

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1055 of 2019

Sk. Sirajuddin

Vs

The State of West Bengal & Anr.

For the Petitioner : Ms. Busera Khatun.

For the State : Mr. Joydeep Roy,
Ms. Sujata Das.

For the O.P. : Mr. Apurba Kumar Dutta.

Heard on : 29.11.2022

Judgment on : 02.01.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred against an order dated 21.12.2018 passed by the Court of the learned Judicial Magistrate, 6th Court, Burdwan in connection with Misc. Case No. 415 of 2016 (Firdoushi Begam vs. Sk. Sirajuddin) rejecting the petitioner/husband's petition challenging the maintainability of the proceedings under Section 125 Cr.P.C. on the ground that the opposite party no. 2/wife being a resident of Kolkata cannot file an application out side the jurisdiction of Kolkata. The application herein has been filed before the Burdwan Court.

The petitioner's case is that he was married to the opposite party no. 2 herein. The said marriage took place on 03.12.2010 according to Muslim rites and customs. The said marriage took place at Village-Uttar Kumrakhali, P.S.-Sonarpur, District-Sourth 24 Parganas and duly registered in the office of the Muslim Marriage Registrar (MMR) of Village-Uttar Kumrakhali, P.S. – Sonarpur, District – Sourth 24 Parganas. In column no. 4 of the said marriage certificate, duly issued by the said marriage registrar, address of the opposite party no. 2, was recorded as Village-Badamtala, Brahmapur, P.O. – Brahmapur, P.S. Regent Park (at present Bansdroni), Kolkata. That in column no. 4 of the said marriage certificate it has been noted that the status of the bride as 'unmarried', though she was a divorcee and cannot be treated

as unmarried. It was found that the said earlier marriage of the opposite party no. 2, herein, was dissolved after realizing an amount of Rs. 1,76,000/- (Rupees One Lack and Seventy Six Thousand) by entering into an agreement in writing between the opposite party no. 2, herein, and her said former husband.

That after the present marriage the petitioner led his conjugal life with the opposite party no. 2, herein, at Hyderabad in the State of Andhra Pradesh where the petitioner was engaged as a casual worker. After the marriage the opposite party no. 2, herein, used to pick up quarrel on trifle matters, expressing her dissatisfaction, as the petitioner, herein, is not upto her expectation. The petitioner always tried to lead his conjugal life peacefully but his entire attempt failed as the parent of the opposite party no. 2, herein, used to instigate the opposite party no. 2 against the petitioner. On 06.09.2013 and 16.08.2014 in absence of the petitioner, the opposite party no. 2, her father and brother with the help of some people of the locality at Hyderabad took away all the valuable articles from the house of the petitioner for which one written complaint was filed with the local police station at Hyderabad. The petitioner states that inspite of all these facts and circumstances the petitioner wants to live peacefully with his wife, and for that purpose he has filed one application for restitution of conjugal rights before the City Civil Court at Hyderabad in the State of Andhra Pradesh. That before filling the said application for restitution of

conjugal rights the petitioner issued several notice, himself and through his learned Advocate, Muslim Marriage Registrar and Kazi requesting her to come back to live their conjugal life but on each and every occasion she refused to come back without any reasons.

That all on a sudden the petitioner received an application under Section 125 of the Code of Criminal Procedure being Misc. Case No. 415 of 2016 filed by the opposite party no. 2, against the petitioner praying for maintenance before the Court of the learned Judicial Magistrate, 6th Court **at Burdwan**. The petitioner contested the said application raising objection regarding maintainability of the said application. After contested hearing the learned Magistrate by an order dated 21.12.2018 was pleased to reject the said application filed by the petitioner on the ground of maintainability.

The petitioner states that the opposite party no. 2, herein, filed an application under Section 498A of the Code of Criminal Procedure against the petitioner being Bansdroni Police Station Case No. 104 of 2013 and the petitioner filed one application against the opposite party no. 2, alleging that in the death of the child of the petitioner the role of the opposite party no. 2 should be investigated and the police registered a case being Burdwan Police Station Case No. 14 of 2014 and after investigation the police submitted a report that the place of the residence of the opposite party no.2 is at Bansdroni, Kolkata. In the medical certificate in respect of the treatment of the opposite party no. 2

also address was given as Bansdroni, Kolkata and an agreement which was entered into by the father of the opposite party no. 2 where he himself stated that he is the resident of Bansdroni, Kolkata.

