

IN THE COURT OF THE SESSIONS JUDGE :::::::::: DHUBRI

C.R. Case No. 28 (1)/ 2012

Petitioner : Md. Osman Goni

- Vs -

Opp. Party : Mosstt. Ayesa Siddique

Present : Sri A. Bhattacharyya, AJS
Sessions Judge, Dhubri

Sri S.M. Shahjahan, Advocate for the petitioner.
Sri Robiul Islam, Advocate for the O.P.

Date of Hearing : 09-01-2013

Date of Judgment : 09-01-2013

J U D G M E N T

The propriety, legality, correctness and regularity have been questioned in this revision preferred U/s.397 Cr.P.C. in respect of an order and judgment dated 30-06-2011 passed by the learned S.D.J.M (M), Bilasipara in Misc. case No.117/2010, whereby learned trying Magistrate was pleased to direct the 2nd party of the aforesaid Misc. Case to pay a sum of Rs.1,000/- to his wife as the maintenance allowance.

2. Being aggrieved and dissatisfied with the aforesaid impugned order, Md. Osman Goni, the revisionist, assailed the impugned order on a numbers of grounds, which are narrated in the memo of Revision.

3. During hearing L.C.R. is called for also learned counsel of the parties are heard.

4. I have carefully gone through the L.C.R. in the light of the submissions advanced by the learned counsel of the parties.

5. On a minute perusal, it appears that the O.P. of this revision Ayesa Siddique, brought an application before the learned trying Magistrate U/s.125 Cr.P.C. praying for maintenance allowance against the revisionist of this revision. The aforesaid

Misc. case was started upon the aforesaid petition. The notice was served upon the 2nd party i.e the revisionist through registered post. As per the order dated 30-05-2011 passed by the learned trying Magistrate, the said notice was refused to be accepted by the addressee. As such, the case is proceeded ex-parte against the revisionist and finally during ex-parte hearing the impugned order was passed whereby the revisionist was directed to pay the maintenance allowance as stated here in before to his wife i.e O.P. of this revision.

6. During hearing learned counsel of the revisionist submits that the O.P. of this revision had taken talak from the revisionist and as such the O.P. is not entitled to get maintenance allowance from the revisionist under the provision of Sec. 125 Cr.P.C. This apart, according to the learned counsel of the revisionist, the revisionist did not get chance to contest the case and to lay his case before learned trying Magistrate.

7. On the other hand, learned counsel of the O.P. submits that the revisionist had the opportunity to raise the matter as per the mandate of Sec. 125 Cr.P.C. before the learned trying Magistrate. But here in this case before exhausting the aforesaid remedy, the revisionist had straightway come to this Court and assailed the impugned order.

8. I have carefully examined the propriety of the aforesaid rival submission in the light of the L.C.R. The notice which was sent through registered post, is in the L.C.R. The same shows that the notice was refused to be received by the addressee. But learned trying Magistrate did not examine the postal peon in support of the aforesaid factum.

8. In view of the above, I find merit in the submission of the learned counsel of the revisionist. Considering the entire circumstance, it is directed that the revisionist shall continue to pay the maintenance allowance awarded earlier and further the revisionist will raise the matter before the learned trying Magistrate and to that effect shall file an application which will be considered by the learned trying Magistrate.

9. With the observations as narrated here in before the instant revision is disposed of on contest and without cost. Let a copy of the order be sent to the learned trying Magistrate along with the L.C.R.

Given under my hand and seal of the Court on this 9th day of January, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri