

(2011) 07 CAL CK 0093

Calcutta High Court

Case No: C.R.R. 1199 of 2004

Reazuddin S.K.

APPELLANT

Vs

State of West Bengal and
Another

RESPONDENT

Date of Decision: July 1, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 127

Hon'ble Judges: Kanchan Chakraborty, J

Bench: Single Bench

Advocate: Tapas Kumar Adhikary, for the Appellant; Asraf Ali, for the Respondent

Judgement

Kanchan Chakraborty, J.

The challenge in this revisional application is to the judgment and order dated 31st January, 2004 passed by the learned Sub-Divisional Judicial Magistrate, Berhampore, Murshidabad in M.R. Case No. 100 of 1999 (T.R. 74 of 1999).

2. The Petitioner, the husband of the opposite party No. 2, Janera Bibi, has come up with this revisional application challenging the legality, validity and propriety of the order passed by the learned Sub-Divisional Judicial Magistrate, Berhampore, Murshidabad, in the aforementioned case granting maintenance u/s 125 of the Code of Criminal Procedure to the tune of Rs. 750/- per month in favour of the wife/opposite party, on the following grounds:

(1) that the learned Trial Court failed to appreciate the evidence in its proper and true perspective and came to a wrong finding as to the fact that the Petitioner was not the husband of the opposite party at the relevant point of time;

(2) that the learned Trial Court failed to consider the factum of marriage between the parties was denied by the Petitioner in course of trial and that the witnesses examined on his behalf had given cogent and trustworthy evidence;

(3) that the learned Trial Court failed to take note of the fact that the marriage between the parties was not at all established by sufficient and satisfactory evidence;

(4) that the learned Trial Court failed to appreciate the fact also that there was a criminal case as well as a suit praying for declaration to the effect that the alleged marriage between the parties was null and void; and

(5) that the judgment, being otherwise bad in law, is liable to be set aside.

There is a history of this revisional application which is required to be referred to.

3. On 14.09.2000 the M.R. Case No. 100 of 1999 was disposed of by the learned Sub-Divisional Magistrate, Berhampore whereby the opposite party was awarded maintenance. The order was challenged in a Criminal Motion, bring No. 1 of 2001 in the Court of Learned Additional Sessions Judge, 3rd Court, Murshidabad. The learned Additional Sessions Judge disposed of the Criminal Motion, being No. 1 of 2001, on 17th August, 2001. The learned Court allowed the revisional application but remitted the case back to the learned Court of Sub-Divisional Magistrate on remand with a direction to determine as to whether there had been refusal and neglect on the part of the Petitioner/husband after giving sufficient opportunities to both the Petitioner and the opposite party to prove their respective cases by adducing sufficient evidence, both oral and documentary. Upon receiving such case from the Court of the learned Additional Sessions Judge, the learned Sub-Divisional Judicial Magistrate allowed the parties to the case to adduce further evidence and, in fact, both the parties adduced further evidence and after recording their evidence, the learned Court passed the order impugned awarding monthly maintenance to the opposite party/ Janera Bibi to the tune of Rs. 750/- from the date of filing of the case. The Petitioner/husband has come up with this revisional application on the grounds mentioned earlier.

4. The point to be decided is whether the judgment impugned is sustainable in law.

5. I have carefully gone through the judgment impugned as well as the evidence recorded by the learned Sub-Divisional Magistrate before the case was sent back on remand as well as after receiving the case on remand. No doubt, a criminal action was initiated by the husband/opposite party against the wife but that has not yet been disposed of. It is also true that a suit has been filed by the Petitioner/husband praying for declaration to the effect that the alleged marriage between him and the opposite party, Janera Bibi, was null and void. I find that the said suit has not yet been disposed of finally. There is nothing also on record to show what were the grounds taken by the Petitioner/husband in that suit. find that the learned Trial Court considered that fact while passing the impugned order. It is settled principles of law that maintenance to a wife is her right. It cannot be denied merely because the husband has initiated a criminal case or that the husband filed a suit praying for declaration that the alleged marriage between him and the opposite party/wife was

null and void.

6. On careful scrutiny of the record it appears that the fact that there was no marriage between the Petitioner and the opposite party has been established satisfactorily. On the contrary, the Kabilnama, which was admitted into evidence and marked exhibit without objection together with the evidence of the Moulavi who conducted the marriage between the parties appear to be convincing and, no doubt, supports the case of the opposite party. I find that the learned Trial Court carefully dealt with the matter and considered that point from all possible angles and finally came to a conclusion that the Kabilnama as well as evidence of Moulavi altogether established the fact that there was marriage between the Petitioner and the opposite party. In fact, this Court also is not ready to accept the plea taken by the Petitioner herein that he was forced to sign the Kabilnama.

7. The evidence adduced on behalf of the Petitioner in the learned Trial Court, do not also support that fact sufficiently and satisfactorily.

8. It is admitted position that the opposite party is a lady having no means to maintain herself. The marriage between the opposite party and the Petitioner, according to the evidence on record, was proved. The Petitioner is a person who can afford Rs. 750/- per month towards maintenance of his wife. He has not obeyed the order of the Court till this date. The learned Trial Court found that there was refusal and neglect on the part of the Petitioner.

9. There is no impediment, whatsoever, for a Court to award maintenance to a wife having no means to maintain herself even if a suit regarding matrimonial status is pending. In case, the suit goes in favour of the Petitioner/husband and the marriage between the parties is declared null and void, the husband can invoke the provisions of Section 127 of the Code of Criminal Procedure.

10. I, on careful consideration of the evidence on record as well as the judgment impugned and upon consideration of the submissions of the learned advocates appearing for the parties, am of the opinion that the judgment impugned is not suffering from any irregularity, illegality and impropriety necessitating any interference by this Court in this revisional application. The judgment impugned is not required to be upset and the same is affirmed.

11. With the above findings, this revisional application is disposed of on contest. The Petitioner is directed to pay maintenance allowance to the opposite party/wife without delay together with the arrears of maintenance in easy monthly instalment which is to be fixed by the learned Magistrate.

12. There will, however, be no order as to costs.

13. Interim order, if there be any, stands vacated.

14. Let urgent photo state certified copy of this order, if applied for, be given to the learned advocates of the parties upon compliance of necessary formalities.