

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jay Sengupta

CRR 377 of 2022

Abdul Matin Gazi
Vs.
Moslema Bibi

For the Petitioner : Mr. Subhajit Das
Ms. Somashree Dey

Heard on : 11th February 2022

Judgment on : 11th February 2022

The Court:

This is an application challenging an order dated 23.12.2021 passed by the learned Chief Judicial Magistrate, Bashirhat, North 24 Parganas, thereby dismissing a non-maintainability application in Case No. M/508/19 under Section 125 of the Code.

Learned counsel appearing on behalf of the petitioner submits as follows. The opposite party was the wife of the petitioner's elder brother. They had two children from such marriage. The elder brother died in 2018. After that on a particular date the petitioner was asked to go to the opposite party's residence. There he was made to consume some intoxicants and in an inebriated state, he was made to sign certain documents. In 2019 the petitioner got married to another lady. Thereafter,

he received summons in respect of two proceedings initiated by the opposite party no. 1, one under Section 125 of the Code and the other under the Protection of Women from Domestic Violence Act. In 2020, the petitioner filed a suit for declaring the marriage, as claimed by the opposite party, as a nullity. In 2021, he also filed an application for non-maintainability of the proceeding under Section 125 of the Code. From the dates given, the alleged marriage between the petitioner and the opposite party would have taken place within the iddat period. Therefore, the marriage is a nullity. Any further continuation of the impugned proceeding shall be an abuse process of the Court.

I have heard the submissions of the learned counsel for the petitioner and have perused the revision petition including the order passed by the learned Magistrate on the application for non-maintainability.

First, after issuing a process/notice upon the other side i.e., the husband in a proceeding under Section 125 of the Code, it is not open to the learned Magistrate to recall or review such order. Reliance is placed on a decision of the Hon'ble Apex Court in the case of *Adalat Prasad vs. Rooplal Jindal* reported in (2004) 7 SCC 338.

Secondly, there is a finding given by the learned Magistrate that no document was filed by the present petitioner to *ex facie* show that the marriage was held during the period of iddat or that the marriage was declared void by a Court of law.

Furthermore, it is an admitted fact that the suit for nullity of marriage is still pending.

I find that a date has been fixed by the learned Magistrate directing the opposite party therein i.e., the husband to file a show cause.

As such, I do not find any illegality in the impugned order.

In view of the above discussions, the revisional application 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)