That in connection with Bansdroni Police Station Case No. 191 of 2013 the father of the opposite party no. 2 contested the said case by filling four separate petitions where he disclosed his residence at Bansdroni, Kolkata and one at Hooghly. During pendency of the proceeding the opposite party no. 2, sent a purported notice of talaqnama dated 04.11.2018 through one Muslim Marriage Registrar of Sonarpur, South 24 Parganas. That subsequent to the notice dated 04.11.2018 another talaqnama notice dated 27.08.2014 was sent to the petitioner by the opposite party no. 2 through Muslim Marriage Registrar office at Tiljala, Kolkata-700017 in which the address of the opposite party no. 2 was shown as Badamtala Brahmapur, Bansdroni, Kolkata. The opposite party no. 2, herein, is a working lady initially posted at Sarberia An-Noor Mission at Sarberia, North-24-Parganas and at present is working at Siddique E-Akbar Mission at Village-Kantadighi, District- Bankura. But she filed the application for maintenance against the petitioner with an ulterior motive and with a view to harass the petitioner so that she can put pressure on him at Burdwan, so that the different complaints and cases filed by the petitioner in Kolkata may be withdrawn.

Learned Counsel for the petitioner Ms. Busera Khatun has submitted that without considering the same the learned Judge mechanically passed the order thereby rejecting the maintainability petition filed by the petitioner which is illegal. That the learned Judge rejected the maintainability petition filed by the petitioner not in terms of the records and not in accordance with the provision of law, and further submitted that the order of the learned Magistrate is bad in law and liable to be set aside and if the instant proceeding is allowed to be continued any further it will be abuse of process of law and as such it is prayed that **the order under revision should be quashed and set aside and the case before the learned Judicial Magistrate, 6th Court, Burdwan be transferred to any other District.**

Mr. Apurba Kumar Dutta learned Counsel for the opposite party has submitted that the voter's ID card filed by the opposite party before the learned Magistrate clearly shows that she is originally the resident of Burdwan and as such she has filed the said application under Section 125 of the Cr.P.C. in Burdwan as she is presently residing there.

Further contention of the petitioner/husband is that though the wife/opposite party has filed a criminal case under Section 498A of the IPC before Bansdroni P.S. at Kolkata, the application under Section 125 of the Cr.P.C. has been filed before the Burdwan Court to harass the petitioner. The counter to the said submission of the petitioner is that

at the time of lodging the case for mental and physical cruelty upon the opposite party/wife with Bansdroni P.S., Kolkata, she was residing in Kolkata. But subsequently she has gone back to her ancestral home in Burdwan and it is convenient for her to pursue her case under Section 125 of the Cr.P.C. before the Burdwan Court which is permissible under the law. From the pleading of the petitioner it can be seen that the petitioner has made a prayer before this Court to transfer the application under Section 125 of the Cr.P.C. to “any place before any Court of law” and has further stated on record that the case may be transferred to the District of Bankura, or North 24 Parganas or South 24 Parganas anywhere **except the District of Burdwan** which is only to harass the opposite party (wife). The order of the Magistrate under revision is in accordance with law and the revision is liable to be dismissed.

Heard Counsels both the parties and the Counsel for the State.
Perused the materials on record. Considered.

The Supreme Court in ***Vijay Kumar Prasad vs. State of Bihar & Ors., (Appeal (crl.) 431 of 2004) on 07.04.2004***, considering the **question of law involved before the Court relating to jurisdiction in terms of Section 126 of the Code of Criminal Procedure as to where an application can be filed held:-**

“.....Section 126 of the Code is in essence a repetition of Section 488 (6) to (8) of the Code of Criminal Procedure, 1898 (in short the 'old

Code'). Section 488 of the old Code corresponding to Section 126 so far as relevant read as follows:-

"Proceedings under this section may be taken against any person in any district where he resides or is, or where he last resided with his wife, or, as the case may be, the mother of the illegitimate child."

Section 125 deals with various categories of persons who can claim maintenance. Sections 125 and 126 of the Code appear in Chapter IX which carries the heading "Order for maintenance of wives, children and parents".

Section 125(1)(d) relates to the father or the mother, unable to maintain himself or herself.

Section 126(1) which is relevant for the purpose of this case reads as follows:

"Proceedings under section 125 may be taken against any person in any district -

(a) where he 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."

