

04.03.2024
Serial no.127
Aloke
Ct. No. 30

**CRR 3791 of 2022
with
IA No. CRAN 2 of 2023**

**Ajay Sardar
Vs.
The State of West Bengal & Anr.**

Ms. Soma Kar Ghosh
Mr. Arabinda Pathak
... for the petitioner
Mr. Narendra Nath Maladar
... for the opposite party no. 2

The present revisional application is taken up for hearing along with CRAN 2 of 2023 in presence of the learned counsel for the opposite party no. 2.

The present revisional application has been preferred against the judgment and order dated 24.08.2022 passed by the learned Additional District and Sessions Judge, 2nd Court, Kakdwip, in Criminal Appeal No. 3 of 2016 being a revisional application filed by the opposite party under Section 397/399 Cr.P.C. against the order dated 12.04.2016 passed by the learned Judicial Magistrate, Kakdwip, in connection with Misc. Case No. 63 of 2007 under Section 125 Cr.P.C.

It is submitted by the learned counsel for the petitioner that the learned Sessions Judge had directed the DNA test of the petitioner but without waiting for the said report, passed the order under revision, on the finding as follows:-

“After filing of the revisional application the O.P. files the application for D.N.A. test of the child and the prayer was allowed on contest on 29.03.2018. But the

O.P. subsequently did not take any initiative to collect the report from the F.S.L. Department on payment of requisite fees. So it can be presumed that though the O.P. denied the paternity of the child but at the same time he avoided to collect the report from F.S.L. Department to ascertain the paternity of the child”.

The appeal was decided against the petitioner by presuming the paternity of the child, without the DNA report.

The learned counsel for the petitioner subsequently filed an application before the Director, Central Forensic Science Laboratory praying for a copy of the said D.N.A. report. The said authority by a reply through e-mail, informed the petitioner that an intimation letter on completion of the examination and report being prepared, was issued to the forwarding authority (herein being the Appellate/Revisional Court). The Court was requested to depute an authorized special messenger to collect the said report, which was not done.

Accordingly, the petitioner was requested to approach the Trial Court for necessary direction.

This Court finds that the order of the learned Appellate Court is thus clearly not in accordance with law, as the order has been passed without considering the D.N.A. report, which was done/prepared on the direction of the said Court and the said order now under revision, if permitted to remain, shall amount to an abuse of the process of the Court.

Accordingly, the order under revision being the judgment and order dated 24.08.2022 passed by the learned Additional District and Sessions Judge, 2nd Court, Kakdwip, in Criminal

Appeal No. 3 of 2016 being a revisional application filed by the opposite party under Section 397/399 Cr.P.C. against the order dated 12.04.2016 passed by the learned Judicial Magistrate, Kakdwip, in connection with Misc. Case No. 63 of 2007 under Section 125 Cr.P.C., **is hereby set aside.**

The learned Court of the Additional District and Sessions Judge, 2nd Court, Kakdwip is directed to hear the appeal afresh, on compliance of the formalities required to collect the said D.N.A. report, as discussed above and on due consideration of the D.N.A. report shall pass an order disposing of the appeal on hearing both the parties, within a period of **three months** from the date of receipt of this order.

CRR 3791 of 2022 is accordingly disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Let a copy of the order be sent to the learned trial court for compliance.

(Shampa Dutt (Paul), J.)