

Item No.114
Ct.No.34
dc.

**C.R.R. 218 of 2023
with
CRAN 2 of 2023
with
CRAN 3 of 2023**

Mr. Debashis Roy,
Mr. Kusal Kumar Mukherjee,
Mr. Diptangshu Basu ... For the Petitioner.

Learned advocate appearing for the petitioner submits that the order dated 23.12.2022 passed by learned Judicial Magistrate, 10th Court, Alipore in ACM Case No. 212 of 2022 was passed without any foundational basis and without appreciating the previous records. According to the learned advocate, earlier there were applications filed by the parties under Section 13B of the Hindu Marriage Act and also under Section 13(1A) of the Hindu Marriage Act at the instance of the present petitioner. It has been vehemently contended by drawing attention of the Court to the affidavit filed by the wife/opposite party that a sum of Rs.7,00,000/- was paid at the time of the application for mutual divorce being filed. However, after accepting the money, according to the petitioner, the wife did not participate in the proceedings and as such, the said case for mutual divorce was dismissed.

Learned advocate appearing for the opposite party
opposed the contention of receipt of any sum of

Rs.7,00,000/-. According to the learned advocate, the wife signed the document. However, the same was at the dictate of the husband/petitioner and without applying any mind and actually no transfer of any amount or receipt of any amount has taken place.

Be that as it may, an application was filed by the husband challenging the maintainability of the proceedings under Section 125 of the Code of Criminal Procedure before the learned Judicial Magistrate. This Court repeatedly asked the learned advocate appearing for the wife/opposite party as to whether any written objection was filed in respect of the petition challenging the maintainability particularly with regard to the contents made therein regarding the payment so made.

Learned advocate for the opposite party submitted that no written objection was filed at the instance of the wife to rebut the contentions. Learned advocate for the wife/opposite party intends to use a written objection enclosing all the versions which have taken place in different suits and proceedings by way of filing a written objection thereby denying receipt of any money from the husband/petitioner.

In view of the learned Magistrate having acted only on the petition filed at the instance of the husband/petitioner although the final order was in favour of the wife, I am of the view that the wife must be granted an opportunity to address the issues in the application for maintainability so filed. The wife/opposite party would file such written objection before the learned Judicial Magistrate, 10th Court, Alipore within a

period of six weeks from date; reply thereto, if any, be filed by the husband/petitioner within four weeks thereafter.

The learned Judicial Magistrate, 10th Court, Alipore will afresh decide the issue relating to maintainability particularly with regard to the factum of whether any permanent alimony at all was granted at any point of time before further proceeding with the trial of ACM Case No. 212 of 2022. Accordingly, the order dated 23.12.2022 seeking dismissal of the case is hereby set aside.

Learned Magistrate, as directed aforesaid, would decide afresh after the written objection and the reply are filed by the respective parties within the time line directed above.

With the aforesaid observations, the revisional application being CRR 218 of 2023 is disposed of.

Pending connected applications are consequently disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)