

(2015) 05 CAL CK 0046
In the Calcutta High Court
Case No : C.R.R. No. 2714 of 2013

Rakhi Arora

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 401, 482

Penal Code, 1860 (IPC) — Section 408, 498A

Protection of Women From Domestic Violence Act, 2005 — Section 12, 18, 19, 20, 22

Citation : (2015) 05 CAL CK 0046

Hon'ble Judges : Shib Sadhan Sadhu, J

Bench : Single Bench

Advocate : Rajdeep Majumder and Karan Sharma, for the Appellant; Krishnendu Bhattacharya, Advocates for the Respondent

Final Decision : Allowed

Judgement

Shib Sadhan Sadhu, J.—By preferring the present application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C. for brevity) the petitioner has prayed that the order dated 18.06.2013 passed by the Learned Chief Judge, City Sessions Court, Calcutta in Criminal Appeal No. 41 of 2013, thereby allowing the appeal and setting aside the order dated 12.02.2013 passed by the Learned Metropolitan Magistrate, 9th Court, Calcutta in Case No. M-2012 granting Rs. 6,000/- per month to the present petitioner as rent for alternative accommodation, be quashed and set aside.

2. The applicant/wife preferred an application seeking relief under Sections 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005(hereinafter referred to as PWD Act for the sake of brevity) against the present O.P. Nos. 2, 3 and 4, i.e. husband, father-in-law and brother-in-law respectively stating inter alia that the marriage of the applicant was solemnized with the O.P. No. 2 on 24th June, 2005. It was stated that her married life was

not at all happy and from the very beginning she was subjected to inhuman mental and physical torture and economical abuse by the O.P. Nos. 2, 3 and 4 herein. She was also a victim of sexual abuse by the O.P. No. 2. Being sick and traumatized she could not continue her job and she was compelled to quit the same. Ultimately she lodged a complaint in DLF Police Station, Gurgaon on the basis of which said P.S. Case No. 949 dated 05.09.2006 under Sections 498A/408 IPC was registered. Thereafter she was driven out from her matrimonial home and she has been living in her paternal home at Kolkata on and from 21.11.2006. Thereafter she filed a proceeding under Section 125 of the Cr.P.C. in the Family Court, Kolkata and that case was disposed of on consent granting maintenance to her @ Rs. 8,000/- per month. The total income of the O.P. No. 2 was Rs. 85,000/- per month at that time. Therefore she prayed for monthly maintenance @ Rs. 30,000/- per month and Rs. 15,000/- per month as rent for alternative residential accommodation. She also prayed for order restraining the O.P.s. from committing and/or abetting any further domestic violence.

3. The said application was opposed by the present O.P.s. 2, 3 and 4 stating inter alia that before passing any such relief sought for by the applicant, the Magistrate is to consider any "Domestic Incident Report" submitted by Protection Officer or the Service Provider and in absence of such report no order can be passed. It was further contended that the applicant left her matrimonial home voluntarily on 28th July, 2006 and a divorce suit filed by the husband is pending since the year 2007 and therefore no question of commission of further domestic violence can arise. Further she has been receiving a sum of Rs. 8,000/- per month as maintenance and therefore no further maintenance can be granted.

4. The Learned Trial Magistrate by its order dated 12.02.2013 entertained the objection and held that the applicant is living separately for more than 6 years and so no interim order restraining the respondents (present O.P. Nos. 2, 3 and 4) from committing any domestic violence can be passed. However, the Learned Magistrate held that the applicant is entitled to get Rs. 6,000/- per month as rent for alternative accommodation and accordingly directed the respondent No. 1 (O.P. No. 2 herein) to pay such amount within 10th day of every succeeding month. On appeal preferred by the present O.P. Nos. 2, 3 and 4 the said finding was set aside and the appeal was allowed. Against this order, this revision has been preferred.

5. Mr. Rajdeep Majumder, Learned Counsel, appearing on behalf of the petitioner submitted that merely because the parties are living separate for some time past the petitioner cannot be held to be not "aggrieved person" as defined in the PWD Act. He further submitted that the definition of "domestic violence" under Section 3 of the said Act very much brings within its fold the "economic abuse" which includes deprivation of all or any economic and financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise. Therefore according to him the non-payment of

the maintenance allowance by the O.P./husband in terms of the order passed by the Family Court also comes within the mischief of such domestic violence. He submitted yet further that the conduct of the parties even prior to the commencement of the PWD Act, 2005 can be taken into consideration and therefore, the impugned order deserves to be set aside. He relied on the decision of the Hon'ble Supreme Court in V.D. Bhanot Vs. Savita Bhanot, AIR 2012 SC 965 : (2012) 1 DMC 482 : (2012) 3 JCC 1854 : (2012) 1 RCR(Civil) 972 : (2012) 1 RCR(Criminal) 834 : (2012) 2 SCALE 367 : (2012) 3 SCC 183 : (2012) AIRSCW 1515 : (2012) 1 Supreme 716 in order to substantiate his submission.

