

21.02.2024
Sl.No. 32
Ct. 32
Amalranjan

In The High Court At Calcutta
Criminal Revisional Jurisdiction
Appellate Side

CRR 2166 of 2018

Banchha Ram Samanta @ Bacharam
Vs.
State of West Bengal and anr.

Nobody appears on behalf of either of the parties on call. Even on earlier occasion no one represented the petitioner, no accommodation sought for.

This case is taken up for disposal on merit since the petitioner is not turned up and the case is pending since 2018 and to avoid further delay.

The instant revisional application has been filed by the petitioner under sections 482 read with section 401 of the Criminal Procedure Code, 1973, challenging the order dated 05.05.2018 passed by the learned Additional District & Sessions Judge, Durgapur, Paschim Burdwan in an application filed by the petitioner being Criminal Motion no. 22 of 2016 under section 399 of the Criminal Procedure Code, 1973 against the impugned ex parte order passed by the learned Additional District & Sessions Judge, Durgapur in Misc. case no. 16/2014 and Misc. Execution case no. 75 of 2016 dated 26.04.2016, thereby the learned Additional District & Sessions Judge, Durgapur rejected the revisional application as barred by limitation.

The brief fact of the case is relevant for the purpose of disposal of this case as under.

The opposite party no. 2/wife of the petitioner filed an application under section 125 of the Criminal Procedure Code and the same was registered as Misc. Case no. 16/2014 with an allegation that the marriage was solemnized between the petitioner and the opposite party no. 2/wife on 29th January, 1985 as per Hindu Rites and Customs.

At the time of marriage, several gold ornaments and cash amount of Rs. 50,000/- was given to the petitioner. However, the petitioner tortured her in different way and finally driven out from her matrimonial home on 10.12.2013. In the said Misc. Case an application for interim maintenance was also filed by the opposite party no. 2/wife. By order dated 15.01.2015, ex parte interim maintenance order was allowed to the tune of Rs. 5,000/- per month in favour of the opposite party no. 2. The opposite party no. 2 also filed an application for Execution being Execution case no. 75/2016 when the petitioner default in payment of maintenance.

Being aggrieved with the said ex parte interim maintenance the petitioner herein filed an application for vacating ex parte interim order along with an application under section 5 of the Limitations Act before the learned Magistrate.

At the same time being aggrieved an ex parte order and subsequent order passed on 26.04.2016 in Misc. Case no. 16/2014 and Misc. Execution Case no. 75/2016, a

revisional application has been filed before the learned Additional District & Sessions Judge, Durgapur, Paschim Burdwan along with section 5 of the Limitations Act.

However, the learned Additional District & Sessions Judge, Durgapur rejected application under section 5 of the Limitations Act and dismissed the revisional application.

Under such circumstances, the instant case comes before this court for disposal.

Upon perusal of the documents appended with the application and the impugned orders, this court finds the Additional District & Sessions Judge, Durgapur, Paschim Burdwan has rejected the application filed by the petitioner under section 5 of the Limitations Act, on the ground that he has suppressed the materials fact that he came to know about the proceeding or ex parte order on 16.7.2016 for the first time, though the criminal revision was filed on 15.7.2016. Accordingly, the petitioner has not presented his case truly with regard to the knowledge of the impugned ex parte order on 16.7.2016 just only a day after filing the revisional application.

The learned Judge further observed that it was not wise on the part of a prudent man to place reliance of the statement and nature of delay. Furthermore delay has not been explained properly.

In such situation, the learned Judge has rejected the prayer for condonation delay under section 5 of the Limitations Act and dismissed the revisional application.

This court also does not find any illegality or infirmity of such order of rejection.

Accordingly, the instant revisional application being **CRR 2166 of 2018** is dismissed without any order as to costs.

Interim order, if any, stands vacated.

Let the order be communicated to the Ld. Court below for information.

Liberty is granted to all parties to act in terms of the copy of this order downloaded from the official website of this court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties taking all legal formalities.

(Ajay Kumar Gupta, J.)