

CRIMINAL REVISION

Present :The Hon'ble Mr. Justice **Prasenjit Mandal**

C.R.R. No.2688 of 2009

Judgement On: June 15, 2010.

Habib Ahmed

Versus

Sarmistha Gon & Ors.

POINTS

EXPEDITE COMPLETION OF TRIAL – QUASHING – The case is pending for a long period on the ground that the results of the said Matrimonial Suit have not been brought by the petitioner before the learned Magistrate – Petitioner has expressed his inability to produce the result of the matrimonial suit, Whether court is to pass appropriate orders and dispose of the criminal case on the basis of the materials as produced by the parties – Code of Criminal Procedure, 1973 – S 401 , S 482 – Special Marriage Act, 1954 – Indian Penal Code 1860 S 494 S 420 S 120(B).

FACTS

The facts leading to the filing of this application in brief are that the petitioner was married to the opposite party no.1 on November 26, 1996 under the Special Marriage Act, 1954. Thereafter the opposite party no.1 stayed in the house of the petitioner but she came back after taking

jewellery and valuable articles. Then she developed intimacy with the opposite party no.2 and their marriage was solemnised on September 18, 1997. For that reason, the petitioner filed a complaint case against the opposite party nos.1 and 2 under Sections 494/34/406/420/120(B) of the I.P.C. before the learned S. D. J. M., Arambag, Hooghly. At one point of time, the case ended in acquittal and the petitioner preferred an appeal. Thereafter, the order of acquittal was set aside and now the case is pending at the stage of recording evidence. But the concerned Magistrate was making delay in proceeding / conducting the case and he directed the petitioner to produce the final order of the Matrimonial Suit No.29 of 1999 pending before the learned Additional District Judge, Tenth Court, Alipore. In the meantime, the petitioner moved the Hon'ble Court by filing an application under Article 227 of the Constitution of India praying for early disposal of the criminal case and the Hon'ble Justice P. N. Sinha (as His Lordship then was) directed to dispose of the said criminal case within a period of four months from the date of communication of the order dated December 16, 2005. In spite of that, by the impugned order, the learned Magistrate is making delay in the disposal of the case on the ground that the results of the Matrimonial Suit No.29 of 1999 have not been produced before the learned Trial Court. So this case for direction to expedite the completion of the trial of the said criminal case.

HELD

Every case shall be decided according to merits. The Court is to consider the materials placed before it by the parties and then to pass appropriate orders in the case. The petitioner has clearly stated that he is not in possession of the result of the said Matrimonial Suit because of the fact that the said suit is still pending and the Court is vacant. For that reason, no final order has yet been passed in the matrimonial proceedings. This being the position, the learned Magistrate

unnecessarily caused delay in dealing with the criminal case under reference. Whenever the petitioner has expressed his inability to produce the result of the matrimonial suit, court is to pass appropriate orders and dispose of the criminal case on the basis of the materials as produced by the parties. He need not wait for the results of the matrimonial suit particularly when the petitioner expressed his inability to produce the same. Para 4

For the petitioner: Ms. Runu Mukherjee.

For the Opposite parties: None appears.

Prasenjit Mandal, J:

THE COURT 1.This application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 has been preferred against the orders dated 11.12.2008 (so far as it relates to relevancy of the result of Matrimonial Suit No.29 of 1999 etc.), 13.01.2009, 18.02.2009, 20.03.2009 and 28.04.2009 passed by the learned Judicial Magistrate, Second Court, Arambag, Hooghly in C.R. Case No.245 of 1999.

2.The facts leading to the filing of this application in brief are that the petitioner was married to the opposite party no.1 on November 26, 1996 under the Special Marriage Act, 1954. Thereafter the opposite party no.1 stayed in the house of the petitioner but she came back after taking jewellery and valuable articles. Then she developed intimacy with the opposite party no.2 and their marriage was solemnised on September 18, 1997. For that reason, the petitioner filed a complaint case against the opposite party nos.1 and 2 under Sections 494/34406/420/120(B) of the

I.P.C. before the learned S. D. J. M., Arambag, Hooghly. At one point of time, the case ended in acquittal and the petitioner preferred an appeal. Thereafter, the order of acquittal was set aside and now the case is pending at the stage of recording evidence. But the concerned Magistrate was making delay in proceeding / conducting the case and he directed the petitioner to produce the final order of the Matrimonial Suit No.29 of 1999 pending before the learned Additional District Judge, Tenth Court, Alipore. In the meantime, the petitioner moved the Hon'ble Court by filing an application under Article 227 of the Constitution of India praying for early disposal of the criminal case and the Hon'ble Justice P. N. Sinha (as His Lordship then was) directed to dispose of the said criminal case within a period of four months from the date of communication of the order dated December 16, 2005. In spite of that, by the impugned order, the learned Magistrate is making delay in the disposal of the case on the ground that the results of the Matrimonial Suit No.29 of 1999 have not been produced before the learned Trial Court. So this case for direction to expedite the completion of the trial of the said criminal case.

3.Having considered the submission of the learned Advocate for the petitioner and perusing the materials on record, I find that the criminal case is pending for quite a long time. Hon'ble Justice P. N. Sinha (as His Lordship then was) directed the learned Magistrate to dispose of the case within four months from the date of communication of the order dated December 16, 2005. In spite of such fact, the case is pending for a long period on the ground that the results of the said Matrimonial Suit have not been brought by the petitioner before the learned Magistrate.

4.Now, every case shall be decided according to merits. The Court is to consider the materials placed before it by the parties and then to pass appropriate orders in the case. The petitioner has clearly stated that he is not in possession of the result of the said Matrimonial Suit because of the fact that the said suit is still pending and the Court is vacant. For that reason, no

final order has yet been passed in the matrimonial proceedings. This being the position, I am of the view that the learned Magistrate unnecessarily caused delay in dealing with the criminal case under reference. Whenever the petitioner has expressed his inability to produce the result of the matrimonial suit, court is to pass appropriate orders and dispose of the criminal case on the basis of the materials as produced by the parties. He need not wait for the results of the matrimonial suit particularly when the petitioner expressed his inability to produce the same. The learned Magistrate should have followed the direction of Justice P. N. Sinha (as His Lordship then was). Therefore, I am of the view that the learned Magistrate shall be directed to dispose of the criminal case within three months from the date of communication of this order at any cost irrespective of the fact that whether the petitioner is able to produce the results of the matrimonial suit under reference.

5.This application is disposed of with the above orders.

6.There will be no order as to costs.

7.Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)