

07.06.2022

Item No.55
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

**C.R.R. 2076 of 2021
with
CRAN 1 of 2021**

**Sri Priyabrata Mishra
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

Mr. Malay Bhattacharya,
Mr. Madan Mohan Roy,
Mr. H. Nayak,
Mr. S. Ghosh ... For the Petitioner.

Mr. Imran Ali,
Ms. Debjani Sahu ... For the State.

Mr. Subrangsu Panda ... For the Opposite Party No.2.

Re: CRAN 1 of 2021
(an application under Section 5 of the Limitation Act)

Learned advocate appearing for the petitioner prays for condonation of delay of 582 days in preferring this revisional application.

The reasons so assigned in the application for condonation of delay are found to be just and sufficient. Accordingly, delay is condoned. The application being CRAN 1 of 2021 is, thus, allowed.

Re: CRR 2076 of 2021

The present revisional application has been preferred challenging the order dated 26.11.2019 passed by learned

Judicial Magistrate, 3rd Court, Contai, Purba Medinipur in connection with Miscellaneous (P) Case No. 03 of 2019.

Mr. Bhattacharya, learned advocate appearing for the husband/petitioner submits that there was a decree of the civil court declaring the marriage to be a nullity under Section 12 of the Hindu Marriage Act and as such, the wife/opposite party no.2 is not entitled to any maintenance.

It is settled principle of law that there is no bar for maintenance even in case of a decree being passed under Section 12 of the Hindu Marriage Act.

Learned advocate for the wife/opposite party no.2 submits that till date, the wife is not getting any maintenance from any forum.

The petitioner intends to participate in the evidence and prays for setting aside the ex parte order of maintenance so passed.

Without going into any reasons which is assigned by the petitioner, I grant an opportunity to the petitioner to participate in the proceedings as provided under Section 126 of the Code of Criminal Procedure. However, such participation in the proceedings can be only after the *ex parte* order is set aside. The wife/opposite party no.2 is suffering since or prior to the year 2017.

Having regard to the quantum of maintenance of Rs.5,000/- per month awarded by the learned Magistrate, I am of the opinion that the husband/petitioner would be able to cross-examine/adduce evidence/participate in the process of evidence provided a sum of Rs.1,50,000/- (rupees one lakh

fifty thousand) is deposited towards the maintenance and the current maintenance being paid during the course of evidence. Such amount should be paid within a period of 60 days from date. Once the amount is paid, the learned Magistrate would allow the application under Section 126 of the Code of Criminal Procedure, in the alternative the learned Magistrate would after 60 days takes steps in accordance with law for execution of the order so passed by way of maintenance.

With the aforesaid observations, the revisional application being CRR 2076 of 2021 is disposed of.

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

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)