

11.12.2023
Sl. 51
Court No. 32

CRR 768 of 2017
Sumitra Sardar
Vs.
State of West Bengal and Ors.

1. Nobody appears on behalf of either of the parties on call.

2. This case pertains to year 2017.

3. Even on earlier occasions no one represented the petitioner. No accommodation is sought for as such this instant case is required to be disposed of on merit as the petitioner herein filed this application under Sections 397 and 399 read with Section 482 of the Code of Criminal Procedure challenging the correctness, legality and propriety of an order dated 10.01.2017 passed by learned J.M. 3rd Court, Alipore in connection of case No. A.C. 5677 of 2015 under Section 323/342/344/506/34 of the Indian Penal Code, thereby minor child aged about 7 years handed over to the father/opposite party no. 2.

4. It is the contention of the petitioner that the petitioner is legally married wife of opposite party no. 2. Their marriage was solemnized in accordance with Hindu Rights and Customs on 26/08/2009 and marriage was duly registered. Out of the said wedlock, one male child was born.

5. During conjugal life, she was subjected to cruelty by the husband and in-laws continuously and on 07.08.2015 opposite party no. 2 mercilessly beaten and driven out from her matrimonial home without allowing her to take the minor child.

6. It is further alleged that the minor child was snatched

even she protested. After that, she tried to settle dispute but failed. Ultimately, there was no option but to initiate proceeding under Section 200 Cr.P.C. before the learned Chief Judicial Magistrate at Alipore alleging commission of the offences punishable under Section 323/342/344/506/34 IPC along with papers and documents

7. After hearing, summon was issued upon the opposite parties. They appeared and obtained bail. A date was fixed on 20.12.2016 directing the opposite party no. 2 to appear along with child in an application filed by the petitioner under Section 97 of the Cr.P.C. Accused persons filed written objection against the petition under Section 97 of the Cr.P.C.

8. The said petition was allowed on contest and a search warrant was issued on 20.12.2016, O/C Basanti P.S. is directed to search Child Souvik Sardar with the assistance of the O/C Conning P.S. and produced search warrant after informing both parties at next date 10.01.2017 but the said order was challenged by the opposite party no. 2/husband before the learned District and Sessions Judge, Alipore, South-24 Parganas by filing a criminal motion and after hearing the learned District and Sessions Judge stayed the order dated 20.12.2016 passed in AC No. 5677/2015 subject to condition to produce the minor child before the Ld. Judicial Magistrate, 3rd Court, Alipore on the date fixed. Opposite party No. 2 produced the child before the Learned Court but vide impugned order dated 10.01.2017 handed over the minor child to the custody of opposite party no. 2, father instead of

petitioner.

9. Upon perusal of impugned order dated 10.01.2017, this Court finds though the District and Sessions Judge stayed the order dated 20.12.2016 passed by the Learned Magistrate on condition to produce the minor child before the Learned Magistrate. On the basis of such direction, the father produced the minor child Souvik Sardar before the Ld. Magistrate. The Ld. Magistrate enquired and put some simple questions to the child to ascertain his views and found the child is ready to live with his father.

10. Accordingly, the minor child aged about 7 years was handed over to the custody of his father, who is natural father and guardian.

11. Under the above facts and circumstances, I do not find any illegality or perversity in the order and it is also not as abuse of the process of the law.

12. Accordingly, this Court does not find any cogent reasons to interfere with the impugned order dated 10.01.2017. There is no need to invoke the inherent power granted under Section 482 of the Cr.P.C.

13. Consequently, **CRR 768 of 2017** is, thus, dismissed.

14. Parties shall act on the server copies of this order.

15. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all the necessary formalities.

(Ajay Kumar Gupta, J.)