

22.8.2022

I. No. 93

Ct-42

P.Jana

CRR 495 of 2022

In re: An application under Section 482 read with Section 401 of the Code of Criminal Procedure;

-And-

In the matter of : Ashit Kumar Panja,

...Petitioner.

Mr. Ashit Kumar Panja,

...Petitioner-in-person.

The petitioner is the ex-husband of the wife-opposite party no. 1.

The marriage between the parties have been dissolved by a mutually decree of divorce passed in Matrimonial Suit No. 502 of 2001 on June 30, 2005 by the learned Additional District Judge, 6th Court at Midnapore (West).

Prior to the aforesaid date of dissolution of marriage, the opposite party no. 1 filed an application under Section 125 of the Code of Criminal Procedure praying for maintenance allowance for herself and her minor daughter. The learned Magistrate allowed the said application by granting maintenance in favour of the petitioner and the minor daughter of the parties.

The present petitioner, being the opposite party in the said maintenance case challenged the judgment passed by the learned Magistrate by filing a criminal revision before the learned Assistant Sessions Judge at Hooghly.

The said revision was disposed of by the learned Additional Sessions Judge, 2nd Court at Hooghly by an order dated August 20, 2003 directing the present petitioner to pay maintenance @ Rs. 1000/- per month to the opposite party no. 1 and @ Rs. 750/- per month to the younger daughter of the parties.

It is further contended by the petitioner/husband that he subsequently preferred an application under Section 127 of the Code of Criminal Procedure with appropriate relief stating inter alia that the divorced wife of the petitioner is not entitled to get any maintenance from the petitioner and their daughter is also not entitled to get any maintenance as she in the meantime attained majority and has been given marriage.

The said application under Section 127 of the Code of Criminal Procedure was disposed of by the learned Judicial Magistrate, 3rd Court at Serampore by an order dated February 22, 2014 in Misc. Case No. 22 of 2011.

The learned Judicial Magistrate, 3rd Court at Serampore disposed of the said application under Section 127 of the Code of Criminal Procedure holding inter alia that the opposite party/divorced wife and her daughter are not entitled to get any maintenance.

Under this backdrop, the petitioner has challenged the maintainability of the Misc. Execution Case No. 49 of 2010

and Misc. Execution Case No. 29 of 2006 under the provision of Section 482 of the Code of Criminal Procedure.

The petitioner has appeared in person. The opposite party no. 1/wife remains unrepresented.

I have perused the order dated February 26, 2014 passed by the learned Judicial Magistrate, 3rd Court at Serampore in Misc. Case No. 22 of 2011 arising out of an application under Section 127 of the Code of Criminal Procedure filed by the present petitioner.

The said proceeding was disposed of holding, inter alia, that the petitioner is not obliged to pay any maintenance allowance to the opposite party for herself and her daughter.

The aforesaid order dated February 26, 2014 have reached its finality.

In view of such circumstances, the learned Judicial Magistrate, 3rd Court at Serampore is under obligation to consider as to whether the Misc. Execution Case No. 29 of 2006 and Misc. Execution Case No. 49 of 2010 are at maintainable or not.

In view of such circumstances, the instant revision is disposed of by giving liberty to the petitioner to file an appropriate application before the learned Judicial Magistrate, 3rd Court at Serampore, Hooghly challenging the maintainability of the aforesaid two misc. execution cases. If such application is filed by the petitioner, the learned

Judicial Magistrate, 3rd Court at Serampore, Hooghly, shall dispose of the said application within four weeks from the date of receipt of such application by passing a reasoned order.

The instant revision is accordingly disposed of with the above directions.

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

(Bibek Chaudhuri, J.)