

(2019) 12 CAL CK 0005

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 2126 Of 2015

Goutam Chanda

APPELLANT

Vs

Gouri Rani Chandan & Anr

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 401, 482

Protection Of Women From Domestic Violence Act, 2005 — Section 2(a), 2(f), 12, 18

Citation : (2019) 12 CAL CK 0005

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Abdulla Rahaman, Md.K.Basar Bulbul

Final Decision : Dismissed

Judgement

Madhumati Mitra, J

This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure filed by the petitioner challenging the impugned order being no.8 dated 5th May, 2015 passed by the Learned Session Judge, Howrah in Criminal Appeal No.426 of 2014. By the impugned order, the Learned Session Judge affirmed the judgment and order dated 29th November, 2014 passed by the Learned Judicial Magistrate, 4th Court, Howrah in Miscellaneous Case No.587/2010 being T.R.No.520/2010.

The facts which are essential for disposal of the present revisional application may be summarized as under:

Opposite party no.1 is the mother of the present petitioner. The mother of the petitioner is an old lady and is suffering from various ailments. Opposite party no.1/mother became the owner of a plot of land measuring about 5 cottahs, 2 chitaks and 42 sq.ft by way of purchase. She has three sons, present petitioner is one of the sons of the opposite party no.1. Out of love and affection, the opposite party/mother transferred a portion of the said land to the present

petitioner by executing a deed in his favour and the remaining portion of the said plot was gifted by the opposite party no.1 to her other two sons. It was alleged by the opposite party no.1 in her application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 that the present petitioner and his father-in-law tried to make permanent construction on the land of the opposite party and her two other sons. Opposite party/mother protested the action of the present petitioner. She filed a civil suit being Title Suit No.179 of 2010 before the Court of Learned Civil Judge, Junior Division, 5th Court, Howrah. It was alleged by the opposite party/mother that after receipt of the summons of the said civil suit, the present petitioner and his wife started abusing the present opposite party/mother. The present petitioner and his parents in law assaulted the opposite party/mother and her 2nd son. They were treated at Howrah State General Hospital for the injuries sustained by them due to assault. The present opposite party/mother was compelled to lodge a written complaint before the I/C of Nazirgunj under Police Station Sankrail against the present petitioner and other. In spite of that the present petitioner along with others disturbed the present opposite party. The opposite party/mother was compelled to inform the matter to the District Magistrate, Superintendent of Police and Additional Superintendent of Police (Rural Howrah). It was the apprehension of the opposite party that the present petitioner was trying to grab her property and as such by filing the application under the provisions of Protection of Women from Domestic Violence Act, the opposite party sought for various reliefs and the said application was registered as Misc.Case No.587 of 2010.

The present petitioner being the opposite party of the Misc.Case No.587/2010, contested the said Misc.Case by filing written objection. In his written objection the present petitioner denied all the allegations levelled against him by the present opposite party/mother. In his written objection, the present opposite party admitted that one civil suit was pending relating to a portion of the disputed plot. It was specifically submitted by the present petitioner before the Learned Magistrate that his other brothers instigated their mother against him. The petitioner claimed that he had invested huge amount for construction of a house at Andul Road and he was being pressurized by his mother and two brothers to sale the said property. The present petitioner was not willing to sell that property. On September 28th,2010 at about 7:00 a.m. the brothers of the present petitioner with the instigation of their mother threatened to kill the present petitioner and his family members over a dispute of locking the door of the passage. The present petitioner lodged an F.I.R. with Sankrail Police Station against the present opposite party and her two sons. The present petitioner specifically stated that he was medically treated due to injury sustained by him. He was compelled to file one M.P.Case being No.1332 of 2010 before the Executive Magistrate, 2nd Court, Howrah.

The present petitioner in his written objection also stated that the opposite party is a pension holder and gets pension of Rs.10,000/- per month. Apart from, she has fixed deposit of Rs.3 Lakhs and Rs.2 Lakhs. The present petitioner claimed

that his mother earns Rs.7,000/- per month from the tenant. The present petitioner also claimed that his two other brothers have sufficient means to their mother.

