

## **CRIMINAL REVISION**

Present: **The Hon'ble Justice Ashim Kumar Roy**

*C.R.R. No. 716 of 2010*

**Judgment On: 31-03-2010.**

*Tirthankar Ghosh*

*versus*

*The State of West Bengal&Ors*

### **POINTS:**

SEARCH WARRANT, CUSTODY - Magistrate issued search warrant for recovery of the child and her production before the Court -Learned Magistrate, whether has jurisdiction to hear the accused person on the question of custody- Indian Penal Code, Ss. 498A/306-Code of Criminal Procedure, 1973 S.97.

### **FACTS:**

The petitioner is the father of a female child. He is accused of a criminal case relating to the offences punishable under Sections 498A/306 of the Indian Penal Code. When the petitioner was in custody in connection with the said case, the parents of his deceased wife, took her in their custody. After his release the petitioner filed an application for issuance of a search warrant for her recovery. Pursuant to such order police submitted its report but the opposite party nos. 2 and 3 refused to hand over the custody of the child to the petitioner. Thereafter, both the opposite parties surrendered in Court and they were released on bail and on their prayer the Learned Magistrate fixed a date for hearing on the question of custody of the child. The question arose whether the Learned Magistrate after issuing a search warrant could at all give a hearing on the question of custody.

### **HELD:**

The Learned Magistrate having given an opportunity of hearing to the opposite party nos. 2 and 3 as to the question of custody of their granddaughter has not committed any mistake.

Para- 4

For Petitioner: Ms. Chandrayee Alam  
Mr. Rajarshi Chatterjee

**THE COURT:**

1. The present petitioner is the father of a female child, aged about 2 years and 9 months. He is an accused of a criminal case relating to the offences punishable under Sections 498A/306 of the Indian Penal Code on the allegations that he during the lifetime of his wife subjected her to cruelty and by such cruelty abetted her to commit suicide. When the petitioner was in custody in connection with the said case the parents of his deceased wife, i.e., the maternal grandfather and grandmother of the child, the opposite party nos. 2 and 3 herein took her in their custody. After his release the petitioner filed an application under Section 97 of the Code of Criminal Procedure before the Learned Additional Chief Judicial Magistrate, Kalyani for issuance of a search warrant for her recovery, when the Learned Magistrate called for a police report. Pursuant to such order police submitted its report and it appears therefrom that opposite party nos. 2 and 3 refused to hand over the custody of the child to her father, i.e., the petitioner herein. Accordingly, the Learned Magistrate took cognizance under Section 342 of the Indian Penal Code and directed issuance of summons against them. Simultaneously, the Learned Magistrate also issued search warrant for recovery of the child and for her production before the Court. Thereafter, both the opposite parties surrendered in Court and they were released on bail and on their prayer the Learned Magistrate fixed a date for hearing on the question of custody of the child.
2. Heard the Learned Counsel appearing on behalf of the petitioner. Perused the impugned order and other materials on record.
3. It has been vehemently contended by the Learned Counsel of the petitioner that once Learned Magistrate issued search warrant for recovery of the child and her production before the Court, the Learned Magistrate has no jurisdiction to hear the accused person on the question of custody.
4. I have given my anxious and thoughtful consideration to the submissions made on behalf of the petitioner. In my opinion that the Learned Magistrate having given an opportunity of hearing to the opposite party nos. 2 and 3 as to the question of custody of their granddaughter has not committed any mistake. The order impugned is wholly justified and does not deserve any interference.
5. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.
6. However, the Learned Magistrate is directed to decide the question of custody of the child with utmost expedition.

7. Let a copy of this order be communicated to the Learned Court below at once by the Office.

8. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

**( Ashim Kumar Roy, J. )**