

CRR 4750 of 2023

Sk. Jamshed Ali
Vs.
The State of West Bengal & Anr.

Mr. Mrityunjoy Chatterjee
Mr. Debapriya Mazumder
Mr. Tusar Hazra ...for the petitioner

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

Opposite party is not represented.

The petitioner herein has assailed the order issuing warrant of arrest against the petitioner herein in connection with Misc. Execution Case no. 42 of 2018 under Section 125(3) of the Code of Criminal Procedure arising out of Misc. Case no. 57 of 2004.

It is submitted by the petitioner that the opposite party herein had initiated a proceeding under Section 125 of the Code of Criminal Procedure, which was registered as aforesaid Misc. Case no. 57 of 2004 and said prayer was disposed of by an order dated 25th September, 2008 by which, the learned Magistrate passed an order directing the petitioner herein to pay a sum of Rs. 4,000/- per month to the opposite party herein towards maintenance.

The opposite party/husband preferred an appeal before the learned Additional Sessions Judge, 4th Court, Paschim Medinipur, being Revisional Application no. 241 of 2008 and the revisional court affirmed the order of the trial Magistrate. Being aggrieved by that order, the petitioner herein preferred an application before this High Court, challenging the maintainability of the

maintenance application and also order of maintenance passed by both the courts below.

However, after contested hearing, this High Court while disposing CRR 1193 of 2009, was pleased to affirm the order of learned trial Magistrate as well as the Revisional court.

Thereafter, the opposite party/husband filed a suit for declaration that the marriage registration certificate bearing no. 277 dated 11.11.2001 registered in the office of Muslim Marriage Registrar Kazi namely, M. Abdur Rahim is null and void and also prayed for restraining wife/opposite party from claiming herself as a wife of the petitioner herein namely, Sk. Jamshed Ali. The trial court dismissed the said suit.

Being aggrieved by that dismissal order, the petitioner herein preferred an appeal before the appellate court being Other Appeal no. 75 of 2013 and the appellate court by an order dated 20th February, 2018, has been pleased to set aside the order of the trial court and allowed the appeal ex parte whereby, the appellate court declared that the marriage registration certificate of the opposite party herein is null and void and also restrained the opposite party herein from claiming herself as the wife of the plaintiff/petitioner herein.

In the present application, grievance ventilated by the petitioner is that in spite of aforesaid declaration and injunction and that there exists no matrimonial relationship between the parties, executing court by the order impugned issued warrant of arrest and distress warrant against the petitioner which is not sustainable in law.

Having heard learned counsel for the petitioner and also on the basis of the materials available in the case record, CRR 4750 of 2023 is hereby disposed of giving liberty to the petitioner herein to agitate all his aforesaid grievances before the executing court in Misc. Execution case no. 42 of 2018 and in the event of making such prayer before the learned court below, he will dispose of the execution proceeding as well as the Misc. case in accordance with law. Till then, the order regarding issuance of execution of distress warrant by the court below dated 30th March, 2023 and the execution of warrant of arrest dated 3rd August, 2023 and the subsequent orders shall remain stayed.

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

(Dr. Ajoy Kumar Mukherjee, J.)