

11.10.2023
Serial no. 7
[G.S.D]

CRR 1022 of 2023

In the matter of : Swarup Biswas

... .. Petitioner

Mr. Shibaji Kumar Das
Ms. Rupsa Sreemani

... for the petitioner

Mr. Manas Dasgupta
Mr. Gourav Das

... for the Respondent/wife

Mr. Das, Id. advocate appears for the petitioner.

Mr. Gourav Das, Id. advocate appears for the wife.

Mr. Das submits a certified copy of the order dated 24th of August, 2023. Let the same may be kept with the record.

The submission of Mr. Das is that this Court directed the Id. Magistrate not to accept the Affidavit-in-chief of the lady/petitioner (before the Id. Trial Court). The same was a guideline as it was seen in most of the cases that cross-examination was deferred and the lady was unaware regarding what are the contents of the Affidavit-in-chief.

The Id. Magistrate was of the opinion that since the order of the Hon'ble High Court was passed after Affidavit-

in-chief was accepted, as such, no retrospective effect should be given.

I have considered the submissions of Mr. Das and I have also taken into account the observations of the Id. Magistrate.

It would be pertinent to state that there was no mandate not to accept the Affidavit-in-chief. The observations given by the Id. Magistrate was that in series of cases which appeared before this Court wherein examination-in-chief was prepared by the Id. lawyers and the lady on dock deposed otherwise. As a result of which the outcome of the cross-examination resulted in favour of the husband/o.p.

In view of the Id. Magistrate insisting not to accept the Affidavit-in-chief, it would for the Id. Magistrate, as a master of the roaster of his Court, to decide the manner in which he would accept the evidence.

However, the petitioner in the circumstances, may be allowed to cross-examine on the Affidavit-in-chief, which has been submitted before the Id. JM, Kalyani in connection with Misc. Case No. 101 of 2019 dated 24.8.2023, as on 24.8.2023 the Id. Magistrate refused to grant time, closed the evidence and fixed dates for OPW. The next date is fixed on 18.11.2023.

The husband/petitioner(before this Court) would be entitled to cross-examine the prosecution witness. Two dates be granted for the said purpose preferably by 15th of December, 2023. After the cross-examination of the prosecution witness is over, Id. Magistrate would fix dates for OPW and proceed with the trial of the case.

So far as the part of the order dated 24.8.2023 is concerned, wherein cross-examination of P.W.1 has been closed and date has been fixed on 18.11.2023 for evidence of OPW, is set aside.

With the aforesaid observations, CRR 1022 of 2023 is partly allowed.

Pending application, if any, is also disposed of.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court at Calcutta.

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

(Tirthankar Ghosh, J.)