

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

Present: - Hon'ble Mr. Justice Subhendu Samanta.

CRR 3520 of 2018

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IA No. CRAN 1 of 2020

Sumita Acharya

Vs.

The State of West Bengal & Ors.

With

CRR 3571 of 2018

+

IA No. CRAN 1 of 2022

Sanjay Acharya

Vs.

State of West Bengal & Anr.

For the petitioner
(in CRR 3520 of 2018)

: Mr. Sabir Ahmed,
Mr. Gouranga Kumar Das,
Mr. Abdur Rakib,
Ms. Suman Biswas.
Ms. Swati Mondal,

For the respondent
(in CRR 3571 of 2018)

: Mr. Mr. Sabir Ahmed,
Mr. Gouranga Kumar Das,
Mr. Abdur Rakib,
Ms. Suman Biswas.
Ms. Swati Mondal,

For the Petitioner
(In CRR 3571 of 2018)

: Ms. Baishali Ghosal,
Mr. Atanu Basu

For the respondent
(In CRR 3520 of 2018)

: Ms. Baishali Ghosal,
Mr. Atanu Basu

Judgment on

: 05 -04-2023

Subhendu Samanta, J.

CRR 3520 of 2018 has been preferred against the order dated

September 15, 2018 passed by the learned First Appellate Court in Criminal Appeal No. 243 of 2017 affirming the order dated September 5, 2017 passed by learned Judicial Magistrate, 3rd Court, Alipore in Case No. C-9584 of 2013 under Section 12 of PWDV Act, 2005.

This criminal revisional application is disposed of by virtue of order of this Court dated February 27, 2020. One application being CRAN 1 of 2020 submitted by the opposite party for restoration or recalling of the order dated February 27, 2020.

CRR 3571 of 2018 has been preferred against the judgment dated September 15, 2018 passed by the First Appellant Court in criminal appeal No.202 of 2017 aggrieved by the judgment dated September 5, 2017 passed by the learned Judicial Magistrate, 3rd Court, Alipore in connection with complaint case No. C-9584 of 2013 instituted under Section 12 of PWDV Act, 2005.

CRR 3520 of 2018 was preferred by the wife and CRR 3571 of 2018 was preferred by the husband.

As both the criminal revisional application is based on the same order of learned Judicial Magistrate passed in same proceeding, so it is prudent to disposed of both criminal revisional application and connected CRAN application in the single judgment.

In Re. CRAN 1 of 2022

This is an application for restoration or recalling of the order passed by this Court on 27.2.2020. It is the submission of the learned advocate for the opposite party that due to some mis-communication, learned advocate could

not appear in this matter. It is the specific averment of the learned advocate for the opposite party(husband) that the notice was served upon the opposite party but learned advocate could not reach the court on due time, thus, an ex parte order was passed. He further argued that there are several merits to entertain the instant criminal revisional application. The learned First Appellate Court never put any light over the merits of the claim of the present opposite party. Thus, the order passed by this Court ex parte need be set aside and the present opposite party may award an opportunity of being heard.

CRAN 1 of 2022 was contested by the present petitioner of this revision by filing affidavit-in-opposition. It is the submission of the learned advocate for the petitioner that the prayer under CRAN 1 of 2020 is barred under Section 362 of the Code of Criminal Procedure. Only inadvertent error and arithmetical error can be corrected otherwise if the opposite party is aggrieved by the order by this Court, he must have to prefer an appeal before the appropriate forum.

It is the further contention of the learned advocate for the petitioner that adequate opportunity was given the opposite party to appear. It would be revealed from the orders altogether that notice was specifically served upon the opposite party on several occasions. He further argued that the instant CRAN application was filed after ten months from date of passing of this order. It is dilatory tactics adopted by the husband who did not want to comply with the order of this Court. So, he prayed for rejection of the CRAN application.

Heard the learned advocate perused the CRAN application, affidavit-in-opposition and affidavit-in-reply filed by the husband.

It is true that the judgment of a Court cannot be altered except to correct a clerical or arithmetical error. The Code of Criminal Procedure is exhaustive and it has specifically mentioned the forum whether any order can be challenged. In perusing the impugned order in question dated February 27, 2020, it appears that this Court observed that affidavit of service was filed before this Court on the earlier several occasions. On perusing the earlier orders and perusing the Court records it appears that affidavit of service filed on the behalf of the petitioner was taken on record on several occasions and on all occasions the private opposite party i.e. the present petitioner of CRAN 1 of 2020 did not turn up. There is no clerical error or arithmetical error revealed in the impugned order. Moreover, the opposite party i.e. husband never raised of such error. It is only the intention of the husband to ventilate its claim before this Court.

