

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**CRR 326 of 2024
with
CRR 2554 of 2019
Kailash Prasad Yadav
Vs.
The State of West Bengal & Anr.**

For the Petitioner : Mr. Bijay Adhikary
Ms. Sushmita Adhikari
Mr. Supriyo Ghosh

For the Opposite Party no.2 : Mr. Kasiswar Ghosal
Mr. Kartik Kumar Roy

Heard On : 13.09.2024

Judgment on : 19.09.2024

Ajoy Kumar Mukherjee, J.

1. The present application being CRR no. 2554 of 2019 has been preferred challenging the order dated 5th April 2019 passed by learned Judicial Magistrate, Bongaon in Misc. Case No. 161 of 2017, by which the court below has directed the petitioner to pay a sum of Rs. 4,000/- per month towards interim maintenance allowance to the opposite party no.2 herein. The other application being CRR 326 of 2024 has been preferred

with a prayer for setting aside the order dated 6th January, 2024 passed by learned Judicial Magistrate Bongaon in M. Execution Case No. 54 of 2021 arising out of Misc Case No. 161 of 2017, wherein the same petitioner husband has challenged the executibility of the maintenance order passed in aforesaid Misc. Case no. 161 of 2017.

2. The bone of contention of the petitioner in connection with the aforesaid applications is that opposite party no.2 herein, claiming herself as the wife of present petitioner preferred the aforesaid maintenance proceeding under section 125 of the Code of Criminal Procedure (in short Cr.P.C.) and the learned court below ignoring petitioners contention that opposite party no.2 herein is not the legally married wife of the petitioner, had awarded interim maintenance in favour of the opposite party no.2 herein. It is specific contention of the petitioner that the petitioner appointed the opposite party no.2 as his maid servant and that the petitioner was married with one Chinta Devi Yadav long back in 1979 and he is the father of two sons and one daughter who were born due to said wedlock. Petitioner's further contention is that the petitioner has already filed a civil suit being T.S. No. 116 of 2018 before civil Judge (Junior Division), Bongaon with a prayer for declaration and permanent injunction that the opposite party no.2 is not the wife of the petitioner and there is no marital relationship in between them. The further contention of the petitioner is that the court below ought to have recorded the evidence of the parties before passing any order of maintenance to the opposite parties and he ought not to have believed the purported marriage certificate when the above mentioned civil suit is still pending. Petitioner further contended that the

opposite party no.2 is the wife of one Satyajit Gharami and a citizen of Bangladesh and is a married lady and as such she is not entitled to get any amount of maintenance.

3. Per contra it is submitted on behalf of the opposite party no.2 that the opposite party no.2 herein has adduced valuable and cogent document i.e. the marriage certificate in support of her marriage with the petitioner and the petitioner herein has specifically admitted in his objection before the court below that the petitioner and the opposite party no.2 herein filed a Mat Suit being Mat Suit no. 19 of 2016 with a prayer for passing decree of mutual divorce before the appropriate forum, which clearly shows that the marriage between the parties is undisputed. Further case of the opposite party no. 2 is that the petitioner had driven out the opposite party no.2 after long physical and mental torture, but with the intervention of local police station and neighbours the petitioner, voluntarily permitted the opposite party no. 2 to reside in her matrimonial house. Infact the petitioner at his own will left the said house and never mentioned before the opposite party no.2 that he has children or any wife, ever before marriage with the opposite party no.2. Further contention of the opposite party no. 2 is that the petitioner is a Government employee posted in the Indian Railway and as per salary slip, his monthly earning is Rs. 2,61,000/- and as such the order impugned passed by the court below in connection with the Application being CRR 2254 of 2019 and the order of continuance of execution proceeding in connection with other application being CRR 326 of 2024, does not call for interference.

4. I have considered submissions made by both the parties.

5. After going through annexed documents, it appears that while the petitioner/wife sought for interim maintenance on the basis of marriage certificate, the opposite party /petitioner herein filed an objection against the said prayer for interim maintenance, where the opposite party vehemently opposed alleged marriage with the petitioner/wife. In page 5 of his written objection opposite party/ petitioner herein has taken a specific plea that in the year 1979 he had married one Chinta Devi and due to said wedlock, two sons and one daughter were born and the age of the daughter is now 36 years and the age of two sons are 24 years and 23 years. He further stated that said marriage is still subsisting. In support of said contention petitioner herein filed certain documents like Aadhar card of said Chinta Devi and Aadhar card of sons and daughter, the school certificate of his sons and daughter, marriage invitation card of his marriage with Chinta Devi in the year 1979 and details of family members furnished by petitioner in his Eastern Railway office and also nomination form for gratuity showing Chinta Devi as his wife, joint bank account, recital in a deed of gift and some other documents in support of his said subsisting marriage with Chinta Devi.

6. However while passing the impugned order court below held that *“from the pleading and submission of the parties it is crystal clear that the marriage between the parties and the separate living is not in dispute in the present case and this unchallenged facts themselves are sufficient at this stage to dispose of the said petition in favour of the petitioner”*.

7. Such finding of the court below is contrary to the materials available in the record. Infact opposite party/petitioner herein has seriously disputed the marriage with the petitioner in his written objection.

8. Needless to say that the expression “Wife” used in section 125 of the Code refers to legally married wife. Accordingly when the factum of marriage has been seriously disputed by the respondent, the marriage has to be established *prima facie* as a valid marriage, notwithstanding the fact that the petitioner has claimed that they resided a considerable period of time as husband and wife. It is true that strict standard of proof is not necessary as the proceeding under section 125 Cr.P.C is summary in nature and is meant to prevent vagrancy but still *prima facie* it is to be established before the court granting maintenance, be it in the nature of interim or final that the claimant is a legally married wife. Since the question as to whether opposite party no. 2 herein is a married wife of the petitioner is pre-eminently questions of fact, High Court would not be justified in expressing its own view on question of fact while exercising jurisdiction under section 482 of the Code.

9. Since the order impugned suffers from perversity in view of the observation made by the court below that the marriage between petitioner and opposite party no. 2 is not disputed, the order impugned dated 05.04.2019 is hereby set aside. Learned court below is directed to hear opposite party no. 2’s Application under section 125 Cr.P.C, seeking interim maintenance, afresh after giving both the parties opportunity to place all their documents and evidence (if any) in connection with the disputed issue of marital relationship between the parties and other questionable issues, if

any, and thereafter to write an order afresh after giving opportunity to both the parties to contest, preferably within a period of eight weeks from the date of communication of this order, without being influenced by any observation made herein.

10. CRR 2554 of 2019 is thus allowed.

11. In view of setting aside the order dated 05.04.2019, the other Application being **CRR 326 of 2024** is also allowed and thereby the impugned proceeding being M. Ex No. 54 of 2021 is hereby quashed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)