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**CRR 367 of 2017**  
**IA NO: CRAN 1 of 2017 (Old No: CRAN 1235 of 2017)**

**Abeda Begum @ Bibi**  
**Vs.**  
**The State of West Bengal & Anr.**

Mr. Prosenjit Mukherjee  
Mr. Arghya Kamal Das,  
Ms. Poulami Dutta ... for the petitioner.

Mr. Binoy Kumar Panda,  
Mr. Pratick Bose ... for the State.

This revisional application has been filed assailing the judgment and order dated 30.11.2016 passed by the Additional Sessions Judge, Birbhum, Rampurhat in connection with Criminal Revision No. 31 of 2015, whereby learned Judge remanded back the matter with a direction upon the learned Additional Chief Judicial Magistrate, Rampurhat, Birbhum to deliver the judgment after settlement of issue of paternity of the child.

Learned advocate appearing on behalf of the petitioner has submitted that the paternity of the child was disputed by the opposite party by filing an application before the learned Additional Chief Judicial Magistrate Rampurhat, Birbhum on 20.03.2014 claiming a DNA test of the child which was considered by the learned Additional Chief Judicial Magistrate and rejected

the said application. Thereafter, learned Additional Chief Judicial Magistrate Rampurhat, Birbhum took up the application under Section 125 of the Criminal Procedure Code and after considering the pleadings of the parties as well as evidence on record return its finding that the petitioner/wife is entitled to maintenance for herself as well as for her child.

Learned Sessions Judge sitting in revision against the judgment and order passed by the learned Additional Chief Judicial Magistrate, Rampurhat, Birbhum observed that paternity of the child was required to be adjudicated as the same was refused by the learned Additional Chief Judicial Magistrate before disposal of the application under Section 125 of the Criminal Procedure Code.

On careful perusal of the judgment impugned, I find that learned Additional Sessions Judge confined his discussion only on the issue of paternity of child but surprisingly no such issue was ever taken by the opposite party/husband even in his show cause petition in the petition in the proceeding under Section 125 of the Criminal Procedure Code.

It is needless to mention here that the order of refusal of the application for DNA test filed on 20.03.2014 was never assailed before any higher forum.

Therefore, in my opinion, learned Additional Sessions Judge in disposing of the criminal revision against the judgment and order passed by the learned

Additional Chief Judicial Magistrate, Rampurhat, Birbhum in Misc. Case No. 299 of 2011 had no authority to discuss the issue of paternity of child and remanding back the issue to the Court of learned Additional Chief Judicial Magistrate, Rampurhat, Birbhum for decision on the particular issue of DNA test.

In the aforesaid view of the matter, the judgment and order passed by the learned Additional Session Judge, Birbhum is not at all sustainable and liable to be set aside.

The judgment and order dated 30.11.2016 stands set aside.

Learned Additional Sessions Judge, Birbhum is directed to rehear the revisional application which was filed being aggrieved and dissatisfied with the judgment and order dated 17.07.2015 passed in Misc. Case No. 299 of 2011 by the learned Additional Chief Judicial Magistrate, Rampurhat, Birbhum within two months from the date of receipt of this order.

Let a copy of this order be communicated to the learned Additional Sessions Judge, Birbhum for compliance.

With the aforesaid observation, the revisional application along with CRAN 1 of 2017 stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual

undertakings.

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

***(Bibhas Ranjan De, J.)***