

(2014) 07 CAL CK 0020
In the Calcutta High Court

Case No : C.R.R. No. 3325 of 2011 and C.R.A.N. 2706 of 2011

Puspendu Biswas

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401

Family Courts Act, 1984 — Section 9

Hindu Marriage Act, 1955 — Section 23

Protection of Women From Domestic Violence Act, 2005 — Section 12, 14

Citation : (2015) 2 Crimes 199 : (2015) 3 DMC 119 : (2015) 2 JCC 1359 :
(2015) 2 RCR(Criminal) 203

Hon'ble Judges : Shib Sadhan Sadhu, J

Bench : Single Bench

Advocate : Debashis Banerjee, Advocates for the Appellant

Judgement

Shib Sadhan Sadhu, J.—This Revisional Application is directed against the order No. 6 dated 15th July, 2011 passed by the Learned Additional Sessions Judge, 14th Court, Alipore, South 24-Parganas in Criminal Motion No. 126 of 2011 affirming the order dated 11th February, 2011 passed by the Learned Judicial Magistrate, 10th Court, Alipore in Complaint Case No. 702 of 2010.

2. The factual matrix giving rise to the instant revision may be summarized as follows:--

"The O.P./wife filed one complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Act) against her present petitioner/husband. The petitioner entered into appearance in that case and was contesting the same. In course of such proceedings, the present petitioner filed an application under Section 14 of the said Act praying for an order for counselling between the parties. In that petition, the petitioner stated that he had already filed a Matrimonial Suit being No. 137 of 2008 for restitution of conjugal life and that, he is eager to restore their conjugal relation.

3. The Learned Magistrate, however, on hearing both the sides, rejected the application filed by the petitioner under Section 14 of the Act observing that since both the parties have got allegations and counter allegations, it is quite difficult for them to reside together.

4. Being aggrieved, the present petitioner/husband preferred a Revision but the same was also dismissed on contest by the order impugned.

5. The O.P. No. 2 who is the wife of the present petitioner has been duly served. But she has not chosen to enter appearance or oppose this Revision.

6. Mr. Debasish Banerjee, Learned Advocate appearing for the petitioner/husband has assailed the orders of the lower Court on the following grounds:--

"i) Both the Learned Courts below have acted illegally and with material irregularity by rejecting the prayer for counselling as provided under Section 14 of the Act.

ii) They failed to appreciate that the O.P./wife is willing to continue with her marital relationship by filing the petition under the Act without taking recourse to file a suit for divorce and so, there is ample scope for reconciliation between the parties.

iii) They have failed to visualize the aim and object of the Act and have arrived at a finding which tantamounts to declaration that there has been irretrievable break down of the marriage which is beyond their jurisdiction. They ought to have kept in mind that the Legislative intent enshrined in all the Matrimonial Legislations is that the Court is under an obligation to make sincere endeavour for reconciliation between the parties.

iv) They miserably failed to appreciate that the aggrieved wife will in no manner be prejudiced if the reconciliation fails and the Court concerned would have liberty to pass order accordingly.

v) The Learned Magistrate passed the order in a very casual manner without applying his judicial mind.

vi) Learned Appellate court failed to take note of these defects and the judgment and order of the Lower Court should be set aside on these grounds. He relied on the decision reported in (2013) 5 Supreme Court Cases 226 in support of his contention."

7. Appreciating the submission of the Learned Advocate appearing for the petitioner and on perusal of the aforecited decision of the Hon'ble Supreme Court placed by him, I would like to say that disputes contemplated in the Domestic Violence Act are really family disputes and in most of the cases such disputes are between the wife and husband. Law always encourages amicable settlement of matrimonial disputes. Incidentally it may be mentioned that Section 9 of the Family Court's Act, 1984 as well as Section 23 of the Hindu Marriage Act, 1955 deal with conciliation and settlement of matrimonial disputes.

Section 9 of the Family Court's Act casts a duty on the Court to make an endeavour and persuade the parties in arriving at a settlement.

