

8.9.2022
18
Ct. no. 652
sb

**C.O. 636 of 2020
with
CAN 2 of 2022**

**Partha Sikdar
Vs.
Oindrilla Sikdar**

Mr. Shibaji Kumar Das
Ms. Rupsa Sreemani ...for the petitioner

Being aggrieved and dissatisfied with the order no. 64 dated 14.1.2020 passed by the learned Additional District Judge, 1st Court, Alipore, South 24 parganas in connection with Matrimonial suit no. 191 of 2013, the present application under Article 227 of the constitution of India has been preferred.

Said Matrimonial Proceeding has been initiated by husband/petitioner for dissolution of marriage. In the above matrimonial proceeding, the wife/opposite party herein had filed a petition on 3rd July 2019 wherein she has sought for a direction upon the husband to return streedhan articles as mentioned in the schedule of that petition. The petitioner herein filed written objection against the said petition denying such allegation . After hearing both the parties, learned trial court opined that the dispute between the parties can be resolved by appointing an advocate commissioner who will

investigate the truthfulness of the contentions of the parties by means of investigation.

Learned advocate for the petitioner submits that marriage between the parties took place on 14th December, 2007 and on 5th January, 2008 the opposite party herein without any prior permission from the petitioner had voluntarily left her matrimonial home along with all her streedhan articles and thereby deserted the petitioner and since then she has been residing at her paternal home at Jadavpur Calcutta. Subsequently the opposite party has filed written complaint at Sonarpur police station which was registered as GR case 1235 of 2008 and upon conclusion of investigation, charge-sheet has been submitted against the petitioner and her mother and two other accused persons.

He further submits that during investigation, the investigating officer for the purpose of recovery of alleged streedhan articles of the defacto-complainant i.e. opposite party herein had served RT messages to her for seizure of the stridhan articles which allegedly was lying in her matrimonial house and for identification of the same but in spite of receipt of RT messages, the opposite party did not turn up which clearly pointed out towards the fact that there was no streedhan article lying at her matrimonial home which she did not want to point out before the investigating officer as the same would

prejudice her case under section 406 of I.P.C. Investigating officer has duly noted said fact in the charge-sheet submitted by him.

Moreover, suppressing the material fact that she has already initiated a criminal proceeding being GR case 1235 of 2008 under section 498A/406/34 IPC she again filed a complaint case being C. no. 1901 of 2008 in the court of learned Additional Chief Judicial Magistrate, Baruipur, South 24 parganas against the petitioner complaining commission of offence under Section 406/34 of the Indian Penal Code and filed a separate petition with a prayer for issuance of search warrant under Section 94 of the Code of Criminal Procedure. In the said complaint case, learned court took cognizance and allowed the petition under Section 94 and issued search warrant. When initiation of said GR Case 1235/2008 was brought to the notice of the court, order of search warrant was recalled and opposite party herein lost interest in the said complaint case being no. 1901/2008 and it was ultimately dismissed and accused persons were relieved.

Thereafter, the petitioner also filed petition under Section 12 of the Protection of Women from Domestic Violence Act wherein opposite party herein prayed for her residential accommodation along with a further direction for return of her streedhan articles as mentioned in 'B' schedule of that petition. In the said

proceeding learned Magistrate refused to grant relief regarding residential accommodation and opposite party/herein did not press for her prayer for return of Streedhan articles and for which no relief was granted when Magistrate disposed of said proceeding on 16.11.2018

The present petitioner in the said matrimonial suit by filing objection has categorically stated that the said petition for return of streedhan article by opposite party herein is *mala fide* and filed with an ulterior motive to delay the matrimonial suit because the opposite party/wife had voluntarily left her matrimonial house when she had taken away all her streedhan properties, for which she had nothing to recover but the learned court below without taking into account pleadings of the parties, documents on record and submissions based on the same had passed the impugned order with material illegality and irregularity and thereby made out a third party case.

In spite of service, the opposite party is not represented.

Considering the submission made by the parties, it appears that in the charge-sheet, it has been specifically stated by the investigating officer that during investigation he sent RT message to complainant for seizing her streedhan articles which is allegedly lying at her home but she is unwilling and she did not turn up

for identification of those articles. It further appears from the written objection filed by the petitioner herein in response to the said petition filed by the opposite party/wife that opposite party did not make any such petition before the learned court for last 6 years and in application under Section 94 of Cr.P.C. being complaint case no. 1901 of 2008 the respondent/wife also failed to substantiate her claim for which, learned court had dismissed the said complaint case on 11.6.2009.

From the impugned order it appears that the trial court opined that the dispute between the parties can be resolved by appointing an advocate commissioner who will investigate the truthfulness of the claim. Learned trial court himself could have ascertained the truthfulness on the basis of materials in record which includes report of investigation officer in the charge sheet, conduct of petitioner in respect of her suppression of fact in complaint case No. C-1901 of 2008, her non-action in respect of such prayer in her proceeding under section 12 of protection of women from domestic violence Act, 2005, being case No. C-8542 of 2010 along with other material factors like evidence (oral and/or documentary) in support of their respective claim over the property but instead of that the order for appointment of third party Advocate commissioner by the court below to investigate the truthfulness of the petition and written objection of the parties by means of

investigation is merely an attempt to deligate his power, in respect of which, court is authorised to exercises jurisdiction and as such it renders the order not sustainable in the eye of law.

Having considered the facts and circumstances of the case and that the order impugned has been passed without considering materials on the record the order impugned is liable to be quashed in the eye of law.

In view of above, the impugned order no. 64 dated 14.1.2020 is hereby set aside. However this order will not preclude learned trial court to consider the substance of said petition filed by wife/opposite party herein and objection filed by husband/petitioner herein on the basis of available documents and evidence in record, at the time of final disposal of the suit.

Accordingly, C.O. 636 of 2020 is disposed of. Since the case is pending for a long time, the learned trial court is directed to make every endeavour for expeditious disposal of the case and to conclude the entire proceeding preferably within a period of one year from the date of communication of the order.

Accordingly, the application being CAN 2 of 2022 is also disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)