

(2022) 06 CAL CK 0010
In the Calcutta High Court
Case No : C.R.R. No. 3276 Of 2019

Md. Nur Hassain @ Noor Hossain & Ors.

APPELLANT

Vs

Thumpa Bibi @ Nashima Khatun & Anr.

RESPONDENT

Date of Decision : 13-06-2022

Acts Referred:

Protection Of Women from Domestic Violence Act, 2005 — Section 12, 27, 27(1)(a)
Indian Penal Code, 1860 — Section 34, 498A
Dowry Prohibition Act, — Section 3, 4

Citation : (2022) 06 CAL CK 0010

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Nasreen Islam, Rudra Prasad Matilal , Rajesh Agarwal

Final Decision : Dismissed

Judgement

Ajoy Kumar Mukherjee, J

1. This revisional application has been preferred for transferring the case record being A.C. Case No.310 of 2019 (Thumpa Bibi @ Nashima Khatun Vs. Md. Nur Hossain @ Noor Hossain and ors.) filed under Section 12 of the Protection of Women from Domestic Violence Act (in short, P.W.D.V. Act), pending before the court of learned Judicial Magistrate, 9th Court at Alipore, South 24 Parganas to the court of learned Additional Chief Judicial Magistrate at Lalbagh, Murshidabad,

2. It has been contended that the petitioner no.1 got married with respondent no.1 according to Mohammedan Law and their marriage was duly registered on 7.8.2015 in Murshidabad and out of said wedlock a female child was born on 24.9.2016. After about 4 years of marriage, the wife/de facto complainant lodged a complaint against the present petitioners under Section 498A/34 of the Indian Penal Code read with Sections 3/4 of the Dowry Prohibition Act, which is pending before the learned Additional Chief Judicial Magistrate at Lalbagh, Murshidabad. Now, the said complainant/wife has again filed a case under Section 12 of the P.W.D.V. Act against petitioners herein before the learned Judicial Magistrate, 9th

Court at Alipore being A.C. case No.310 of 2019.

3. According to the petitioners, the learned Judicial Magistrate, 9th Court, Alipore, does not have the jurisdiction to try the above case as the wife/complainant, who has filed the aforesaid case before the learned Judicial Magistrate, 9th Court at Alipore, is a permanent resident of the District of Murshidabad and she has also completed her education from the said area. Their marriage was also solemnized in the district of Murshidabad and after marriage the Complainant/Respondent all along stayed with the petitioner at Murshidabad and as such, no cause of action arose within the jurisdiction of the learned Judicial Magistrate, 9th Court at Alipore and moreover, some of the respondents in the aforesaid case under Section 12, are aged persons and it has become very difficult for them to travel from Murshidabad to Alipore and as such, they have prayed for transferring the case from Alipore court to Murshidabad court.

4. In reply, Mr. Rudra Prasad Matilal, learned Advocate appearing on behalf of the opposite party no.1 submits that the wife/opposite party is temporarily residing in Kolkata in order to protect herself from the torture of the in-laws and as per Section 27(1)(a) of the P.W.D.V. Act, the respondent no.1 herein has right to file the case before the learned Judicial Magistrate, 9th Court at Alipore, since she is temporarily residing within the jurisdiction of this Court. In support of her contention, learned Counsel had filed one copy of leave and licence agreement, which is effective from 1st day of September, 2019 and ending on 31st January, 2023.

5. Learned Advocate for the petitioners, Ms. Nasreen Islam, submits that the photostat copy of a licence agreement is not sufficient enough to establish that the respondent no.1 herein is residing at her given address at premises No.130, Jaigirghat Road, P.S. Thakurpukur, Kolkata-700063, so that it can create jurisdiction of the said case before the Alipore Court. She further submits that the respondent/wife has not filed any other document to show that she is temporarily residing in Kolkata and accordingly, she cannot pray for dismissal of the prayer for transfer of the case as above.

6. The place of trial of a case under P.W.D.V. Act is regulated by Section 27 of the Act and Section 27(1)(a) of the Act speaks that the Court of Judicial Magistrate within the local limits of which the person aggrieved permanently or temporarily resides or carries on business or is employed, shall be the competent court to try the offence. The word 'temporary' means that place which is last for limited time though obviously casual visit to a place, does not satisfy the requirement of temporary residence even if the person stays there for a suitable period. The temporary "residence" as envisaged under the Act also includes such residence where an aggrieved person compelled to take shelter or compelled to stay for doing some business, in view of domestic violence perpetrated on her for which she had to leave her matrimonial home. PWDV Act is the first Act where a temporary residence of the aggrieved person has also been made a ground for invoking the jurisdiction of court. A temporary residence can be a temporary

dwelling place of the person , who has for the time being decided to make the place as her home.

7. In the present context, it is true that beside one copy of agreement of leave and licence, the respondent/wife has not filed any document in support of her temporary residence in Thakurpukur area. But it appears from the affidavit of service filed by the petitioners dated 24th March, 2022 that the address of the private respondent, where it was served by speed post on 9.3.2022 is at 130, Jaigirghat Road, P.S. Thakurpurkur, Kolkata-700065 and the same was received with postal remark "delivery confirmed" on 23.3.2022. This affidavit of service sworn on behalf of the petitioners is sufficient enough to come to a conclusion that the private respondent/wife is presently residing within the jurisdiction of Alipore Court and as such, it creates jurisdiction to file case under Section 12 of the P.W.D.V. Act before the Alipore Court and it is in compliance with the provisions of Section 27(1)(a), where the private respondent resides temporarily, as admitted in the above-mentioned affidavit of service.

8. In view of the above, I find no substance in the petitioners' prayer for transferring the case from the court of the learned Judicial Magistrate, 9th Court, Alipore to the court of learned Additional Chief Judicial Magistrate Lalbagh, Murshidabad and accordingly, the instant revisional application stands dismissed. However this order will not prevent concerned court to consider exemption from personal appearance, if sought for by any of the parties.

9. CRR 3276/2019 is dismissed accordingly. However there will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.