

(2019) 06 CAL CK 0041

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 3566 Of 2018, Civil Application (CAN) No. 1348 Of 2019

Krishnendu Das Thakur

APPELLANT

Vs

State Of West Of Bengal & Anr

RESPONDENT

Date of Decision : 28-06-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 125(1)(b), 127, 482, 489
Protection Of Women From Domestic Violence Act, 2005 — Section 2(a), 2(f), 2(q),
12, 18, 23, 23(1), 25, 25(1), 25(2), 29
Constitution Of India, 1950 — Article 227

Citation : (2019) 06 CAL CK 0041

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Siva Prosad Ghose, Chandra Bhanu Sinha, Rohit Kumar Shaw, Anand Kesari, Sekhar Mukherjee

Final Decision : Dismissed

Judgement

Madhumati Mitra, J

The petitioner has filed the present application under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, praying for quashing/setting aside the impugned order dated 10th October, 2018 passed by the Learned Additional Session Judge, Howrah in Criminal

Appeal no.82 of 2017 and the order of rejection of the prayer for stay of the Mis.Execution Case no.298 of 2016 pending before the Learned Judicial

Magistrate, Howrah Municipal Court, Howrah arising out of Miscellaneous Case no.27836/2014 under Section 12 of the Protection of Women from

Domestic Violence Act, 2005.

In Miscellaneous Case no.27836/2014 under Section 12 of the Protection of

Women from Domestic Violence Act, the petitioner was directed by the Learned Magistrate to pay Rs.3,000/- per month for maintenance and Rs.800/- per month for rent of alternative accommodation on and from 5th October, 2015 to the opposite party. Thereafter the petitioner initiated a matrimonial suit praying for dissolution of his marriage with his wife and obtained ex parte decree of divorce on 23rd February, 2016. After the decree of divorce the petitioner filed an application under Section 25 of the Protection of Women from Domestic Violence Act, 2005 praying for alteration/ modification or revocation of the order dated 5th October, 2015, passed by the Learned Magistrate granting maintenance and rent for alternative accommodation in connection with Miscellaneous Case no.27836/2014 on the ground that his marriage with the opposite party was dissolved by a decree of divorce on 23rd February, 2016 and he is not liable to pay any amount to opposite party in terms of the order dated 5th October 2015. It is the specific contention of the petitioner that after the decree of divorce he is no longer in "domestic relation" with the opposite party no.2.

All the Learned Counsel appearing for the parties advanced their arguments with the help of a series of decisions. Before delving deep into the matter, it would be better to deal with the relevant Sections and Provisions of the Protection of Women from Domestic Violence Act, 2005.

Section 25 of the said Act reads as under:

"Duration and alteration of orders- (1) A protection order made under Section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances

requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he

may deem appropriate."

Section 25 consists of two parts. Sub-Section 1 of Section 25 of the Act 2005 deals with the protection order made under Section 18 of the Act. The

second part, that is Sub-Section 2 of Section 25 speaks about alteration, modification or revocation of any order made under this Act. So far as Sub-

Section 1 of Section 25 is concerned, only the aggrieved person may apply for discharge of protection order passed under Section 18 of the Act.

On the other hand Sub-Section 2 of Section 25 provides that the aggrieved person or the respondent may approach before the Magistrate by filing an application for alteration, modification or revocation of any order made under this Act. If any such application is filed before the Magistrate praying for alteration, modification or revocation of any order made under this Act either by the aggrieved person or by the respondent then the Magistrate may for reasons to be recorded in writing pass order, as he may deem appropriate. Sub-Section 2 of Section 25 has conferred right both on the aggrieved person and the respondent to approach before the Magistrate for alteration, modification or revocation of any order made under this Act. Sub-Section 1 of Section 25 is restricted only to the protection orders under Section 18 of the Act. The recourse under Sub-Section 1 of Section 25 can be availed of only by the aggrieved person not by the respondent. Whereas, Sub-Section 2 of Section 25 deals with the alteration, modification and revocation of any order made under the Act and recourse can be taken both by the aggrieved person and the respondent. The scope of application of Sub-Section 2 of Section 25 is much wider than Sub-Section 1 of Section 25.

Section 2(a) of the Act, 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 respondents. Whereas respondent has been defined in Section 2(q):-

"respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against the relative of the husband or the male partner.

In view of the provision as contained in Sub-Section 2 of Section 25, it can be presumed that the order passed under the Act is not perpetual in nature and the order passed under this Act may be altered, modified or revoked, if there is a change in the circumstances and for that purpose the aggrieved person or the respondent may approach before the Magistrate under the Act. If such prayer is made the Magistrate may for reasons to be recorded in writing passed such order, as he may deem appropriate.