After giving opportunity of being heard to both the parties, the Learned Magistrate allowed the prayers of the opposite party under Section 12 of Protection of Women from Domestic Violence Act in part on 29th November, 2014. By the said order the Learned Magistrate directed the present petitioner to pay Rs.8,000/- per month as monetary relief including medical expenses to the present opposite party/mother and also directed him to pay Rs.50,000/- as damage to his mother for mental torture and emotional distress caused to her.

Being aggrieved by and dissatisfied with the judgments and order passed by the Learned Magistrate, the present petitioner preferred a Criminal Appeal being No.426 of 2014 on 05.05.2015. The Learned Session Judge, Howrah, dismissed the said Criminal Appeal preferred by the present petitioner and affirmed the judgment and order passed by the Learned Judicial Magistrate on 29.11.2014 in Misc.Case No.587 of 2010.

During the course of hearing the impugned judgment and order passed by the Learned Session Judge have been assailed by the Learned Counsel for the petitioner on the ground that both the Learned Courts below have committed an error in passing the impugned order in favour of the opposite party. According to the contention of the Learned Counsel for the petitioner is that both the Learned Courts below have failed to appreciate the fact that the opposite party has sufficient means to maintain herself. He has further submitted that proceedings initiated by the opposite party are not within the ambit and scope of the provisions of Protection and Women from Domestic Violence Act. It has been forcefully contended by the Learned Advocate for petitioner that both the Learned Courts below have failed to take into consideration that the dispute between the petitioner and his mother cropped up with regard to some properties and the opposite party mother was instigated by her two other sons to initiate proceedings against the petitioner.

Learned Counsel has further contended that both the Learned Courts below have failed to take into consideration that the dispute raised in the proceedings under Section 12 of the Protection of Women from Domestic Violence Act is purely a dispute of civil nature between mother and her sons and the mother cannot be regarded as aggrieved person within the meaning of the Act. It is the specific contention of the Learned Counsel for the petitioner that the judgment and order passed by the Learned Session Judge whereby affirming judgment and order passed by the Learned Magistrate are not sustainable in law and are liable to be set aside.

Admittedly, the present petitioner is one of the sons of the opposite party. It is also an admitted fact that the opposite party has three sons. She gifted her landed property to her sons. Present petitioner is the youngest son of the

opposite party and he is residing in the property gifted to him by his mother i.e. the present opposite party. Materials placed on record show that the present petitioner used to reside with his mother and after the death of his father he left his mother.

In her application, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 the present opposite party described that she was subjected to physical and mental torture by the present petitioner. Section 2(a) of the Act of 2005 has defined the term 'aggrieved person'. 'Aggrieved Person' means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

Section 2(f) of the Act of 2005 defines 'domestic relationship'. Domestic relationship means a relationship between two persons who live or have at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

In the present case, the petitioner and the opposite party are related with each other i.e. the relationship of son and mother. They have been in a relationship with each other where both the parties lived together in a residence.

The Learned Courts below after considering the evidence adduced by the parties and the materials placed on record came to the concurrent findings that the present opposite party was entitled to get a protection order under Section 18 of the Act of 2005, monetary relief including medical expenses @ rate of Rs.8,000/- per month from the date of the order and also entitled to get Rs.50,000/- as damages for mental torture and emotional distress.

Both the Learned Courts elaborately analyzed the evidence on record, the relationship between the parties, their economic condition and the income of the other two sons of the present opposite party/mother. Thereafter came to the conclusion that the aggrieved party/mother was entitled to get the reliefs under the Act of 2005. The conclusion drawn by the Learned Courts below is based on facts and law.

It is a settled principle of law that in exercise of its power under Section 482 of the Code of Criminal Procedure, the High Court should not, in the absence of perversity, upset concurrent factual findings of the Trial Court and Appellate Court. Moreso, the High Court in exercise of its inherent power should not reanalyze and re-assess the materials particularly the evidence on record.

On perusal of the entire materials on record, it cannot be held that the Learned Courts below committed an error in holding that the present opposite party/mother is entitled to get the reliefs under the Protection of Women from Domestic Violence Act.

The above discussion leads me to hold that the Learned Courts below have

rightly come to their conclusion. I do not find any justification to interfere with the impugned judgment and order.

The present application is devoid of merit and stands dismissed.

Urgent certified photocopy of this judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.