
(2012) 04 CAL CK 0119
In the Calcutta High Court
Case No : C.R.R. No. 2011 of 2011

Sk. Mokibul @ Mokibur

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2012) 3 CALLT 186

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Achin Jana and Mr. Suman Chakraborty, for the Appellant;

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—Challenge is to the Order dated December 24, 2009 passed by the learned Additional Chief Judicial Magistrate, Uluberia, Howrah in Misc. Case No. 99 of 2005 thereby allowing an application u/s 125 of the Criminal Procedure Code (in short, "Cr.P.C."). The short fact is that the petitioner and the opposite party No. 2 were married on November 28, 2003 according to Muslim Rites and Customs without consent of his parents and after marriage the husband was living with the wife at the house of the father of the wife. One child was born in the wedlock. The members of the family of the husband took the husband/petitioner herein to their house on assurance that the wife would be taken to their house soon. Accordingly, the wife requested the husband to take her to their house. The parents of the opposite party demanded Rs. 25,000/- and other articles as dowry. The father of the petitioner is poor and he was unable to pay the said dowry. The husband did not keep any information about the petitioner and the child. The petitioner has no income. On the other hand, the opposite party earns Rs. 6,000/- per month by working as a Jori worker and he has also income to the tune of Rs. 15,000/- to 20,000/- per month from landed properties. So, she filed the application for maintenance for herself and her

minor son.

2. Husband/petitioner herein is contesting the said application denying the allegations raised in this application. He has also denied the relationship between the parties. He has contended that no marriage took place between them. There was no cohabitation between the two. The wife/opposite party No. 2 herein is the "aunt" of the petitioner by relation and she led an immoral life for which the petitioner is not responsible. The wife is a married lady and her husband's name is Salauddin Laskar. The husband/petitioner herein earns Rs. 700/- to Rs. 800/- per month by working as a Jori worker and he has no landed property. So, the application should be dismissed.

3. Both the parties have adduced evidence over the matter and upon analysis of the evidence on record, the learned Trial Judge granted maintenance at the rate of Rs. 1200/- per month for the wife and Rs. 800/- per month for the minor son and a litigation cost of Rs. 500/- only. The order will take effect from the date of filing of the case. Being aggrieved by such orders, this application has been preferred by the husband.

4. Now, the question is whether the impugned order should be sustained.

5. Upon hearing the learned Counsel for the parties and on going through the materials-on-record, I find that the marriage between the two is a matter of challenge. In support of the marriage, the wife/opposite party No. 2 has stated that marriage between the two took place as per desire of the husband and after the marriage, they resided together in the house of the father of the opposite party No. 2, but the father of the husband did not allow them for entry into their house and as such, they were compelled to take shelter in the house of her father and that one child, namely, Sk. Sabraj (son) was born in the wedlock. The evidence of the wife is corroborated by her father, P.W. 2. The wife has stated that one Safique Mallick (O.P.W. 3) acted as Moulavi in the marriage but this O.P.W. 3 has denied that he has acted in such capacity. During the cross-examination, he has stated that he did not receive any summons from the Court, the husband/opposite party called him to depose and as such, he came to depose. Therefore, from his conduct, it appears that he could not depose as an independent witness. The learned Magistrate has, therefore, rejected his evidence and relying on the statement of the wife corroborated by her father and in consideration of the other materials-on-record, the learned Magistrate has held that the marriage between the two was held according to Muslim Rites and Customs and that the child (son) was born in the wedlock. The learned Magistrate, I think, has rightly concluded in this regard and his conclusion is based on evidence.

6. So far as the quantum of maintenance is concerned, the wife has proved that he has no income and that her husband earns by working as a Jori worker. The husband has also admitted that he works as a Jori Worker but he has denied the contention of the wife that he has any landed property. Anyway, since the wife

has no independent source of income, the petitioner is bound to maintain his wife and child. Accordingly, the learned Trial Judge has come to the conclusion that the husband should pay maintenance at the rate of Rs. 1200/- per month and Rs. 800/- per month for the wife and the son respectively. The quantum of maintenance does not seem to be excessive. So, I do not think that the said findings are perverse.

7. The learned Advocate for the petitioner has contended that unless the marriage is proved or if the marriage is void on the ground of pre-existing marriage of the wife, the order of maintenance passed by the learned Trial Judge cannot be supported and in support of his contention, he has relied on the decision *Aloke Kumar Biswas v. The State of West Bengal & anr.* reported in (2008) 1 C.Cr.L.R. (Cal) 559 and *Ashim Dey v. Smt. Khuku Dey* reported in (2002) C.Cr.L.R. (Cal) 800. The decision of *Ashim Dey*(supra) is with regard to the essential of a marriage of two Hindu persons. So, this decision will not be applicable at all in the instant case. Since, the findings of the learned Trial Judge are based on evidence and there is no perversity in the impugned order, in exercising the jurisdiction under Article 227 of the Constitution, I am of the view that the impugned order should not be interfered with. After all, the proceeding u/s 125 of the Cr.P.C. is a summary procedure and the learned Magistrate has rightly observed that the husband did not file any suit or appropriate proceedings for annulment of the marriage or declaration that no marriage was held between the two. I think the learned Magistrate has rightly concluded in this regard. So, there is no scope of interference with the impugned order.

8. Accordingly, the application fails to succeed. The application is, therefore, dismissed.

9. Considering the circumstance, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.