

02.06.2022
Sl. No.4
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C. R. R. 1834 of 2022

In Re: An application under Section 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973.

In Re: ***Shiv Kumar Shaw.***

Mr. Deboiprotim Guha,
Mr. Niladri Khanra for the petitioner.

Ms. Shamima Khatoon .. for the opposite party no.2.

The petitioner appears to be the brother of opposite party no.2.

Petitioner seeks to stall the execution proceeding being M-Ex 273 of 2021 pending before the learned Judicial Magistrate, 4th Court at Alipore, South 24 Parganas arising out of AC Case No.2053 of 2017 under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

It appears that opposite party no.2 by filing a revisional application before this Court had challenged a judgment and order dated October 9, 2018, passed by the learned Additional District & Sessions Judge, Fast Track 2nd Court at Alipore, South 24 Parganas whereby the learned Judge modified an order of the learned Judicial Magistrate, 4th Court at Alipore, South 24 Parganas, granting a monetary relief of Rs.1,00,000/- per month and interim maintenance of

Rs.50,000/- per month for an alternative accommodation of the petitioner.

A Coordinate Bench by an ex-parte order dated November 18, 2019, disposed of the said revisional application being C.R.R. No.194 of 2019 holding, inter alia, that the opposite party no.2 is entitled to monetary relief under the said Act to the tune of Rs.50,000/- per mensem towards her maintenance out of the income of the family business run by the petitioner. It was further held that the opposite party no.2 was entitled to reside at the ancestral house of the parties. The Officer-in-Charge of the relevant police station was directed to extend all help so that the residential accommodation of the opposite party no.2 at the shared household is maintained till her share was allotted by a decree of partition by metes and bounds in the pending partition suit between the parties.

The petitioner filed an application before this Court for recalling the said ex-parte order. By an order dated March 24, 2022, a Coordinate Bench of this Court declined to interfere with the said order on the ground that an order of a Coordinate Bench cannot be set aside or recalled by another Coordinate Bench. Accordingly, the said application for recalling being C.R.A.N. No.1 of 2019 was dismissed.

The said Bench, however, noticing the submission made on behalf of the petitioner that fraud had been committed in obtaining the said order, observed that it was for the petitioner to take appropriate steps in accordance with law.

It appears that after the order of March 24, 2022, the petitioner filed an application under Section 340 of the Code of Criminal

Procedure, 1973 before the learned Judicial Magistrate, 4th Court at Alipore following which the investigating agency filed a charge sheet under Sections 420, 467, 468, 471 and 120B of the IPC before the learned Additional Chief Judicial Magistrate, Alipore.

It is the case of the learned Advocate for the petitioner that in view of the aforesaid charge sheet submitted by the investigating agency, the order dated November 18, 2019, should not be implemented. Learned advocate for the petitioner has submitted that challenging the said order dated November 18, 2019, a Special Leave Petition has also been filed before the Hon'ble Supreme Court and the same is pending adjudication.

I am unable to accept the contention of the petitioner. The order dated November 18, 2019 is still in force and therefore the present revisional application being CRR No.1834 of 2022, wherein the petitioner has prayed for a stay of the execution of the said order dated November 18, 2019, cannot be entertained.

Accordingly, the instant revisional application being C.R.R. No. 1834 of 2022 is dismissed.

No order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Kausik Chanda, J.)