

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

CRR 3767 of 2017

Pranab Banerjee
Vs.
State of West Bengal & Ors.

Mr. Sandipan Ganguly, Sr. Advocate
Mr. Arkadeb Bhattacharya
Ms. Manaswita Mukherjee
... For the petitioner

Mr. Jayanta Narayan Chatterjee
Ms. Moumita Pandit
Mr. Supreem Naskar
Ms. Jayashree Patra
Ms. Ritushree Banerjee
... For the opposite party nos.2 & 3

1. This revisional application has been filed assailing the orders dated 13th February, 2014 and 8th August, 2017 passed in MAT Suit No.03 of 2007 by the learned Judge, 12th Bench, City Civil Court, Calcutta with an application under Section 126(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “CrPC”).

2. Heard Mr. Sandipan Ganguly, learned Senior Advocate, on behalf of the petitioner and Mr. Jayanta Narayan Chatterjee, learned advocate, on behalf of the opposite party nos.2 and 3.

3. Mr. Ganguly on behalf of the petitioner has not pressed the prayer in this revisional application in respect of the order impugned dated 13th February, 2014 passed by the learned Judge, 12th Bench, City Civil Court, Calcutta.

4. Now, I take up the order impugned dated 8th August, 2017.

5. The brief fact of this case is that both the parties to this revisional application were married and out of such wedlock, one female child was born. Thereafter, the opposite party no.2/wife deserted the petitioner/husband. The opposite party no.2/wife filed an application under Section 125 of the CrPC praying for maintenance in the learned Metropolitan Magistrate, Patiala House Courts, New Delhi on 2nd July, 2002. Learned Metropolitan Magistrate disposed of the said application ex parte directing order of maintenance at the rate of Rs.10,000/- per month to both wife and child at the rate of Rs.5,000/- each. Thereafter, petitioner/husband filed an application under Section 126(2) of the CrPC before the learned Metropolitan Magistrate, Patiala House Courts, New Delhi. In the meantime, on an application for transfer of the case, the Hon'ble Apex Court passed an order in Transfer Petition (Civil) No.116 of 2006 on 13th November, 2006, directing transfer of the case to the Judge, City Civil Court, Calcutta. The learned Judge, 12th Bench, City Civil Court, Calcutta was assigned to hear the matter. Thereafter, on an application filed by the petitioner/husband, the Hon'ble Apex Court passed an order in Special Leave to Appeal (Crl) CRLMP No(s). 21514 of 2013 on 11th November, 2013 directing deposit of the entire arrears of maintenance before the trial court within two months' time and also directed the learned Judge, City Civil Court, Calcutta to dispose of the application under Section 126(2) of the CrPC according to law.

6. Mr. Ganguly, learned senior advocate, on behalf of the petitioner has submitted that the learned Judge, 12th Bench, City Civil Court, Calcutta did not comply with the direction of the Hon'ble Apex Court for disposal of the application under Section 126(2) of the CrPC according to law by not taking of the issue of service of notice within the meaning of Section 126(2) of the CrPC.

7. Per contra, Mr. Chatterjee, learned advocate, on behalf of the opposite party nos.2 and 3 has submitted that the issue of notice has already been decided by the learned Metropolitan Magistrate, Patiala House Courts, New Delhi and he has referred to the order passed by the learned Magistrate.

8. I am not agreeable with Mr. Chatterjee as the Hon'ble Apex Court has already passed an order after transferring the case to the City Civil Court, Calcutta for disposal of the application under Section 126(2) of the CrPC according to law.

9. On careful scrutiny of the order impugned dated 8th August, 2017, I find that the learned Judge disposed of the application under Section 126(2) of the CrPC but without going into the issue of wilful avoidance of service of notice. He only disposed of the case on merit within the meaning of Section 125 of the CrPC which has already been disposed of by the learned Metropolitan Magistrate, Patiala House Courts, New Delhi. Actually, the learned Judge, 12th Bench, City Civil Court, Calcutta focused the issue on the ground for maintenance under Section 125 of the CrPC and not on the issue of service of notice under Section 126(2) of the CrPC.

10. In the aforesaid view of the matter, I am of the opinion that the order impugned dated 8th August, 2017 is not at all sustainable in law and liable to be set aside.

11. Regard being had to the above, the impugned order dated 8th August, 2017 stands set aside.

12. The revisional application, being CRR 3767 of 2017, stands allowed.

13. The learned Judge, 12th Bench, City Civil Court, Calcutta, is directed to dispose of the application under Section 126(2) CrPC in terms of the direction of the Hon'ble Apex Court dated 11th November, 2013 passed in connection with Special Leave to Appeal (Crl) CRLMP No(s).21514 of 2013 within two weeks from the date of communication of this order.

14. Both the parties are at liberty to communicate server copy of this order to the learned Judge, 12th Bench, City Civil Court, Calcutta, forthwith.

15. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

16. Criminal Section is directed to supply certified copy of this order, if applied for, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)