

11.12.2023

Sl.No. 46

Ct. 32

Amalranjan

CRR 2257 of 2016

Supriya Barua
Vs.
Moumita Barua (Phulan)

Nobody appears on behalf of either of the parties on call. Even on earlier occasion no one represented the petitioner, nor any accommodation sought for.

This revisional application filed in the year 2016 as such the instant case is required to be disposed of on merit.

The petitioner filed this application under Article 227 of the Constitution of India challenging the notice issued under Section 125(3) of the Criminal Procedure Code by the learned 2nd Judicial Magistrate, Alipore in M. Execution case no. 37 of 2016 arising out of A. Misc Case No. 159/2015.

The opposite party/wife filed an application for maintenance allowance under section 125 of the Cr.P.C before the learned 2nd Judicial Magistrate, Alipore being A. Misc. Case no. 159/2015 due to the matrimonial dispute. The opposite party/wife is staying in her parental house and she has no income to maintain herself despite of the fact that the petitioner did not maintain his wife/opposite party.

In the meantime, the petitioner/husband filed a petition for dissolution of marriage before the learned District Judge at Barasat, North 24 Parganas being Matrimonial Suit 544 of 2013 since the wife/opposite party did not return to her matrimonial home.

In the said divorce proceeding, the opposite party/wife also filed an application under section 24 of the Cr.P.C.

Accordingly, the contention of the petitioner is that the application under section 125(3) Cr.P.C is not maintainable.

Considering the case of the petitioner as well as the record, this court finds that the Misc. Execution case was started against the present petitioner/husband, when the petitioner failed to pay the maintenance amount awarded by the learned Magistrate. Total dues was Rs. 20,000/- for a period from November, 2015 to March, 2016 and those amount was accumulated for payment.

Accordingly, the opposite party/wife initiated M. Execution case and in the said execution case, the learned Magistrate issued a notice under section 125(3) of the Cr.P.C with a direction to appear on the date and time as mentioned in the said notice before the learned court below for payment of arrear maintenance. It is fact that the divorce suit is pending, in the said divorce suit the opposite party/wife also filed an application for maintenance under section 24 of the Hindu Marriage Act. It does not preclude the opposite party/wife from the proceedings the case filed under section 125 of the Cr.P.C. In the said proceeding Rs. 20,000/- dues was accumulated and for that M. Execution was initiated by the opposite party/wife. Accordingly, a notice was issued against the present petitioner/husband.

This court does not find any illegality or perversity in issuing notice under section 125 (3) Cr.P.C in M. Execution case 37/2016.

Accordingly, the instant case is devoid of merit.

The instant revisional application being **CRR 2257 of 2016** is dismissed without any order as to costs.

Interim order, if any, stands vacated.

Let the order be communicated to the Ld. Court below for information.

Liberty is granted to all parties to act in terms of the copy of this order downloaded from the official website of this court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties taking all legal formalities.

(Ajay Kumar Gupta, J.)