8. It is clear from a conjoint reading of Section 23 of the Hindu Marriage Act, 1955, Section 9 of the Family Court's Act, 1984, Section 89 and Order 32A of the Code of Civil Procedure that it is obligatory for the Court to give a fair chance to a conciliated or negotiated settlement before adjudication is embarked upon. The matrimonial disputes are distinct from other types of disputes on account of presence of certain factors which are not found in other disputes. These factors are motivation, sentiments, social compulsion, personal liabilities and responsibilities of the parties, the views of the two parties regarding life in general and to the institution of marriage in particular, the security of the future life, so on and so forth. Heavy responsibility, therefore, lies on the Court concerned to go for Court annexed mediation. The main role of the Court is to discover a solution instead of breaking the family relation. It is the mandate of law as also the social obligation of judge to make an earnest attempt for reconciliation. As noticed above, considering the importance of settlement in matrimonial disputes, Order 32A was inserted as because for the sensitive area of personal relationship special approach is needed keeping in view the forefront objective of family counselling as a method of achieving the ultimate object of preservation of the family.

9. The whole idea behind appointment of counsellors and securing the service of welfare expert is nothing but an endeavour to settle the dispute amicably. For change of mind of the parties who may be at loggerheads, there is need of counselling. The word "Counsel" means "advice and assistance given by one person to another in regard to a legal matter, proposed line of conduct, or contention (vide Blacks' Law Dictionary, 6th Edition). The stage of counselling arises when the Magistrate is in seisin of an application under Section 12 of the Act and the Magistrate may "direct the respondent or the aggrieved person, either singly or jointly to undergo counselling with any member of a service provider who possesses such qualifications and experience in counselling as may be prescribed."

"Sub-rule (9) of Rule 14 specifically provides that "the Counsellor shall strive to arrive at a settlement of the dispute by suggesting measures for redressal of grievances of the aggrieved person by taking into account the measures or remedies suggested by the parties for counselling and reformulating the terms for the settlement, wherever required."

10. Thus, it becomes clear as day that a Court dealing with matrimonial disputes is under statutory obligation to make endeavour for amicable settlement of the dispute between the parties through counselling/mediation. In this context, it should be mentioned here that the Act cannot be said to be a penal statute. The power under the Act can be exercised even by a Civil Court or a Family Court. In the aforecited case of K. Srinivas Rao v. D.A. Deepa (Supra) the Hon"ble Supreme Court observed - "This Court has always adopted a positive approach

and encouraged settlement of matrimonial disputes and discouraged their escalation." Reiterating the observation made by the Hon"ble Supreme Court in the case of G.V. Rao Vs. L.H.V. Prasad and Others, , Their Lordships held - "There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable a young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case."

11. From the discussion made in the foregoing paragraphs it is apparent that both the Learned Magistrate and the Learned Additional Sessions Judge have failed to appreciate the true purport of the object of the Act and to discharge the obligation cast upon them. The situation is more painful because the respondent/ husband approached the Learned Magistrate but he did not response. It is interesting to see that they have shirked off their duty on the plea that both the parties have levelled allegation and counter allegation against each other. It is simply ridiculous. A dispute postulates allegation and counter allegation. It is needless to mention that if there is no dispute, there can have no necessity for counselling or conciliation.

12. After bestowing my anxious consideration to the facts and circumstances of the case, I am convinced that the Learned Magistrate approached the whole matter from a wrong angle resulting in miscarriage of justice and the order impugned affirming the order of the Learned Magistrate suffers from irregularity and impropriety calling for interference by this Court in exercise of its power under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973. The impugned order is accordingly set aside and the matter is remitted to the Court below for disposal of the application under Section 14 of the Act dated 11th February, 2011 afresh and in accordance with law.

13. In the result, this Revision is allowed and the matter is remitted to the Court below as above.

14. In view of disposal of main Revisional Application, the application filed under C.R.A.N. 2706 of 2011 becomes infructuous and the same is, also, disposed of.

15. There will be no order as to costs.

16. Urgent Xerox certified copies of this judgment and order be supplied to the parties after observing all the required formalities.