The position of law relating to proper jurisdiction was highlighted by this Court in *Mst. Jagir Kaur and Another v. Jaswant Singh* (AIR 1963 SC 1521) as follows:

"The words of the sub-section are, "resides", "is" and "where he last resided with his wife". Under the Code of 1882 the Magistrate of the District where the husband or father, as the case may be, resided only had jurisdiction. Now the jurisdiction is wider. It gives three alternative

forums. This in our view, has been designedly done by the Legislature to enable a discarded wife or a helpless child to get the much needed and urgent relief in one or other of the three forums convenient to them. The proceedings under this section are in the nature of civil proceedings, the remedy is a summary one and the person seeking that remedy, as we have pointed out, is ordinarily a helpless person. So the words should be liberally construed without doing any violence to the language."

As noted in the above said judgment the crucial expression for the purpose of jurisdiction in respect of a petition which is filed by a father is not where "parties reside" and "is".

It is to be noted that Clauses (b) & (c) of sub section (1) of Section 126 relate to the wife and the children under Section 125 of the Code. The benefit given to the wife and the children to initiate proceeding at the place where they reside is not given to the parents. A bare reading of the Section makes it clear that the parents cannot be placed on the same pedestal as that of the wife or the children for the purpose of Section 126 of the Code.

The basic distinction between Section 488 of the old Code and Section 126 of the Code is that Section 126 has essentially enlarged the venue of proceedings for maintenance so as to move the place where the wife may be residing at the date of application. The change was thought necessary because of certain observations by the Law Commission, taking note of the fact that often deserted wives are compelled to live with their relatives far away from the place where the husband and wife last resided together. As noted by this Court in several cases, proceedings under Section 125 of the Code are of civil nature.

Unlike clauses (b) and (c) of Section 126(1) an application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives.

As has been noted in Jagir Kaur's case (supra) the expression "is" cannot be given the same meaning as the word "reside" or the expression "the last resided". It connotes in the context the presence or the existence of the persons in the district where the proceedings are taken. It is wider in its concept than the word "resides" and what matters is his physical presence at the particular point of time. No finding has been recorded by the High Court on this particular aspect which needs a factual adjudication. The stand of the appellant is that he practises in Patna and was not present in Siman physically when the application was filed for maintenance. Respondent No. 2- father has indicated about the son practising in the Patna High Court. Obviously if his son was practising at the time of presentation of petition in the Patna High Court, he could not have been physically present at Siwan, whatever extended meaning may be given to the expression "is". In view of this the position is clear that the Court at Siman has no jurisdiction to deal with the petition. One thing may be noted, which can clear lot of cobwebs of doubt. The expression "is" cannot be construed to be a fleeting presence, though it may not necessarily for considerable length of time as the expression "resides" may require. Although the expression normally refers to the present, often it has a future meaning. It may also have a past signification as in the sense of "has been". (See F.S. Gandhi (Dead) by LRs. V. Commissioner of Wealth Tax, Allahabad (AIR 1991 SC 1866). The true intention has to be contextually culled out....."

From the said decision of the Supreme Court it is clear that clause (b) and (c) of Sub section 1 of Section 126 of the Cr.P.C. relate to wife and the children under Section 125 of the Cr.P.C. **The benefit given to the wife and the children to initiate proceedings at the place where they reside** is not given to the parents. It has been further made clear by **the Supreme Court that Section 126 of the Cr.P.C. has essentially enlarged the venue of the proceedings for maintenance so as to move the place where the wife may be residing on the date of application** that said change was brought in taking note of the fact that often deserted wife are compelled to live with their relatives far away from the place where the husband and wife last resided together.

In the present case the opposite party/wife has chosen to file her application before the Burdwan Court and in support has even filed her voter card, which prima facie proves that she is originally the resident of Burdwan and is now residing there and it is convenient for her to pursue the case at a place where she presently resides.

The intention of the petitioner/husband as it appears from his prayer that the case may be **transferred to any Court of law accept Burdwan** goes to prima facie prove that his only intention is to inconvenience or may be harass the petitioner/wife.

Such motive and purpose of the husband should be discouraged by the Court and the learned Magistrate rightly rejected the application of the petitioner/husband for transfer of the case and this Court finds no reason to interfere with the said order under revision and accordingly the order dated 21.12.2018 passed by the Court of the learned Judicial Magistrate, 6th Court, Burdwan in connection with Misc. Case No. 415 of 2016 is **hereby affirmed**.

CRR No. 1055 of 2019 is thus dismissed.

All connected Application stand disposed of.

Interim order if any stands vacated.

There will be no order as to costs.

A copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

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

(Shampa Dutt (Paul), J.)

