

20.07.2021
Item no.27
Ct. No.34
CHC

C.R.R. No.3016 of 2013

(Via Video Conference)

In Re: An application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

AND

In the matter of:-

Amirunnecha Bibi

... petitioner

Md. Sabir Ahmed,

Mr. Shraman Sarkar

...for the petitioner

In spite of service, none appears on behalf of the opposite party.

Learned advocate, Mr. Shraman Sarkar appears on behalf of the petitioner.

The order under challenge before this Court refers to the order dated 27.06.2013, passed by the learned Judicial Magistrate, 1st Court, Basirhat, North 24 Parganas, in connection with Case No. M 362 of 2003. I find that after ten years the learned Magistrate on appreciation of the evidence denied to award maintenance to the wife who is the present petitioner before this Court.

The reasons so assigned by the learned Magistrate are not acceptable to this Court. In view of the fact that the learned court without any appreciation has come to the conclusion that the lady has denied to stay at her matrimonial home. Evidence reflects that the husband was having an illicit relationship and

subsequently, he married for the second time which obviously is a good ground for a lady not to stay with the husband. The other contention which weighed with the learned Magistrate was without any proof and relying only on oral deposition by the husband to the fact that lady has also married for the second time. The further consideration which weighed with the learned Magistrate was that the lady was granted Talaque long ago and as such she is not entitled to maintenance.

The law in this regard has been well settled by the Hon'ble Apex Court and which has been reiterated in the number of judgements. Further the statute itself provides that the provisions of Section 125 of the Code of Criminal Procedure are applicable to divorced wife, secondly, statute also provides that a lady may refuse to stay with her husband when such husband has without her consent decided to continue relationship with another lady.

Having regard to the reasons so assigned for refusing maintenance and rejecting the application under Section 125 of the Code of Criminal Procedure, I am of the view that the same is not tenable in the eye of law and accordingly, the order dated 27.06.2013, passed by the learned Judicial Magistrate, 1st Court, Basirhat, North 24 Parganas is set aside.

Learned court below is to issue notice and decide afresh on the evidence so available keeping in mind the pronouncement by the Hon'ble Apex Court and also of this Court alongwith the provisions of the statute regarding maintenance.

With the aforesaid observations, C.R.R.3016 of 2013 is allowed.

Department is directed to communicate this order to the learned court below within a period of seven days. Learned Magistrate, on receipt of such intimation from this Court would issue notice and fix a date after a fortnight for deciding the issue.

It is further directed that the fresh order/final finding should be arrived within a period of three months from the date of communication of this order to the court of the learned Judicial Magistrate, 1st Court, Basirhat, North 24 Parganas.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)