

03.01.2024
Sl.No. 37
Ct. 32
Amalranjan

CRR 3730 of 2017

Sk. Jafar Ali
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, nor any accommodation sought for.

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

The instant application has been filed by the petitioner under section 482 read with section 401 of the Criminal Procedure Code, 1973, seeking quashing of the impugned order dated 22.08.2017 passed by the learned Judicial Magistrate, 4th Court at Howrah in connection with Misc. Case no. 362 of 2017 under section 125 of the Criminal Procedure Code and the impugned proceedings arising therefrom.

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

In the month of February, 2011, the petitioner got married with the opposite party no. 2 as per Muslim rites, rituals and customs and out of that wedlock two female child and one male child were born and at the time of filing of the application they were 7, 5 and 1 years old respectively. Due to matrimonial disputes, the opposite party no. 2/wife started

residing separately leaving the matrimonial home and filed an application under section 125 of the Criminal Procedure Code on 21st June, 2017 against the husband/petitioner herein claiming maintenance for herself and for her minor children.

The said case was registered as Misc. Case no. 362/2017 and the same was later transferred to the learned Judicial Magistrate, 4th Court, Howrah for its disposal.

After receiving summon from the court, the husband/petitioner entered appearance in the said Misc. case and filed a petition challenging the territorial jurisdiction of the learned court below regarding hearing of the application filed under section 125 of the Criminal Procedure Code as because the opposite party no. 2 disclosed his residence in different locality in an another case filed by the wife/opposite party no. 2 herein in Amta police station case No. 359/2016 dated 21.9.2016 (G.R. 2094/2016) presently pending before the learned Additional Chief Judicial Magistrate, Uluberia, Howrah. Not only that, one Smt. Rita Banerjee, the councilor, Howrah Municipal Corporation, ward no. 33 informed the petitioner that the opposite party no. 2 /wife is not the resident of 59, Abinash Banerjee Lane, Police Station – Chatterjeehat, Howrah. After obtaining such information, it is clear that the opposite party no. 2/wife does not reside within the territorial jurisdiction where the application under section 125 of the Criminal Procedure Code filed on 21.6.2017 seeking maintenance for herself and her minor children. However, the said application was rejected

by the learned Magistrate, 4th Court, Howrah on contest after observing therein that the case is maintainable as the opposite party /wife presently residing within the jurisdiction of Howrah District and she has stated the said address by filing an affidavit. Therefore, there is nothing to disbelieve such submission as made by the opposite party no. 2/wife.

Upon perusal of the application, annexures thereto as well as the impugned order, this court finds that the wife/opposite party no. 2 was earlier residing with her parents in parental house i.e., under the jurisdiction of Uluberia Court, but at present she is residing within the jurisdiction of the court, where the application under section 125 of the Criminal Procedure Code is pending. So, the case is quite maintainable within the jurisdiction of learned Judicial Magistrate, 4th Court, Howrah. Furthermore, Sub-section 1 of Section 126 of the Criminal Procedure Code says that the proceeding under section 125 may be taken up against any person in any District - *a) Where he is, or (b) Where he or his wife resides, or (c) Where he last resides with his wife, or as the case may be with the mother of the illegitimate.*

Upon perusal of the aforesaid provision, it is clear that where she resides, she can file an application for maintenance under Section 125 of the CrPC.

So, I do not find any infirmity or perversity or jurisdictional error in the impugned order dated 22.08.2017 passed by the learned Judicial Magistrate, 4th Court, Howrah.

Accordingly, the instant revisional application being **CRR 3730 of 2017** is, thus, dismissed without order as to costs.

Department is directed to send down the lower court records, if any, immediately.

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 after observing all legal formalities.

(Ajay Kumar Gupta, J.)