

30.01.2024
Serial no. 112
[G.S.D]

CRR 4502 of 2022

With
CRAN 2 of 2023

In the matter of : Rohit Sharma

... .. Petitioner

Mr. Krishna Das Poddar

... for the petitioners

Mr. Anindya Ghosh
Mr. Pronajit Roy

... for the a.p.

The petitioner has challenged the order dated 27.2.2019 passed by the Id. JM, 3rd Court, Durgapur in Misc. Case No. 06 of 2018 which was a proceeding under section 125 of the cr.p.c.

Ld. advocate for the petitioner submits that as the same was an ex parte order and the petitioner was prevented from participating in the proceedings as the wife was residing in the same premises, who informed the postal authorities that the husband is not available and, as such, there was postal endorsement 'left without leaving the last address.'

Ld. advocate submits that by the said ex parte order, the petitioner has been foisted with a maintenance award of Rs. 17,000/- which is beyond his capacity for payment and, as such, the same may be interfered with.

I find from the records that the said aggregated amount of Rs.17,000/-, is Rs.5,000/- for the wife and Rs.6,000/- for the two minor children.

The statutory provisions under section 126 of the cr.p.c. empower the Id. Magistrate itself to set aside the ex parte order, if it is shown to the Id. Magistrate that the party to the proceedings was diligent and there was no scope for the party to know regarding the factum of any service being effected and willfully the party has not participated in the proceedings.

There were number of factual issues which have been canvassed. But, this court, not being a fact finding court, do not intend to interfere with the instant proceedings.

The petitioner would be at liberty to invoke the provisions under section 126 of the cr.p.c.

With the aforesaid observations, CRR 4502 of 2022 is disposed of.

Pending application, if any, is also disposed of.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Tirthankar Ghosh, J.)

