

18.01. 2024
Item No.6
Ali
Ct. no. 551

CRR 2225 of 2017

**Mahamayi Halder
Vs.
The State of West Bengal & Anr.**

Mr. Sanjib Kumar Mukhopadhyay,
Ms. Nargish Parveen

... for the petitioner.

Mr. Narayan Prasad Agarwal,
Mr. Pratick Bose,

.... for the State.

Heard the learned advocate for the parties at length.

This is an application under Section 401 read with Section 482 CrPC against the judgment and order dated 18.04.2017 passed by the learned Court of Additional Sessions Judge, 2nd Court, Katway in criminal revision No. 14 of 2016 arising out of judgment and order dated 30.12.2015 passed by the learned Judicial Magistrate, 2nd Court, Kalna in Mis. Case No. 110 of 2010 corresponding to TR Case No. 467 of 2015 under Section 125 CrPC.

The brief facts of the case is that the present petitioner has preferred an application under Section 125 CrPC against the present OP No. 2 before the learned Judicial Magistrate, Katway for getting maintenance. Initially, the learned JM, Katway, 3rd Court has dismissed the petition vide order dated 29.02.2012.

Being aggrieved by the said order the present petitioner has preferred a revisional application before the learned Sessions Judge. The learned Sessions Judge after hearing the parties has remanded back with a liberty to give further chance of giving evidences to the parties. Thereafter, the case was transferred to the

Court of learned Judicial Magistrate, 2nd Court for disposal. Thereafter, the learned Judicial Magistrate, Katway has heard the matter and by passing the order dated 30.12.2015 directed the opposite party No. 2 to pay a sum of Rs. 4,000/- per month as maintenance in favour of the present petitioner.

Being aggrieved by the said order the present opposite party No. 2 has preferred a criminal revisional application being No. 14 of 2016 before the learned Additional Sessions Judge. Thereafter, the same revisional application was transfer to the learned Additional Sessions Judge, 2nd Court, Katway. The learned Additional Sessions Judge, Katway after hearing the parties has passed the impugned judgment and order dated 18.04.2017. thereby the learned Sessions Judge has allowed the criminal revisional application and the order passed by the learned Judicial Magistrate, Katway in Mis. Case No. 110 of 2010 was set aside.

Being aggrieved by and dissatisfied with the said order of learned Sessions Judge the instant criminal revision has been preferred.

Learned advocate appearing on behalf of the petitioner submits that the impugned judgment passed by the learned Sessions Judge is illegal in the eye of law. The learned Sessions Judge has failed to appreciate the facts and circumstances of the this case and came to an erroneous findings. The learned Sessions Judge has misread and misconstrued the evidences on record specifically, the evidence of present OP (Private) who deposed as OPW-1 before the learned Magistrate. He argued that the marriage between the parties was under challenged. By virtue of the decision

of the learned Magistrate, he is of the opinion that the marriage has been proved. The learned Sessions Judge in revision has no opportunity to revisit the finding of the learned Magistrate regarding the marriage between the parties. He further argued that the evidence of the husband i.e. the present OPW-2 itself proof that their relationship between the parties and the evidence also shows that the OPW-2 knows the internal fact of the family of the present petitioner. Such knowledge cannot be possible without being there a marital relation between the parties. He further argued that the petitioner is a rustic lady residing in a village. She does not know the procedure and formalities of Court. She was under compulsion to proceed upon the mercy of the law clerks and the learned advocate thus, she could not represented properly before the learned Magistrate. He frankly submits that there may have some discrepancies in the evidence of PWS that does not itself wipe out the entire case of the present petitioner. She is the married wife of the present opposite party.

Refuting the contention of the learned advocate for the petitioner, learned advocate for the opposite party No. 2 submits that the observation of the learned Sessions Judge in the impugned order is distinct and very particular. The learned Sessions Judge has categorically gone through the evidences on record and after scanning the evidences he came to an opinion that the present petitioner could not prove the marriage between the petitioner and the opposite party No. 2. He further argued that the details discussion has been made by the learned Sessions Judge in the inner page 7 and 8 of the impugned judgment. This revisional

Court must have confine about the finding of the learned Session Judge and this Court is only to look into whether there is any impropriety and perversity in the impugned order. The facts and circumstances of this Court goes to show that there are no perversity in the impugned order itself.

Learned advocate for the opposite party No. 2 further pointed out that the evidence of the petitioner and her mother goes to show that they are contradictory to the fact of the case of the petitioner. The petitioner herself could not speak out the date of marriage. The petitioner has failed to establish the circumstances how she is stated the ground in the petition that the dowry was taken by the present opposite party No. 2 from the father of the petitioner while it was the proved that the father of the petitioner was died prior to the marriage. However, the time of death of the father of the petitioner was also contradictory. He further argued that the present opposite party No. 2 has clarified in his written statement/written objection that there were a long standing property dispute between the relatives of the parties that is why, the present petitioner and the opposite party No. 2 are acquainted with each other. But, they had no marriage relationship between them. No marriage has been conducted between them at any point of time. He further argued that after filing of the instant case under Section 125 CrPC. the petitioner has preceded to the learned Additional District Judge Katway for filing a suit for declaration of nullity of marriage between the present opposite party No.2 and the petitioner. However, the said suit was not preceded further and was dismissed for default. He further argued that the supplementary

affidavit filed on behalf of the present petitioner before this Court cannot support the petitioner's case further. He also pointed out that the affidavit-in-opposition filed against the supplementary affidavit.

