

07.06. 2022
item No.61
n.b.
ct. no. 34

CRR 2187 of 2021
Chanchal Kumar Das
Vs.

Smt. Sayani Das(Kundu) & Anr.

Mr. Avik Datta

.....for the Petitioner

Mr. Mukteswar Maity,

Mr. Madhusudan Ray

.....for the opposite party no.1

Mr. Dutta, learned advocate appearing for the petitioner submits that there has been mutual divorce between the petitioner and the private opposite party which was pursuant to the order of maintenance being awarded by the learned Magistrate in Misc. Case No.95A of 2017. An execution case was subsequently filed at the instance of the private opposite party being Misc. Execution Case No.109 of 2021.

It has been submitted on behalf of the private opposite party that about a sum of Rs.1,20,000/- is due towards the maintenance so directed by the Learned Magistrate.

According to the learned advocate for the petitioner that there has been change of circumstances and such change of circumstances were brought to the kind notice of the Court in Misc. Execution Case No.109 of 2021, I am of the opinion that there should have been separate application under Section 127 of the Code of Criminal Procedure at the instance of the present petitioner before the Learned Judicial Magistrate to adjudicate the issue.

In view of the series of events which have taken place, I am of the opinion that the petitioner within two weeks shall deposit a sum of Rs.60,000/- in Misc. Execution Case No.109 of 2021 and within a week thereafter prefer an application under Section 127 of the Code of Criminal Procedure. Once the amount is deposited before the Learned Magistrate, the warrant of arrest so issued in Misc. Execution Case No.109 of 2021 would be stayed till the application under Section 127 of the Code of Criminal Procedure is disposed of.

Needless to state that application under Section 127 of the Code of Criminal Procedure should be disposed of within a period of three months from the date of filing of the application. Additionally, the sum of Rs.10,000/- so directed to be paid, on each and every month, should continue till the Learned Magistrate disposes of the application under Section 127 of the Criminal Procedure Code.

With the aforesaid direction, CRR 2187 of 2021 is disposed of.

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

Interim order, if any, is hereby vacated.

It is reiterated that this Court has not entered into the merits of the contention so advanced by both the parties. The learned Magistrate would arrive at his independent opinion, in respect of the issue raised by the petitioner.

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

(Tirthankar Ghosh, J.)