

17.01.2025
S.L No. 1
Ct. No. 30
SM

CRR 1385 of 2024
(Assigned)
Shri Abhijit Palit
VS.
Nivedita Roy

Mr. Surojit Basu
Mr. Debojyoti Poddar
.....for the petitioner

Mr. Sayan Kanjilal
.....for the opposite party

1. The present revisional application has been preferred praying for quashing of the Case No. AC M-83 of 2021 pending in the Court of the learned Judicial Magistrate (1st Class), 1st Court at Alipore, South 24 Parganas filed by the respondent no. 2 under Section 125 of the Cr.P.C. against the petitioner.
2. Vide the order under revision it appears that the proceeding which is pending under Section 125 of the Cr. PC. The husband/petitioner has preferred the present revisional application. The petitioner herein being the O.P. before the Trial Court had preferred a petition challenging the maintainability of the proceedings before the Magistrate, wherein it appears that the stand of the O.P./petitioner herein is that his wife deserted him and as such the O.P. filed a matrimonial suit praying for decree of divorce which was granted to

him on 24.04.2017 ex parte. On the grounds of cruelty and desertion.

3. The learned Magistrate considered the prayer of the petitioner herein on the issue of non-maintainability of the case and finally rejected the said prayer on the findings as follows:-

“ACM Case No. 83 of 2021

Order dated 06.05.2023

..... Perused the case record. The OP has not yet filed his WO in the record but has instead filed one petition challenging the maintainability of this case on the ground that the petitioner has been divorced and she is now not entitled to claim maintenance and also with the allegation that the petitioner did not intentionally mention the fact of divorce in her application. At the time of hearing, the Ld. Advocate for the petitioner did not controvert the fact of divorce rather asserted that even a divorced wife is entitled to claim maintenance. This instant case has been filed u/s 125 Cr.PC, a provision for social justice for women and children and for their protection from vagrancy and destitution. The Explanation (a) to Section 125(1) of the Cr.PC clearly states, "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. There is no submission on the point of the petitioner having remarried any other person. So, there is no hindrance for the petitioner to seek for maintenance from the OP. A divorced lady, if not remarried, has all the rights to seek maintenance from her husband u/s 125 Cr.PC. Further, the fact of non-mentioning about the divorce in the application does not appear, at this stage, to affect the case in an adverse manner against the OP, since the fact would still remain that the petitioner whether married to him or divorced, is entitled to pray for maintenance from him for herself and their child. This very case is at initial stage and evidence of the parties are yet to be taken on record.

Therefore, such petition of the OP, at this stage, cannot be allowed.

Hence, the petition filed by the OP for non-maintainability of this case is hereby considered and rejected without any order as to costs.

OP is directed to file his W/O along with disclosure on affidavit of assets and liabilities on the next date fixed.

To 20/07/2023 for W/O and filing of disclosure on affidavit of assets and liabilities.

*S/d-
Judicial Magistrate, 1st Court,
Alipore, South 24 Parganas.”*

4. **The learned Magistrate has now fixed the Misc Case for final hearing** with a direction for filing of affidavit of assets and liabilities as per the guidelines of the Supreme Court in ***Rajnesh vs. Neha & Anr.*** reported in **(2021) 2 SCC 324.**
5. In ***Ramveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave Petition (CRL.) No. 2953 of 2022, decided on April 20, 2022,*** the Supreme Court held:-

“39. *In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under **Section 482** of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under **Section 482** of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power***

under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.”

6. Considering the materials on record and the order under challenge, this Court finds that the findings of the learned Magistrate that as the divorced women being the opposite party in the revisional application **has not re-married**, she is entitled to maintenance, is in accordance with law.
7. The learned Magistrate also rightly relied upon Explanation (a) to Section 125(1) Cr.P.C.
8. The point of contention of the petitioner that a proceeding under Section 498A IPC has been quashed in respect of the petitioner herein, thereby proving that there was no cruelty on his part and also the ground of desertion as made out, are issues which are to be considered by the Trial Court on adducing appropriate evidence.
9. As such this Court finds no reason to interfere with the findings of the learned Judge, the same being in accordance with law.
10. Thus, considering the said facts, the prayer of the petitioner for quashing of the proceeding is hereby dismissed as interfering in such a proceeding shall clearly be an abuse of the process of law.

- 11.** Let a copy of this order be sent to the learned Magistrate to proceed with the Misc Case expeditiously.
- 12.** Pending applications stand disposed of.
- 13.** Interim order, if any, stands vacated.
- 14.** Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

[Shampa Dutt (Paul), J.]