Now, the question comes as to whether after a decree of divorce by a Court of competent jurisdiction, the domestic relationship between the husband

and wife would continue in view of the provision of this Act. In this connection, the definition of domestic relationship as mentioned under Section 2(f)

of the Act may, be cited here:-

“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.

No doubt, here the parties i.e. the aggrieved person and the respondent were related with each other by marriage. It is the contention of the husband

that he is no longer in domestic relationship with the wife and as such the interim order under Section 23 of the Act passed by the Magistrate requires

to be revoked. Section 23 of the Act speaks about grant of interim order. In view of Sub-Section 1 of Section 23 of the Act, Magistrate may pass such

interim order, as he deems just and proper in connection with any proceedings before him under this Act.

An order passed by the Magistrate under Section 23 of the Act shall remain in force unless and until it is altered, modified or revoked either by the

Magistrate under Section 25 of the Act or by the Appellate Court under Section 29 of the Act in connection with an appeal preferred either by the

aggrieved person or by the respondent.

In the instant case, the prayer for alteration, modification or revocation of the interim order under Section 25 of the Act was rejected by the Learned

Magistrate and thereafter said order of rejection has been affirmed in appeal. That means there are two concurrent decisions against the present

petitioner passed by the Learned Courts below.

During the course of the hearing the Learned Advocate appearing for the opposite party has contended that in view of the decision in Krishna

Bhattacharjee Vs. Sarathi Choudhury and another reported in 2016 Cri.L.J. 330 the wife does not cease to be an aggrieved person because merely

that the husband obtained a decree for divorce from a Civil Court. I have gone through the decision as referred by the Learned Counsel appearing for

the opposite party. From Paragraphs 18 and 22, of the said decision it appears

that a question was raised before the Honâ??ble Apex Court as to whether the wife ceased to be an aggrieved person because of the decree of judicial separation. In the said judgment particularly in paragraph 22

Honâ??ble Apex Court, has made a distinction between a decree of divorce and decree of judicial separation.

In paragraph 22 of the said judgment Honâ??ble Supreme Court observed as under:

â??In view of the aforesaid pronouncement, it is quite clear that there is a distinction between a decree for divorce and decree of judicial separation;

in the former, there is a severance of status and the parties do not remain as husband and wife, whereas in the later, the relationship between husband

and wife continues and the legal relationship continues as it has not been snapped. Thus understood, the finding recorded by the courts below which

have been concurred by the High

Court that the parties having been judicial separated, the appellant wife has ceased to be an â??aggrieved personâ?? is wholly unsustainableâ??.

In the said decision of Krishna Bhattacharjee Vs. Sarathi Choudhury and another the wife approached for relief under the Act. The said relief under

Section 12 of the Act of 2005 was refused on the ground that the wife ceased to be an â??aggrieved personâ?? due to judicial separation. The

factual situation of the present case is distinguishable from the facts of the decision as referred by the opposite party. In the present case the opposite

party had already been granted maintenance and rent for alternative accommodation and the husband prayed for revocation of that order on the

ground of divorce.

Learned Counsel for the opposite party has referred another decision in A. Ashok Vardhan Reddy & Ors. Vs. Smt P.Savitha and Another reported in

2012 Cri.L.J. 3462 and contended that the interim order passed under Section 23 of the Act in connection with an application under Section 12 of the

Protection of Women from Domestic Violence Act, 2005 cannot be altered, modified or revoked by any subsequent decree of divorce on the ground

that at the time of passing the interim order under Section 23 of the Act the parties were in jural relationship of man and wife.

The specific contention of the petitioner is that after the decree of the divorce, the opposite party-wife ceased to be an aggrieved person as envisaged

in the provisions of Section 2(a) of the Act of 2005. The opposite party-wife though had been in the domestic relation with the petitioner but that

relationship has been legally terminated by a decree of divorce passed by a Court of competent jurisdiction. After the decree of divorce the opposite

party no.2 cannot be said to be a women who is or has been in a domestic relationship with the respondent/petitioner. Now the status of the opposite

party no.2 is a divorced wife as the matrimonial relationship between the parties has been terminated by a decree of divorce. After the decree of the

divorce the opposite party cannot be considered to be an aggrieved person or in domestic relationship with the present petitioner.

In both the definitions of aggrieved person and domestic relationship, our legislature in its wisdom use present tense and present perfect tense. In order

to bring an action and to get a relief under the Act the aggrieved person has to show that she is in domestic relationship with the respondent or has

been in a domestic relationship with him.