6. On the other hand, Mr. Krishnendu Bhattacharyay, Learned Counsel appearing for the O.P. Nos. 2, 3 and 4 contended that the PWD Act, 2005 has no retrospective effect and therefore, the provision of the said Act cannot be made applicable for the conduct of the parties prior to commencement of the PWD Act, 2005. He further contended that the petitioner had withdrawn herself from the society of her husband voluntarily and they have been living separate for more than 6 years. So they cannot be held to be in any domestic relationship on the date of filing of her application before the Learned Magistrate. As such the application filed by her before the Learned Magistrate under the provisions of the said Act is not at all maintainable and she is not entitled to get any further amount towards rent for alternate accommodation as has been granted by the Learned Magistrate. Thus according to him the Learned Chief Judge, City Sessions Court, Calcutta rightly set aside that order and no interference with such order is warranted. He cited the decisions reported in Nishant Hussain Vs. Seema Saddique and Another, (2012) 4 WLN 237 , Sejal Dharmesh Ved Vs. The State of Maharashtra and Others, (2014) ALLMR(Cri) 636 and Amitabh Upadhyay Vs. State of Maharashtra, (2014) 4 BomCR(Cri) 545 . He also cited one judgment passed by the Hon'ble Supreme Court on 23.08.2011 in Criminal Appeal No. 1635 of 2011 (Inderjit Singh Grewal V. State of Punjab and Anr.) in support of his contention.

7. Having regard to the rival submission and contention advanced by the Learned Counsel for the parties in the light of the decisions placed I find that the moot question falling for consideration in this revision is whether the conduct of the parties even prior to commencement of the PWD Act, 2005 would be taken into consideration while hearing an application under the provisions of the said Act.

8. Admittedly and undisputedly, the PWD act, 2005 came into force with effect from 26.10.2006. The aforesaid question being raised herein has been considered by Their Lordships of the Hon'ble Supreme Court in the case of V.D. Bhanoot v. Savita Bhanoot (supra) (cited by the Learned Counsel appearing for the petitioner) in which it has been held as under :

"12.We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In

our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005."

9. Very recently the Hon''ble Supreme Court has considered and reiterated the principles laid down in *Saraswathy Vs. Babu*, (2013) 12 AD 54 : AIR 2014 SC 857 : (2014) 1 CCR 3 : (2014) CriLJ 1000 : (2014) 1 DMC 3 : (2013) 15 JT 129 : (2014) 175 PLR 759 : (2014) 1 RCR(Criminal) 167 : (2013) 14 SCALE 370 : (2014) 3 SCC 712 : (2014) 2 SCJ 745 and held that the conduct of the parties even prior to commencement of the PWD Act, 2005 can be taken into consideration while passing the order under Sections 18, 19 and 20 of the PWD Act, 2005.

10. In view of the aforesaid authoritative pronouncement of Their Lordships of the Hon''ble Supreme Court, it is no longer res-integra that conduct of the parties prior to commencement of the PWD Act, 2005, can be taken into consideration while hearing and for passing an order under the PWD Act, 2005 and therefore, the order impugned passed by the Learned Chief Judge, City Sessions Court, Calcutta deserves to be and is hereby set aside.

11. The order dated 12.02.2013 passed by the Learned Metropolitan Magistrate, 9th Court, Calcutta in case No. M-37 of 2012 is restored. The present O.P. No. 2 is directed to pay off the arrear amount in terms of such order dated 12.02.2013 which comes to Rs. 1,50,000/- (from 10.03.2013 to 10.04.2015) in three equal monthly installments @ Rs. 50,000/- each. He is further directed to pay the first installment within 30th May, 2015, second installment within 30th June, 2015 and the 3rd and last installment within 30th July, 2015. If the O.P. No. 2 fails to pay any installment the petitioner will be at liberty to realize the amount through Execution Proceeding.

12. The Revisional application is thus allowed. No order as to costs.

13. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.