affirm the order dated 12.06.2018 passed by the learned Judicial Magistrate, 3rd Court, Suri, Birbhum in Criminal Misc. Case No.170 of 2015.

Supplementary affidavit filed on behalf of the petitioner enclosing the evidences is kept with the record.

I have perused the order passed by the learned Magistrate and the reason so assigned. On an appreciation of the same, I am of the view that the learned Magistrate has discretely taken up the evidences from the cross-examination to come to its own finding. The learned Sessions Judge also has approved such manner of appreciation of evidence by the learned Magistrate.

I have considered both the judgments and on an appreciation of the same, I am of the view that both the courts below failed to take into account the background from which the

lady belonged and the system prevailing in the villages for a complaint case to be registered. The interpretation of the courts below so far as the wife is unwilling to stay with the husband do not seem to be in consonance with the purpose for which the provisions of Chapter VII of the Code of Criminal Procedure was incorporated. A court of law has to appreciate overall circumstances. The learned court, in my opinion, failed to take into account the allegations of torture, the reasons for not staying with the husband as also the factum of demand of dowry. The court also failed to consider that the wife was restrained from taking the child back.

Hence, I am of the opinion that a fresh appreciation of the evidence is required to be considered to arrive at a finding as to whether maintenance should be awarded or not to the present petitioner. Accordingly, the matter is remanded back to the learned Judicial Magistrate, 3rd Court, Suri, Birbhum, who would freshly consider the evidence and arrive at its own finding within a period of sixty days from the date of the communication of this order.

The Department is directed to communicate this order to the learned court below within a period of seven days.

The learned Magistrate thereafter would fix a date issuing notice to both parties. To that effect, the learned Magistrate will be at liberty to take assistance of the local police station for ensuring the appearance of the parties.

CRR 2530 of 2019 is allowed with the aforesaid directions.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)