

16.03. 2022
item No.79
n.b.
ct. no. 34

CRR 846 of 2020
IA No. CRAN 1 of 2020(Old No. CRAN 1086 of 2020)
Sabita Hela
Vs.
State of West Bengal & Anr.

Mr. Satadru Lahiri,
Mr. Safdar Azam,
.....for the Petitioner

Mr. Mr. Arijit Ganguly,
Mr. Sanjib Kr. Dan
.....for the State

Mr. Avik Ghatak,
Ms. Afreen Begum
.....For the Opposite Party.

Earlier a report was called for and copy of the same was handed over to the learned advocate for the petitioner as well as learned advocate for the private opposite party. Prima facie I find that the pleas which has been taken before the Civil Court for annulment of marriage wherein ex parte order was passed is debatable.

I also find from the order dated 13.11.2019 passed by the learned Judicial Magistrate, 6th Court, Sealdah that the learned Magistrate was pleased not to hold the present petitioner as wife within the meaning of Section 125 of the Code of Criminal Procedure. To that effect the relevant part of the order of the learned Magistrate is set out as follows.

“The petitioner preferred this petition u/s 125 Cr.P.C. claiming maintenance from her husband/the OP was filed on

28.08.18 however as per the averments of the OP the marriage between him and her has already been annulled by the ex parte order of the Ld. Fast Track 3rd Court, Barrackpore, North 24 Parganas on 28.09.16 the petitioner however did not prefer an appeal against the said order of annulment. If the marriage is annulled by a decree of nullity the wife no more remains a wife even for the purpose of maintenance Under Section 125 Cr. P.C. The definition of 'wife' given Under Section 125 includes a divorced woman. It does not provide that even after the marriage is annulled by a decree of nullity Under Section 12 of the Act, the women remains a wife for the purposes of maintenance Under Section 125. The intention of the legislature is clear from the explanation given Under Section 125 of the Code of Criminal Procedure. Thus benefit of maintenance under Sub-section 125(I) (a) is available only if the applicant is the wife of the person concerned."

In view of the observations made by the Hon'ble Supreme Court in the decision of *Badshah Vs. Urmila Badshah Godse & Anr.* reported in (2014) 1 SCC 188 I am of the opinion that petitioner has been able to make out a case to be considered by the learned Magistrate. Accordingly, the said order dated 13.11.2019 is set aside.

The petitioner is directed to approach the learned Court on April 4, 2022. The learned Magistrate would freshly issue notice upon the opposite party and thereafter proceed in accordance with law. If the opposite party on its appearance raises the issue of maintainability afresh, the learned Magistrate would consider the

same in its proper perspective after affording the petitioner opportunity to rebut the same.

With the aforesaid observation CRR 846 of 2020 is disposed of.

All pending connected applications, if any are consequently disposed of.

The learned Magistrate would be at liberty to take into account while deciding the issue of maintainability of the proceedings regarding the report submitted by the concerned officer of the Entally Police Station which encloses the documents being certified by Professor & Head Department of Gynecology & Obstetrics NRSMCH. Needless to state that the intrinsic value of the document has not been assessed by this Court and have been left before the Learned Magistrate to deal with the same in accordance with law.

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

(Tirthankar Ghosh, J.)