Sub-Section 2 of Section 25 of the Act empowers the Magistrate to modify, alter or revoke any order passed under the Act when there is a change in

the circumstances.

The moot questions which are requisite to be considered are:-

1) Whether the opposite party is required to be continued in domestic relationship to execute an order of maintenance already granted in her favour

under the provision of the Act of 2005;

2) Whether change of marital status of the opposite party no.2 by a decree of divorce can be considered to be a change in circumstances as

mentioned in Section 25(2) of the Act.

Both the questions are interrelated with each other.

Section 25(2) of the Act 2005 speaks about "change in circumstances". Circumstances mean a fact or condition connected with or relevant to

an event or action. The term "change in circumstances" has not been defined in the Act of 2005.

The words change in circumstances are used in the Code of Criminal Procedure. The expression "change in circumstances" in Section 489

Cr.P.C. now Section 127 of the Code of Criminal Procedure is wide enough to cover the cost of living, income of the parties, etc. In both the Code of

Criminal Procedure and the Protection of Women from Domestic Violence Act, 2005, the words change in circumstances are used in connection with alteration of an order of maintenance.

Use of same words in similar connection in a subsequent Act gives rise to a presumption that they are used to carry the same meaning as in the earlier statute. Moreover when the said words used in the earlier statute have been interpreted by the Higher Courts on several occasions, then use of same words in similar context in a subsequent statute will give rise in favour of the presumption that the Parliament intends the same interpretation should also be followed for construction of those words in the later enactment.

The term wife has not been defined in the Act of 2005.

Explanation (b) of Sub-Section 1 of Section 125 of the Code of Criminal Procedure says that wife includes a woman who has been divorced by or has obtained a decree of divorce from her husband and has not remarried.

Admittedly, the opposite party no.2 had been in a domestic relationship with the petitioner i.e. husband and wife. Opposite party no.2 got the order of maintenance and rent for alternative accommodation while she was in domestic relationship with the petitioner and she was an aggrieved party within the meaning of the Act of 2005. "Change in circumstances" and "change of marital status" are quite different. Divorced wife has a right

to claim and get maintenance allowance. Her said right continues till her remarriage. In view of Explanation (b) to Sub-Section (1) Section 125 of the Code of Criminal Procedure a woman divorced, by her husband under the Hindu Marriage Act, continues to enjoy the status of a wife for the purpose of claiming maintenance allowances from her ex-husband, if she is unable to maintain herself and she has not remarried.

From copy of the judgment passed in MAT Suit no.103/2015 (Previous no.345/2015) it appears that the decree of divorce was granted under the provision of Hindu Marriage Act. Now the status of the opposite party no.2 is divorced wife of a Hindu ex-husband. In view of the provisions as contained in Explanation (b) to Sub-Section (1) of Section 125 Cr.P.C., a Hindu divorced wife is entitled to get maintenance from her ex-husband. It is true that the Protection of Women from Domestic Violence Act does not contain any provision similar to that of Explanation (b) to Sub-Section (1) of Section 125 Cr.P.C.

The domestic relationship between the opposite party no.2 (aggrieved person) and the petitioner (respondent) was very much alive when the opposite party no.2 made complaint of domestic violence. The order of maintenance and rent for alternative accommodation which was passed in favour of opposite party no.2 will continue unless and until there is change in circumstances as mentioned in Section 25(2) of the Act of 2005. Decree of divorce does not deprive the wife from the relief granted in her favour under the provisions of the Act of 2005. After decree of divorce the opposite party no.2 has become a divorced wife.

Moreover, our law recognises the right of a divorced wife to get maintenance till her remarriage. This Act of 2005 provides additional rights and remedies to the aggrieved person. If the contention of the petitioner is accepted then the wife will be forced to approach before the Magistrate to get maintenance under Section 125 of the Code of Criminal Procedure. What is needed is that the existence of domestic relationship as defined in the Act is necessary to bring an action and to get relief under the Act of 2005. Existence of domestic relationship is not needed to execute the order granted under Section 12 of the Act of 2005 and the divorced wife who got an order of maintenance and other relief under the Act of 2005 prior to the decree of divorce is entitled to execute the same if she is unable to maintain herself and she has not remarried and for other reasons.

For the reasons mentioned above, I do not find any substance and force in the application filed by the petitioner.

Consequently, the application is dismissed.

Re: C.R.A.N. 1348 of 2019.

In view of the judgment passed in C.R.R. 3566 of 2018 the application becomes infructuous and stands dismissed.

Urgent Photostat certified copy of this judgment be supplied to the parties, if applied for, upon compliance with all formalities