

02.01.2024
Item No.11
BR

CRR 2098 of 2015

In the matter of: Anupam Sen

Nobody appears on behalf of
either of the parties on call.

It is also unknown whether the petitioner has served copy of notice and application to the other side or not.

On earlier occasions also nobody appears on behalf of either of the parties. This case is pertaining to year 2015. The nature of prayer and to avoid further delay, the record is taken up for disposal on merit.

The petitioner has filed this application under Section 397/401/402 of the Code of Criminal Procedure , 1973 seeking quashing / setting aside the order dated 21st Mach, 2015 passed by learned Additional District and Sessions Judge , 11th Court, Alipore, South 24-Parganas in criminal motion No. 512 of 2013 thereby the learned Judge rejected the revisional application of the petitioner praying for setting aside the impugned order dated 5th December, 2013 passed by the learned Chief Judicial Magistrate at Alipore in connection with M.P. Case No. 79 of 2013 arising out of complaint case No.C-2444/2013 pending before the learned 8th Judicial Magistrate, Alipore, South 24-Parganas.

The brief facts of the instant case are relevant for the purpose of disposal of the instant case as follows:

The opposite party No. 2 being wife of the petitioner filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the learned Chief Judicial Magistrate at Alipore, South 24-Parganas with certain reliefs. The said case was transferred for trial and disposal to the learned 8th Judicial Magistrate at Alipore, South 24-Parganas.

The opposite party no. 2/wife has also lodged a complaint with Sonarpur P.S. against the petitioner and others and the same was registered as Sonarpur P.S. Case No. 9 of 2012 dated 4-1-2012 under Sections 498A/406/313 of the Indian Penal Code, 1860.

It is further contention of the petitioner that opposite party no. 2/wife had also filed an application under Section 125 of the Criminal Procedure Code, 1973 before the learned Additional Chief Judicial Magistrate at Baruipur, South 24-Parganas on 16.7.2012 and the same is registered as criminal miscellaneous case No. 360 of 2012. In the said application, the opposite party/wife had prayed maintenance to the tune of Rs. 9,000/- for herself and Rs. 8,000/- each for her two children with a contention that the petitioner and the opposite party no.2 are legally married couple. It is further alleged by the wife that in her matrimonial home, she was subjected to torture by asking further demand of dowry. The Opposite party/wife was also tortured mentally and physically day after day and finally driven out after mercilessly assaulting her but she was saved after intervention by the local people though entire allegations are false. She left matrimonial home according to her own will and now she is residing separately.

It is further contention of the petitioner that the petitioner had filed a matrimonial suit for divorce against the opposite party no. 1 before the learned District Judge at Alipore and same is registered as Mat. Suit No. 952 of 2012 against the opposite party/wife.

The petitioner had filed an application under Section 410 of the Code of Criminal Procedure before the learned Chief Judicial Magistrate at Alipore, South 24-Parganas praying for transfer of complaint case No. C-2444/2013 pending before the learned 8th Judicial Magistrate, Alipore, South 24-Parganas to the learned Additional Chief Judicial Magistrate at Baruipur, South 24-Parganas on the ground that both are residents of jurisdiction of Sonarpur police station and allegations made in the application under Section 12 of the Protection of Women from domestic violence Act, 2005 are similar and falls within the same territorial jurisdiction. But the said application was rejected by the learned Magistrate vide order dated 5.12.2013 without applying judicial mind.

Feeling aggrieved by the said rejection order, the petitioner filed a revisional application under Section 397/399 before the learned District and Sessions Judge at Alipore being criminal motion No. 512 of 2013. The said case was transferred to the learned Additional District and Sessions Judge, 11th Court, for its disposal. After hearing, the learned Additional District and Sessions Judge mechanically dismissed the said revisional application and affirmed the impugned order without considering the case of petitioner and applying judicial mind. Therefore, the impugned order is incorrect, illegal and perverse. Accordingly, he prays for setting aside the said impugned order.

Upon perusal of the entire record, it appears that the learned Magistrate has rejected the said application contending therein that two cases are pending before the Baruipur Court and another case being complaint case C-2444/2013 under Section 12 of the PWDV Act pending before the learned Judicial Magistrate, 8th Court, Alipore are different in nature. That cannot be transferred under Section 410 of the Cr. P C and finally rejected the same. The said impugned order was also affirmed by the Additional District and Sessions Judge by observing therein that the Judicial Magistrate has an exclusive discretionary power to either hear the case himself or send it to some subordinate Magistrate for hearing which took place within the jurisdiction of his District. The nature of both the cases is different. As such the application filed under Section 410 of the Cr P C is devoid of any merit and finally revisional application was dismissed.

I also do not find any perversity or illegality or jurisdictional error in passing such order because section 410 of the CrPC says

“Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinates to him, and may inquire into or try such case himself or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same”.

Furthermore, both cases are different in nature and guided by different provision of law. Both the courts are situated within the same district and competent to inquire into or try the same as such the present application is devoid of merit. This court also agrees with the findings of the both the Learned courts below.

Accordingly, **CRR 2098 of 2015** stands dismissed without any order as to costs.

Let a copy of this order be communicated to the learned Court below for information.

Urgent xerox certified copy of this order, if applied for, be given to the learned advocate for the parties on usual undertakings.

(Ajay Kumar Gupta, J.)