

29.01.2024
Sl. No. 14
Ct. 32
P.A.

CRR 1910 of 2016

Basudeb Samanta

Vs.

Sumana Samanta

Nobody appears on behalf of either of the parties when the matter called on.

Even on earlier occasions, no one represented the petitioner nor any accommodation sought for.

In view of the above facts, nature of prayer and pendency of the case since 2016, I am inclined to dispose of this case on merit.

The petitioner has filed an application under Section 482 of the Cr.P.C., 1973 praying for setting aside the impugned order dated 15th day of July, 2015 passed by the learned Additional District Judge, Kalna, Burdwan in Criminal Revision No. 12/2014 whereby the learned Additional District Judge dismissed the revisional application on contest without order as to costs and affirmed the order dated 31.03.2014 passed by the learned Magistrate, 2nd Court, Kalna in Misc. Case No. 52/03 (TR 141/2013) in connection with an application filed under Section 125 of the Cr.P.C., whereby the learned Magistrate awarded a

maintenance to the tune of Rs. 1500/- per month to the opposite party/ wife - Sumana Samanta.

It is the case of the petitioner that the opposite party is not his wife and further denies all the allegations of physical torture as well as driven out from the house.

It is the further case of the petitioner that after the death of his first wife on being persuaded by his friends and relatives, he agreed to marry the opposite party, who is also a widow. He went to marriage registration office at Kalna, Burdwan and filled up the notice form on 26.12.2002. Thereafter, they started missing and after few days, Petitioner came to know she has already married and she has more marriages. Accordingly, he did not proceed with the proposal of marriage and he had cancelled the notice before the marriage office as such she is not married wife of petitioner and did not co-habit her. So, he is not liable to pay any compensation. However, the learned Magistrate awarded maintenance to the tune of Rs. 1500/- per month.

It is the further case of the petitioner that being aggrieved with the said granting of a maintenance of Rs. 1500/- per month, he filed a revisional application before the learned Additional District Judge with a contention that there was no relation between them as husband and wife. He denied all allegations and he never stayed with her as husband and wife at the matrimonial home. He neither led conjugal life with the opposite party. In spite of aforesaid

facts, the Ld. Additional District Judge whimsically affirmed the order of Ld. Magistrate as such impugned order under challenge is liable to be set aside.

Having considered the case of the petitioner and on perusal of the annexure appended with the application, this Court finds the Ld. Magistrate has decided the application filed under Section 125 of the Cr.P.C. after full hearing of the parties and finally awarded a maintenance to the tune of Rs. 1500/- per month and that is to be paid within 10th of succeeding English calendar month with effect from date of order.

The Ld. Magistrate also observed while passing the final order that in view of the evidence of P.W. 1 and P.W. 2 that the opposite party no. 1 woman of class 4 standard had got no knowledge of notice of marriage, she only went before the marriage registration office and as per her version their marriage was officially solemnized. She further stated that she lived with the petitioner for about two months in the quarter of petitioner as husband and wife and when she went to her father's house as per the request of the petitioner but when she returned, she found the quarter was under lock and key. Petitioner left the opposite party/wife though she had no independent source of income to maintain herself. She was a widow with one son from her first husband, Ashim Pakre, who died on 17.04.2012. When petitioner deserted her, she has no option but to file an application under

Section 125 of the Cr.P.C. praying for maintenance from the petitioner.

From the aforesaid fact, it is clear that the petitioner as well as opposite party was earlier married but subsequently their spouses were expired. It is admitted fact that their spouses were expired. It is also admitted fact that they were decided to get married and OP went with the petitioner before the Registration Officer and made an application for marriage. Cancellation of the application of marriage is unknown to the Opposite party. No such cancellation document produced by the petitioner before the Ld. Magistrate. Rather the Opposite party had exhibited receipt of marriage Registrar Swati Mitra (Pal) where the fees have been paid by them for registration of marriage between Basudeb Samanta and Sumana Samanta on 26.12.2002 and such receipt of marriage registration marked as Exhibit 1. Opposite party/wife also furnished the death certificate of her first husband Ashim Pakre, which is marked Ex. 2 who died on 17.04.2002.

Upon perusal of the oral evidence, it is transpired prime facie that she lived with the petitioner for a considerable period as husband and wife. But subsequently she was deserted on the plea that the application for registration of marriage has been cancelled though no evidence transpired about the cancellation of marriage.

Another witness i.e. P.W. 2 Manju Pal admitted that the nick name of Sumana is Rupa and her marriage was also held in Mandir. So, from the evidence, it is clearly proved that they were resided as husband and wife for about two months.

She lived as husband and wife for two months then he has obligation and bounden duty to maintain the Opposite party. Apart from that a meager amount of Rs. 1500/- has been awarded by the Learned Magistrate which was subsequently affirmed by the Ld. Additional District and Sessions Judge.

I do not find any illegality or jurisdictional error or perversity in the order passed by the learned Additional District and Sessions Judge as such I do not find any merit in this application.

Accordingly, **CRR 1910 of 2016** is, thus, dismissed without order as to costs.

Interim order, if any, is also vacated.

Let a copy of this order be sent to the Learned Court Below for information.

All parties are to act in terms of the 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 as expeditiously as possible taking all legal formalities.

(Ajay Kumar Gupta, J.)