Though, the impugned order dated 27.2.2020 was passed in ex parte but it was considered on merit. It further observed that in passing the order dated 27.2.2020, this Court actually considered the merits of the case of the husband also. Accordingly, the claim of the opposite party/husband was already taken into account without his presence. Thus, I find no scope to entertain the prayer of the husband at this stage.

Accordingly, CRAN 1 of 2020 is dismissed and disposed of.

In re. CRR 3571 of 2018

Learned advocate for the husband submitted before this Court that the

First Appellate Court has passed the impugned order, which is illegal and irregular in the eye of law. He further pointed out that learned First Appellant Court has mis-read and mis-construed the provisions of law and passed an erroneous order affirming the judgment of the learned Magistrate. He again argued that the claim of the husband/petitioner regarding the fact that no marriage was solemnised between the petitioner and the opposite party, was not considered. He again argued that the learned Appellate Court is of the opinion that some documents regarding proof of marriage were filed by the petitioner of PWDV Act which is vague and fictitious. It is the final argument of the learned advocate for the petitioner that without ascertaining the fact regarding the proof valid marriage between the parties, the order passed by the learned Magistrate in PWDV Act is erroneous. On that score, the order of the learned First Appellate Court affirming the order of the Magistrate is liable to be set aside.

Learned advocate for the opposite party submits that the appeal was preferred before the First Appellant Court against the order passed by the jurisdictional Magistrate in PWDV Act in connection with C-9584 of 2013. The said order of the Magistrate was affirmed and modified by the order of this Court in CRR 3520 of 2018. Thus, at this juncture the order is still subsisting; by virtue of filing this criminal revisional application the order passed by this Hon'ble Court cannot be altered or passed otherwise.

It is the further argument of the learned advocate for the opposite party that learned Magistrate has committed no error in passing the order in favour of the opposite party as because the factum of marriage is not the

deciding factor in a proceeding under PWDV Act, only domestic relationship has to be proved. In this case, the report of the Protection Officer proved the relationship of the present petitioner with the opposite party and on the basis of which the Magistrate passed the order. There is not illegality in passing the impugned order passed by the Magistrate as well as affirmed by the learned Appellate Court. So, he prayed for rejection of the criminal revisional application.

Heard the learned advocate perused the petition for revision along the connected documents also perused the connected affidavits and counter affidavits of the parties. It is true; this revisional application is also arising out of order of First Appellate Court, which affirmed the order of the Judicial Magistrate passed on September 5, 2017 in connection with case no. C-9584 of 2013. This Court has passed the detailed order modifying the same order of the Magistrate. Thus, there is no scope for this Court to act otherwise to that of the order passed by this Court on the earlier occasion in CRR 3520 of 2018.

In a case of PWDV Act, 2005 the aggrieved party on any proof the domestic relationship with the other persons (not specifically husband) may pray necessary relief before the jurisdictional Magistrate. The report of protection officer is the essential ingredients to pass an order of PWDV Act. The petitioner intends to challenge in the proceeding of a fact that he never married the opposite party. For declaration of his marital status there are separate forum, the petitioner may prefer such forum to ventilate his claim for proper redress; but in a case under PWDV Act, it is not imperative for the

Magistrate to enter into the merit of marital status of the parties.

Considering the same, I find there no merit in the submissions of the learned advocate for the petitioner.

Accordingly, the instant criminal revisional application has got no merit. The matter of challenge in this revisional application has already been decided by this Court in CRR 3520 of 2018. Thus, CRR 3571 of 2018 is dismissed.

Connected pending CRAN applications, if any, are consequently disposed of.

Any order of stay of execution proceeding passed by this Court during the pendency of the instant criminal application is hereby also vacated.

The petitioner(in CRR 3571 of 2018) is directed to comply with the order of this Court passed in CRR 3520 of 2018 on February 27, 2020 in its true letter and spirit; failing which the necessary legal consequences shall ensue and petitioner in CRR 3520 of 2018 is at liberty to put the order in execution.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Subhendu Samanta, J.)

