

CRR 3154 of 2013

Ashish Kedia-Vs- State of West Bengal & Ors.

Re: An application for transfer under Section 407 read with Section 482 of the Code of Criminal Procedure.

None appears on behalf of the petitioner.

The petitioner has preferred the present revisional application for setting aside of order dated 23.8.2013 passed by the learned Judicial Magistrate, 4th Court at Alipore in Maintenance Case No. 295 of 2012.

The brief fact of the case is that the opposite party no. 2, filed an application under Section 125 of the Criminal Procedure Code before the learned Chief Judicial Magistrate at Alipore 24-Parganas(South) being M. Case No. 295 of 2012. In the aforesaid proceedings, the petitioner filed an application under Section 126 of the Criminal Procedure Code challenging the maintainability of the case at Alipore 24-Parganas(South) on the ground that the opposite party no. 2/wife is a permanent resident within the District of Howrah. Upon hearing the learned Judicial Magistrate, 4th Court at Alipore by order dated 28.3.2013 dismissed the aforesaid application of the petitioner under Section 126 of the Criminal Procedure Code.

Being aggrieved by and dissatisfied with the impugned order, the petitioner has preferred the present revisional application.

The petitioner by filing application under Section 126 of

the Criminal Procedure Code has challenged the maintainability of the maintenance proceedings before the learned Judicial Magistrate at Alipore precisely on the ground of lack of jurisdiction.

At this juncture, it will be apposite to reproduce the relevant provisions of Section 126(1) of the Criminal Procedure Code is hereunder:-

“(1) Proceedings under Section 125 may be taken against any person in any district-

(a) where is, or

(b) where he or his wife, resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proceed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases: Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

3) The Court in dealing with applications under Section 125 shall have power to make such order as to costs as may be just”.

On bare reading of the aforesaid provisions it manifests that proceeding under Section 125 of the Criminal Procedure Code may be taken against any person in any district where the husband resides presently or where the husband and the wife lastly resided or where the husband or the wife resides.

The application under Section 125 of the Criminal Procedure Code filed by the opposite party no. 2 shows that at the time of filing of the application, she was residing at 45/1, Chetla Road, Kolkata-27. The provisions of law as well as the circumstances have been taken into consideration by learned Magistrate at the time of disposal of the application. As present place of residence also creates jurisdiction, hence, the application under Section 125 of the Criminal Procedure Code filed before the learned Magistrate at Alipore is maintainable as has been rightly held by the learned Magistrate. Accordingly, the impugned order does not call for interference.

Accordingly, the criminal revisional application is dismissed.

All connected applications stand disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)