

12.12.2022
BMJR
Item no. 33
Ct. No.551

CRR 1320 of 2018

**Bidhan Chandra Jana
Vs.
State of West Bengal & Anr.**

Mr. Harekrishna Halder

.... For the petitioner

Mr. Bidyut Kumar Roy,
Ms. Rita Dutta

.... For the State

The instant revisional application was filed under Section 482 Cr.P.C for quashing the proceeding being M.R Case No.32 of 2016 under Section 125 of the Code of Criminal Procedure pending before the learned Judicial Magistrate, 1st Class at Dantan, Paschim Midnapore.

The brief fact of the matter is that the present petitioner is the husband and O.P no.2 is the wife. The marriage between them was solemnized in the month of September, 1997. Their marriage was duly consummated and out of wedlock two children were born. Thereafter the matrimonial dispute between them was developed. So, the wife filed a criminal proceeding before the learned jurisdictional Magistrate for getting maintenance under Section 125 Cr.P.C. By filing a supplementary affidavit learned advocate for the petitioner submits that the marital tie between the parties was dissolved mutually and at that time a lump sum money was received by the wife. It is submitted, at this juncture a proceeding under Section 125 Cr.P.C for getting maintenance has no leg to stand upon

and this matter is liable to be quashed.

Mr. Roy, learned advocate appearing on behalf of the State submits that the proceeding adopted by the petitioner to sever the marriage between them is illegal and he further pointed out that the matter has already been dissolved by the parties. So, it is not necessary for this Hon'ble Court to pass any order in respect of the instant revisional application. Accordingly, he prayed for rejection of the criminal revision.

Heard learned advocates for the parties. Perused the supplementary affidavit filed by the petitioner. It appears that the marriage between the parties was dissolved by virtue of an order passed by the Lokadalat where the lump sum amount was received by O.P. No-2.

The proceeding was pending before the learned Magistrate. Sub-section (4) and (5) of Section 125 Cr.P.C. makes it clear the circumstances that on the proof of any wife who is residing separately and have a lump sum money for such separation, such wife is not entitled to have the maintenance. Considering the same, the scope is there before the jurisdictional Magistrate to proceed under sub-section (4) of Section 125 Cr.P.C. Any order passed by this Court is not necessary which is available before the learned jurisdictional Magistrate. I find no merit in this revisional application. I make it clear that I am not passing any order regarding the matter pending before the learned jurisdictional Magistrate. The learned Magistrate has to consider the prayer of the petitioner, if any, made before him within a very short time.

Accordingly, the instant criminal revisional application is disposed of. Any interim order of stay passed by this Court during the proceeding of the instant revisional application is also vacated. Any connected application is also disposed of.

(Subhendu Samanta, J.)