

S/L-01 wt 17
03-02-2022
Ct-25
Kole

CRR 1027 of 2009

With

CRAN 1 of 2021

Sri Gouranga Chakraborty

-Vs.-

Smt. Purnima Chakraborty & Anr.

With

CRR 1146 of 2013

Mr. Partha Sarathi Das,

Mr. M. Ritwika,

... for the petitioner.

In Re: CRAN 1 of 2021 in CRR 1027 of 2009

Causes shown being sufficient, the application for restoration being CRAN 1 of 2021 is allowed.

In Re: CRR No. 1027 of 2009 and CRR No. 1146 of 2013

Curiously, the revisional application being CRR No. 1027 of 2009 was filed by the petitioner/husband against an order dated January 29, 2009, even though by the said order, the learned Magistrate rejected the prayer for maintenance filed by the opposite party no.1/wife under Section 125 of the Code of Criminal Procedure, 1973.

The wife/opposite party no.1 also being aggrieved by the said order dated January 29, 2009, preferred a revisional application before the learned Sessions Judge, North 24 Parganas. The said revisional application was allowed by the

learned Sessions Judge by his order dated February 5, 2013. Order of the learned Magistrate dated January 29, 2009, was set aside granting maintenance of Rs.1,500/- per month in favour of the opposite party no.1/wife.

The said order of the learned Sessions Judge dated February 5, 2013, was again challenged by the petitioner by filing the revisional application being CRR 1146 of 2013.

Both the applications being CRR 1027 of 2009 and CRR 1146 of 2013 are taken up together for hearing.

Since the order of the learned Magistrate dated January 29, 2009, as indicated above, had already been set aside by the learned Sessions Judge on February 5, 2013, the revisional application being CRR 1027 of 2009 has become infructuous.

CRR No. 1146 of 2013 wherein the order of the learned Sessions Judge dated February 5, 2013, has been challenged, is, therefore, taken up for hearing.

It has been submitted by the learned advocate representing the petitioner that, the learned Sessions Judge while passing the order dated February 5, 2013, failed to consider that there was no marriage between the parties.

Learned advocate for the petitioner draws attention to the cross-examination of the opposite party no. 1 where the opposite party no.1 expressed her inability to show any photographs in support of her marriage. It has been submitted by the learned advocate for the petitioner that there were no independent witnesses who deposed on behalf of the opposite party no.1, to prove the marriage.

Before the learned Magistrate, the petitioner urged that there was no marriage between the parties and therefore the claim for maintenance could not be entertained. The learned Magistrate rejected such contention but declined to grant maintenance on the ground that the opposite party no.1/wife herself admitted in evidence that she had an independent source of income from stitching clothes.

The learned Sessions Judge in revision held that while exercising revisional jurisdiction over an order passed by the learned Magistrate, the Court would be slow to interfere with the factual findings. The learned Sessions Judge set aside the order of the learned Magistrate on the ground that without ascertaining the exact income of the parties or considering the need of the wife/opposite party no.1 the prayer for maintenance could not have been rejected.

I do not see any reason to interfere with the order of the learned Sessions Judge.

Apart from opposite party no. 1 herself, two other witnesses adduced evidence to prove that the marriage indeed had taken place in between the petitioner and the opposite party no.1. A copy of the application for registration of the marriage was also adduced in evidence.

Needless to say that in a proceeding for granting maintenance under Section 125 of the Code of Criminal Procedure, 1973, strict proof of marriage is not necessary. If the learned Magistrate is, *prima facie*, satisfied with the factum

of marriage, he will be competent to pass an order of maintenance.

The learned revisional Court below granted maintenance of Rs.1,500/- per month to be paid by the petitioner to the opposite party no.1 holding that the said amount of maintenance was minimum for her sustenance.

In my view, the said quantum of maintenance is too paltry to be interfered with by this Court.

The order of maintenance by the revisional Court was passed way back in the year 2013. The opposite party no.1 will be at liberty to take out appropriate application before the learned Magistrate for enhancement/modification of the maintenance amount if she is so advised.

CRR No. 1027 of 2009 and CRR No. 1146 of 2013 are, accordingly, dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Kausik Chanda, J.)