

CRR 1449 of 2020

In the matter of :Sahanawaz Tarafdar

.... Petitioner

Mr. Sunny Nandy ... for the petitioner

Ms. Soni Ojha,

Mr. Ganesh Manna for the O.P. No.2

The husband /appellant in criminal appeal no. 55 of 2018 is the petitioner in the instant revision . The instant revision is filed challenging legality, validity and propriety of the judgment and order dated 25th September, 2020 passed by the learned Additional Sessions Judge, Fast Track 1st Court, Barasat, North 24-Parganas in criminal appeal no. 55 of 2018.

Be it mentioned here, the said appeal was filed challenging an order of interim monetary relief granted in favour of the opposite party no. 2 by the learned Chief Judicial Magistrate, Barasat in C- Case No. 1155 of 2016 dated 3rd September, 2018.

Learned Judge in the lower appellate Court dismissed the appeal on contest affirming the judgment and order passed by the learned Chief Judicial Magistrate, Barasat in the abovementioned C-case No. 1155 of 2016.

The bone of contention as raised in the instant revision is that the petitioner divorced

the opposite party no. 2 under Mohammeden rites and customs. Within one year her divorce she married another person, namely, Rejaul Ali and she has been residing with him. The petitioner has raised question as to whether the opposite party no. 2 is entitled to get monetary relief under Section 23 of the said Act in view of her re-marriage with another person. In support of his contention, the petitioner has filed a certificate issued by the local gram panchayat member and some copies of police reports where the opposite party no. 2 has been stated as the wife of the said Rejaul Ali.

By filing an affidavit –in-opposition the opposite party no. 2 has specifically denied her alleged second marriage after divorce by her husband. It is submitted by the learned advocate for the opposite party no. 2 that a certificate issued by a member of local gram panchayat or police report are not proves of marriage between the opposite party no. 2 and one Rejaul Ali.

The petitioner has filed affidavit in reply reiterating the same fact of marriage of the opposite party no. 2 with one Rejaul Ali for the second time.

Having heard the learned counsels for the parties and on careful perusal of entire record as well as the documents filed by the parties at the time of hearing it is ascertained that the issue that is required to be adjudicated upon in the proceeding under Section 12 of the said Act is as

to whether the petitioner divorced the opposite party no. 2 or not and secondly whether after divorce the opposite party no. 2 has married to one Rejaul Ali. Grant or refusal of monetary relief depends upon the decision of the issues referred hereinbefore.

Therefore, the instant criminal revision is disposed of directing both the parties to adduce evidence before the learned Chief Judicial Magistrate, Barasat and produce all the documents in respect of them. The learned Chief Judicial Magistrate is at liberty to even call the said Rejaul Ali to give evidence as a Court witness under Section 311 of the Code of Criminal Procedure for proper adjudication of the dispute. The learned trial Court is also under obligation to dispose of the C-Case No. 1155 of 2016 keeping in mind the observations made by a coordinate Bench of this Court in CRR No. 3104 of 2019.

The learned Chief Judicial Magistrate, Barasat is directed to conclude the evidence and dispose of the case expeditiously and preferably within eight weeks from date.

In the mean time the petitioner shall go on paying the interim monetary relief payable for maintenance of the daughter of the parties.

(Bibek Chaudhuri, J.)

