

CRR 1277 of 2024

Sk. Ajibar Ali
Vs.
The State of West Bengal & anr.

Adv. Aniket Mitra,

...for the petitioner.

Affidavit of service filed on behalf of the petitioner is taken on record.

None appears for the opposite parties despite service.

Mr. Arijit Ganguly, who is present in Court and usually represents the State is requested to appear for the State in this matter. His appointment be regularised by the appropriate authority.

The petitioner is directed to serve copy of the application along with annexure thereto upon Mr. Ganguly in course of this day.

The petitioner has assailed the order dated 24th January, 2024 passed by the learned Additional Chief Judicial Magistrate, Alipore in AC no. 2903 of 2023 turning down the prayer of the petitioner under Section 97 of the Code of Criminal Procedure.

Learned counsel for the petitioner submits that the private opposite party is the wife of the petitioner and have been blessed with a girl child. The private opposite party deserted the petitioner with the child and has remarried a person with whom she developed an extra marital relationship. The said person and the private opposite party also have a child. She has been residing in Gujrat with the child. The petitioner apprehends ill treatment of the child at the hands of the private opposite party and has filed an application under Section 97 of the Code of Criminal Procedure.

In the order impugned, the learned Magistrate has referred to a judgment of the Hon'ble High Court at Bombay in *Marotao Pachare &*

ors. vs. Usha Marotrao Pachare reported in 2004 (1) MHLJ 253 and has observed that there is no material which *prima facie* suggests that taking away of the minor child amounts to an offence. The learned Court has further held that the private opposite party being the biological mother of the child has the right to retain custody of the child.

Upon perusal of the order impugned, this Court is of the view that the observation made by the learned Magistrate therein is reasonable and in accordance with law and does not call for interference by this Court. The child being in custody of her mother can under no stretch of imagination be termed as confinement amounting to an offence for issuance of search warrant in terms of Section 97 of the Code of Criminal Procedure. In the event the petitioner seeks custody, guardianship or visitation right of the child, he is at liberty to approach the appropriate forum for the same.

The revisional application, being CRFR 1277 of 2024 is accordingly dismissed.

Urgent certified website copy of this order, if applied for, be given to the parties, upon compliance of all requisite formalities.

(Suvra Ghosh, J.)