

17-04-2023
Subha
Item no. 40
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
CRR 1204 of 2021

Sri Dipankar Ghosal
-versus-
The State of West Bengal & Anr.

Mr. Pawan Kumar Gupta
Ms. Sofia Nesar
Mr. Santanu Sett
Mr. Abhijit Bose
.....for the petitioner.

Mr. Md. Anwar Hossain
Ms. Manisha Sharma
...for the State.

Report submitted by Inspector-in-Charge, Shibpur PS, HPC through the learned advocate appearing on behalf of the State be kept with the record.

Mr. Gupta, learned advocate appears on behalf of the petitioner.

Learned advocate for the petitioner is aggrieved by the factum of the proceedings being continued before the learned Judicial Magistrate, 3rd Court, Howrah. It was the specific contention of the petitioner that the earlier case being Misc. Case No. 257 of 2010 has ended in a finding of the learned Additional Sessions Judge, 1st Court, Howrah in Criminal Revision No. 44/2014, wherein the learned court was pleased to allow a sum of Rs.2000/- per month to be paid to the minor son by the present petitioner. However, having regard to the circumstances then prevailing particularly the learned Magistrate as well as the learned revisional court appreciated that the wife had sufficient knowledge and education and she suppressed her qualification and her ability to maintain herself. According to the

revisional court by suppressing her ability she intended to take shelter under the law as if she is going to live a life of vagrancy, immorality and crime for subsistence of her and her child.

The said order was challenged before the high court in CRR 2259 of 2015. The said revisional application was initially admitted by an order dated 22.07.2015, but subsequently dismissed for default for non-appearance of the learned lawyer on 25.08.2015.

Learned advocate submits that in a proceeding under Section 24 of the Hindu Marriage Act in CO 689 of 2016, the wife was awarded a sum of Rs.3,000/- per month from January, 2016. After the dismissal of the proceeding under Section 125 of the Code of Criminal Procedure, the wife again filed an application under Section 125 Cr.P.C before the learned Judicial Magistrate, 3rd Court, Howrah. The present petitioner filed an application challenging the maintainability/continuance of the said proceeding under Section 125 of the Code of Criminal Procedure. The learned Magistrate on an appreciation of the materials so appearing was pleased to dismiss the application for non-maintainability filed at the instance of the present petitioner.

I have considered the order dated 23.02.2021 passed by the learned Judicial Magistrate, 3rd Court, Howrah in Misc. Case No. 385 of 2019 and on an appreciation of the same, I find that there is no illegality in the said order. The petitioner insists that there may be fresh evidences and the earlier finding of the learned trial court which was affirmed by the learned revisional/sessions court would automatically be diluted.

In a proceeding under Section 125 of the Code of Criminal

Procedure if there are change of circumstances, the wife is entitled to file an application having regard to the background under which the said proceedings were incorporated in the Code of Criminal Procedure.

Having considered the plight of the present petitioner, I direct that in case the learned trial court comes to a finding it would take into account prior to pronouncing any opinion regarding the grounds on which the earlier court was of the opinion that the wife is not entitled to any maintenance.

With the aforesaid observations, the present revisional application being CRR 1204 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]