In reply, learned advocate for the petitioner submits that the sole evidence of OPW-2 before the learned Magistrate would show that he intentionally tried to evade the order of maintenance from inception. If he not being the married husband of the petitioner, he should not have taken such plea before the learned Magistrate. Moreover, his conduct for filing a Mat Suit before the learned Additional District Judge, Katway itself raised a presumption to the Court under Section 41 of the Indian Evidence Act - that the judgment and order passed in Civil Suit is a exclusive proof of the relationship between the parties.

Heard the learned advocates perused the materials on record. The order passed by the learned Additional Sessions Judge in criminal Revision No. 14 of 2016 is under challenged before this Court. In the impugned order learned Additional Sessions Judge has set aside the order of learned Magistrate passed in a proceeding under Section 125 CrPC wherein the maintenance has been awarded in favour of the present petitioner @ Rs. 4,000/- per month.

The sole bone of contention between the parties is the marriage between the petitioner and the opposite party No. 2. This is a proceeding under Section 125 CrPC. By virtue of the observation of Hon'ble Supreme Court in several decisions, it is the settled position of law that, in a case of under Section 125 CrPC it

is not required by the wife to strictly prove the marriage which required to be proved in a case under the Hindu Marriage Act. However, it is cordial principle of Law that only “a wife” can get maintenance under Section 125 CrPC. The said term “wife” directs the petitioner to prove that she is the marriage wife of the opposite party No. 2. In this proceeding from inception, it has been challenged by the OP-2 that the petitioner is not his marriage wife. In dealing with this plea placed by the opposite party No. 2. The petitioner has led some evidence. However, it appears that the evidences are not corroborating the pleadings of the petitioner placed before the learned Magistrate. The learned Sessions Judge is of opinion that the pleadings and proofs are contradictory to each other in respect of the marriage of the present petitioner and opposite party No. 2, that is why, the learned Sessions Judge has passed the impugned order by pointing out the discrepancies appearing in the petitioner’s case. Being a final Court of revision to verify the order of the learned Sessions Judge, if I stretch my imagination regarding the rustic lady and their status before the Court, it appears to me that - the entire pleadings of the petitioner has stated about the marriage, demand of dowry, payment of dowry, the pregnancy and the forceful termination of pregnancy. However, the demand of dowry and payment of dowry by the father of the petitioner was not proved and it is true that there is no single document to prove the marriage of the parties. However the fact goes to show that the marriage was held in the year 2009. Considering the relevant facts of the advance of technology, there must have some paper or some documents to prove the marriage of

the present petitioner. On query by this Court to the petitioner regarding production of any documents, the supplementary affidavit filed on behalf of the petitioner along with a Xerox copy of ration card. One memo no. was mention in the ration card and learned advocate for the petitioner argued that the memo is in respect of transfer of the ration card from the family of the parents of the petitioner to the family of the opposite party No. 2. But his submissions does not support any of such document. Moreover, the Aadhar card prepared in the name of the petitioner also does not reflect the name of the opposite party No. 2 as husband. Though the Aadhar card was issued on 15.9.2021. Only knowledge of a family and affairs of any person is not ipso facto proved the marital relationship between two persons. I find nothing regarding the prima facie marital relationship between the petitioner and the opposite party No. 2.

Perused the certified copy of Mat Suit –112/2012.

The civil proceeding initiated before the learned Additional District & Sessions Judge, Katway, Burdwan being MAT Suit No. 112 of 2012 appears to be a plaint for negative declaration filed by the opposite party No. 2 against the present petitioner. However, the Additional District Judge has no power or specific jurisdiction to accept any plaint of a declaration. However, the said MAT Suit was dismissed for default. The said order is not at all binding to any of the parties as the MAT Suit was filed without jurisdiction. The presumption under Section 41 of the Indian Evidence Act regarding the relevancy of certain judgments or probate reflects relations of parties requires that the judgments passed by a Court

of competent jurisdiction. To prove some relevancy about the relation between the parties cannot possible as the instant judgment or the proceeding initiated before the wrong jurisdiction. So this Court refrains to take cognizance of the said judgment in MAT Suit No.11.

In considering the entire circumstance and after discussion of the matter it appears to me that the impugned judgment passed by the learned Additional Sessions Judge suffers no illegality and impropriety.

I find no jurisdiction to interfere with the finding of the learned Additional Sessions Judge. Accordingly, the instant criminal revision is meritless and the same is dismissed.

Accordingly, the instant CRR 225 of 2017 is disposed of.

All connected pending applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)