

Criminal Revision

PRESENT: The Hon'ble Justice Ashim Kumar Roy

Judgment On: 01-02-2010.

C.R.R. No. 53 of 2010

Rakesh Sarkar

versus

The State of West Bengal & Anr.

.

Point:

Maintenance: Merely because second appeal is pending before High Court, arising out of a suit seeking a declaration that there was no marital relation between the parties whether maintenance proceeding in criminal court will be stayed- Code of Criminal Procedure, 1973-S.125.

Fact: The opposite party no. 1 filed an application under Section 125 of the Code of Criminal Procedure claiming maintenance from the petitioner, which is pending before the Learned Judicial Magistrate. Subsequently, the husband/petitioner filed a Title Suit before the Civil Judge seeking a declaration that there was no marital relation between the petitioner and the opposite party no. 1. The Title Suit was dismissed and against the said order, an appeal was preferred but the same was also dismissed. A second Appeal filed before this Hon'ble Court is still pending. The petitioner thereafter moved an application before the learned Court below praying that till the disposal of the Second Appeal, which is pending before this Hon'ble High Court, all further proceedings relating to the maintenance proceeding be stayed. The Learned Magistrate rejected such prayer, hence this criminal revision. Dismissing the Revisional application, the High Court,

Held: A proceeding under Section 125 of the Code of Criminal Procedure and a proceeding arising out of a Title Suit, where the plaintiff sought for a declaration that there was no marriage, arise out of two different cause of action and one is not overlapping the other. The said two proceedings are working in two different fields. The Title Suit filed by the petitioner has been dismissed as well as the appeal preferred against the same, now, merely because second appeal is pending before this High Court, there is no question of stopping the maintenance proceeding. (Paragraph – 4)

For Petitioner: Mr. Debasish Mukhopadhyay, Mr. Ranjan Chakraborty, Ms. Ranjana Talapatra.

The Court: 1. The opposite party no. 1 herein filed an application under Section 125 of the Code of Criminal Procedure being Misc. Case No. 29 of 2006 claiming maintenance from the petitioner, which is now pending before the Learned Judicial Magistrate, Mekhliganj, Cooch Behar. After filing of such application under Section 125 of the Code of Criminal Procedure, the husband/petitioner filed a Title Suit before the Civil Judge, Junior Division, Mekhliganj seeking a declaration that there was no marital relation between the petitioner and the opposite party no. 1 herein. However, the said Title Suit was dismissed. Against the said order, an appeal was preferred but the same was also dismissed. A second Appeal filed before this Hon'ble Court is still pending.

2. In such circumstances, the petitioner herein moved an application before the learned Court below praying that till the disposal of the Second Appeal, which is now pending before this Hon'ble High Court, all further proceedings relating to the maintenance proceeding be stayed. The Learned Magistrate rejected such prayer, hence this criminal revision.

3. Heard Mr. Debasish Mukhopadhyay, learned advocate appearing with Mr. Ranjan Chakraborty and Ms. Ranjana Talapatra on behalf of the

petitioner. Perused the impugned order and other materials on record.

4. There is no controversy that a proceeding under Section 125 of the Code of Criminal Procedure and a proceeding arising out of a Title Suit, where the plaintiff sought for a declaration that there was no marriage, arise out of two different cause of action and one is not overlapping the other. The said two proceedings are working in two different fields. Moreover, in this case, the Title Suit filed by the petitioner has been dismissed as well as the appeal preferred against the same, now, merely because second appeal is pending before this High Court, there is no question of stopping the maintenance proceeding. I do not find any merit in this criminal revision and, accordingly, same stands dismissed. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)