

4.11.2022
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SB
Ct. No.236

CRR 988 of 2011

In the matter of : Sri Swajal Shil @ Sajal Sil

Mr. N.P. Agarwala
Mr. P. Bose ... for the State

The petitioner is found absent on repeated call.

On 07.9.2022 when the matter was taken up for hearing the petitioner was found unrepresented and an order of adjournment was passed with the observation that on the adjourned date if none appears matter would be disposed of on the basis of materials available with the record.

By filing this application for revision the petitioner Swajal Shil is inviting the Court to quash the proceeding pending before the learned Additional Chief Judicial Magistrate, Ranaghat being Misc. Case No. 208 of 2010 registered under Section 125 of the Code of Criminal Procedure.

From the attending facts of the case it is admitted that the petitioner is the husband of Smt. Rita Shil. They got married on 11.8.2005. Smt. Rita Shil depicted herself as neglected wife of Sri Swajal Shil filed an application under Section 125 Cr. P.C. for maintenance. The petitioner of this revisional application adverted that prior to filing an application under Section 125 of Cr.P.C. the petitioner and his Wife Rita Shil filed an application under Section 13(B) of the Hindu Marriage Act on 18.2.2010 before the learned District Judge, Nadia which was registered as Matrimonial Suit No. 173 of 2010. In the said petition for divorce on mutual consent it has been clearly spelt out that the parties have been staying apart since 2/12/2006. According to the petitioner in view of sub-section 4 of Section 125 of

Cr. P.C. the opposite party no. 2 being the wife of the petitioner is not entitled to maintenance as the parties to the marriage have been living separately by mutual consent. It is further adverted that the opposite party no. 2 suppressed the material fact in her application under Section 125 of Cr. P.C.; no whisper was made about the joint petition for divorce filed by the parties prior to filing of the application under Section 125 of Cr. P.C. on 19th July 2010.

Upon perusal of certified copy of the petition under Section 13B precisely paragraph 3 of the petition, I find that the opposite party no. 2 being the wife left her matrimonial home on 2nd December, 2006 as both the parties were not in a mood to tolerate each other. This averment made in paragraph 3 indicates that there was a reason for opposite party no. 2 to leave her matrimonial home and it cannot be said that without any reasonable cause she has withdrawn herself from society of the petitioner or that the parties have been living separately by mutual consent. Mere filing of an application under Section 13B of the Hindu Marriage Act cannot estop the wife from initiating any proceeding under Section 125 of Cr. P.C.

I do not find any merit in the petition under consideration. However liberty is given to the petitioner to ventilate all the points taken in the application under consideration before the learned Trial Court in the proceeding under Section 125 of Cr. P.C.

With this observation, the criminal revision is disposed of without any order as to costs.

The copy of the order be sent down to the learned Trial Court for information and necessary action.

Interim order if any, stands vacated.

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

(Siddhartha Roy Chowdhury, J.)