

10.04.2024
Item No.20
Ct.No.34
dc.

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

C.R.R. 381 of 2024

In the matter of : **Khokan Chandra Adhikary** ... Petitioner.

Mr. Satadru Lahiri,
Mr. Safdar Azam,
Mr. Jyotirmoy Talukder ... For the Petitioner.

Mr. Sambhunath De ... For the Opposite Party.

The challenge in this revisional application is Misc. Case No. 08 of 2021 which is a proceeding under Section 127 of the Code of Criminal Procedure pending before the learned Judicial Magistrate, 5th Court, Barrackpore. The present petitioner filed an application under Section 127(2) of the Code of Criminal Procedure which was rejected by the learned Judicial Magistrate and date was fixed for evidence of the case.

Mr. Lahiri, learned advocate appearing for the petitioner has drawn the attention of the Court to several issues including the factum of Rs.5000/- being paid till March 2020, an application under Section 125 of the Code of Criminal Procedure being filed on 10.02.2021 being Misc. Case No. 132 of 2021 which was withdrawn on 13.06.2022 and the affidavit filed therein and its contents and the subsequent application under Section 127 of the Code of Criminal Procedure being Misc. Case No. 8 of 2021 which was filed in the year 2021. It has been contended by the learned advocate that the conduct of the opposite party calls in

question and subsequent to withdrawal of the application under Section 125 of the Code of Criminal Procedure, the present application under Section 127 of the Code of Criminal Procedure is not maintainable and the same should be quashed.

Learned advocate appearing for the opposite party opposes such contentions of the petitioner and submits that the petitioner is without any financial assistance after the matrimonial proceeding was dismissed and the provisions of Chapter 9 of the Code of Criminal Procedure being a beneficial legislation, remedy under the same should be extended to the opposite party/wife.

Rebutting such contentions of the opposite party, learned advocate for the petitioner contended regarding certain factual circumstances including the factum that permanent alimony should have been prayed for before the civil court as also that the conduct of the present petitioner not only before the court of law, but also in daily life wherein the major daughter is staying with the husband/petitioner should be taken into account.

Be that as it may, an application under Section 125 of the Code of Criminal Procedure was earlier disposed of with maintenance being awarded. Since the quantum was adjusted with the alimony granted in the matrimonial proceedings, no further persuasion was required in respect of the said proceedings under the provisions of Section 125 of the Code of Criminal Procedure. The subsequent filing of a

proceeding under Section 125 of the Code of Criminal Procedure and its withdrawal itself can be considered to be a wrong legal advice as the application under Section 127 of the Code of Criminal Procedure was and is maintainable in the eye of law. The provisions of Chapter 9 of the Code of Criminal Procedure was incorporated by way of having a human face for protecting wife, minor children and parents who are unable to maintain themselves. Having considered the fact that during the pendency of the application under Section 127 of the Code of Criminal Procedure another proceeding under Section 125 of the Code of Criminal Procedure was withdrawn in the given set of circumstances is an issue of fact which is to be taken into account in course of the trial.

Having regard to the same and the observations made above, I am of the view that the findings of the learned Judicial Magistrate, 5th Court, Barrackpore in Misc. Case No. 08 of 2021 do not call for any interference. The parties are directed to proceed with the evidence of the case and the same be expeditiously disposed of.

With the aforesaid observations, the revisional application being CRR 381 of 2024 is disposed of.

Pending connected application, if any, is consequently disposed of.

All concerned 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.)