

07.05.2024
Court No.32

Item.29
Sws.M

C.R.R. 2861 of 2017

In the matter of: **Bharati Adhikary nee Rakshit**

.....Petitioner.

Nobody appears on behalf of either of the parties on call. Even on earlier two occasions no one appeared on behalf of either of the parties.

This case pertains to the year 2017. Accordingly, the record is taken up for disposal on merit considering the nature of prayer and to avoid further delay.

This application filed by the petitioner under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 challenging the correctness, illegality and propriety of the impugned order dated 31.07.2017 passed by the learned Additional Chief Judicial Magistrate, Basirhat North 24 Parganasin in M.P. Case No. 02 of 2017 under Section 126 of the Code of Criminal Procedure, thereby the learned court below set aside the exparte order passed on 05.12.2016 and re-opened the case for its disposal.

The factual matrix of this case is that the petitioner is the legally married wife of opposite party, Rajib Adhikary. Soon after marriage, the opposite party as well as her in-laws pressurise the present petitioner to bring more money

from her parents and when she failed to fulfill their demand they started torture upon her. Out of said wedlock one female child was born, but their torture reached its ultimatum. Accordingly, the petitioner left the matrimonial home on 03.11.2015 and filed an application for maintenance before the learned Chief Judicial magistrate, Basirhat, North 24 Parganas under Section 125 of the Code of Criminal Procedure and the same was registered as M. Case No. 131 of 2016 as the opposite party neglected them for maintenance. She has no her own income to maintain herself and her child. After being satisfied by the learned Magistrate, case was decided ex-parte on 05.12.2016 and directed the opposite party/husband to pay a sum of Rs.3000/- for the petitioner/wife and Rs.2000/- per month to her minor daughter respectively from the month of March, 2016 and same is payable within 10th day of each succeeding month. Due to non-payment of the interim maintenance she had to file an execution proceeding being Execution Case No. 93 of 2017 against the opposite party/husband.

In the meantime, the opposite party/husband filed an application under Section 126 of the Cr.P.C. being M.P. Case No. 02 of 2017 against the petitioner and *inter alia*

prayed for stay of operation of the ex-parte order dated 05.12.2016 passed by the learned Court below.

In the said proceeding the petitioner has filed objection and pray for rejection of such application.

The said application was considered by the learned ACJM, Basirhat and while deciding the case it was found that in earlier M. Case No. 131 of 2016 was not properly disposed of and it was disposed of ex-parte though no proper service of notice has been effected upon the opposite party/husband. Learned Court below also observed there is no clear track report shows that the notice was served upon the husband/opposite party. Track report accepted by the learned court below was wrong and erroneous and that could not be allowed to be continued irrespective of the fact as committed by the learned Court below by way of mistake. Accordingly, the said ex-parte order was set aside and record of M.Case No. 131 of 2016 has been re-opened and directed to both the parties to appear to place their case.

Under the above facts and circumstances of the case and on perusal of the application as well as annexures thereto and the impugned order, this Court do not find any illegality or perversity in the order passed by the learned Magistrate since the ex-parte order was passed without

serving notice upon the opposite party/husband. As such, the instant revisional application has no merit to consider.

Consequently, CRR 2861 of 2017 is dismissed without any order as to cost.

Interim order, if any be vacated.

Let this order be communicated to the learned court below for information and taking necessary action in accordance with law.

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

(Ajay Kumar Gupta, J.)