

08.06. 2022
item No.26
n.b.
ct. no. 34

CRR 147 of 2022
+
IA No. CRAN 1 of 2022

Sri Utpal Kumar Das
Vs.
Minor Sri Soumyadip Das & Anr.

Mr. Sanjib Das
.....for the Petitioner

Mr. V. Kundalia,
Mr. M. Ali
.....for the private opposite party.

The revisional application was preferred challenging the order dated 8.6.2021 passed by the Learned Additional District & Sessions Judge, Ghatal, Paschim Medinipur in Criminal Appeal No.06 of 2019 wherein the learned Appellate Court was pleased to affirm the order passed by the Learned Judicial Magistrate, Ghatal in Misc. Case no.98 of 2019.

The grievance of the petitioner is that no notice was served upon him and an order of interim maintenance was passed ex parte. According to the learned advocate notice was issued on July 8, 2019 and date was fixed on July 23, 2019. However, the order of interim maintenance was passed by the Learned Judicial Magistrate on June 18, 2019.

Record reflects that the application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 was filed before the Learned Additional Chief Judicial Magistrate,

Ghatal on April 23, 2019 and the order reflects that May 31, 2019 was the date fixed for appearance and hearing of the application with the direction for service return. Subsequently, dates were fixed on 31.5.2019, 10.6.2019 and the order was passed on 18.6.2019. Learned advocate emphatically submits that no notice was received by the present petitioner and ex parte order was passed. Be that as it may the issue is a disputed question of fact as to whether any notice was served upon the petitioner or not, in respect of the other contention the Learned Judicial Magistrate in seisin of the matter under Section 12 of Protection of Women from Domestic Violence Act, 2005 was empowered to pass an ex parte order in case there is urgency in the situation for passing such orders.

Learned advocate also submits that although in the memorandum of appeal there was ground for such notice not being effected yet the learned Appellate Court did not decide the issue. I do not find any substance in such submission as the learned Court has passed a detailed order. Whether such point was canvassed before the Learned Appellate Court is doubted by this Court. In view of the fact that the admitted position is that the marriage has been admitted and the petitioner claims the child of his own, I am of the opinion that no interference is called for in this revisional application as the Appellate Court has properly exercised its jurisdiction. However, the petitioner would be at liberty to canvass the issue of the service of notice in course of the trial of the case to show that any prejudice has been caused to him for an ex parte order being passed. I further grant liberty to the Learned

Magistrate to consider the quantum of the amount which has been granted in case the petitioner is able to adduce proper evidence.

With the aforesaid observations CRR 147 of 2022 is disposed of.

All pending connected applications, if any, are 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.)