

(2016) 01 CAL CK 0067
In the Calcutta High Court
Case No : C.R.R. No. 2347 of 2014.

Sri Indranil Dasgupta and another.	Vs	APPELLANT
The State of West Bengal and another.		RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 482
Protection of Women From Domestic Violence Act, 2005 — Section 20, 23

Citation : (2016) 166 AIC 809 : (2016) 3 CalLT 65 : (2016) CriLJ 1832 : (2016) 3 Crimes 673 : (2016) 3 Crimes 671 : (2016) 2 DMC 894 : (2016) 3 HLR 83 : (2017) 3 RCRCivil 20 : (2017) 2 RCRCriminal 610

Hon'ble Judges : Sankar Acharyya, J.

Bench : Single Bench

Advocate : Mr. Ranabir Roy Chowdhury, Advocate, Mr. Indranil Roy Chowdhury, Advocate, for the Appellant; Mr. Debabrata Acharya, Advocate and Mr. Sital Samanta, Advocate, Mr. Prabir Adhya, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sankar Acharyya, J. - This revisional application under Sections 397/401/482 of the Code of Criminal Procedure, 1973 has been filed by two petitioners Indranil Dasgupta and his mother Rina Dasgupta against two opposite parties The State of West Bengal and wife of petitioner Indranil Dasgupta viz. Debjani Dasgupta nee Sengupta challenging the judgment dated 16th June, 2014 passed by learned Additional Sessions Judge, Fast Track, 2nd Court, Alipore, South 24 Parganas in Criminal Appeal No. 121/13 under Section 29 of the Protection of Women from Domestic Violence Act (in short P.W.D.V. Act), 2005.

2. In the impugned judgment the observations of learned Judicial Magistrate, 2nd Court, Alipore made in A.C. 2143/12 on 3rd August, 2013 have been affirmed. In the said interim order dated 03.08.2013 under Section 23 of the Protection of Women from Domestic Violence Act, 2005 learned Magistrate has observed that the domestic relationship of the parties and their shared household are not denied. Domestic violence has taken place as appears from that order. Regarding

income of petitioner Indranil Dasgupta it has been observed by learned Magistrate that petitioner of that case (opposite party no. 2 herein) did not file sufficient document in support of monthly income of present petitioner no. 1. Regarding entitlement of petitioner of that case learned Magistrate opined that there is urgency to pass order of protection against respondents (petitioners herein) monetary relief of Rs.15,000/- for the aggrieved party (opposite party no. 2 herein) and her child in interim form till final disposal of the case.

3. In this revisional application contending inter alia the petitioners have alleged that observations of learned Additional Sessions Judge in the impugned judgment in appeal and of learned Judicial Magistrate are based on surmise and conjecture. Petitioners have alleged that the petitioner no. 1 has no independent source of income and he only works in his father's business and so passing of the order for payment of Rs.15,000/- per month is his great hardship and it causes miscarriage of justice. Claiming the impugned judgment as bad in law and facts petitioners have prayed for setting aside or modification of the impugned judgment.

4. In substance, the petitioners have not been able to establish violation of any legal provision. There is a very little scope in this case to consider the facts in the matter of granting interim relief under the P.W.D.V. Act in favour of aggrieved person and her child.

5. However, prima facie it appears that before the learned Judicial Magistrate the opposite party no. 2 house wife alleged that monthly income of her husband is Rs.6,00,000/- but she could not produce any prima facie evidence to substantiate it. Similarly, present petitioner no. 1 (husband of opposite party no. 2) alleged that he works in his father's business and he has no personal independent income and he did not file any document to show that the business where he works is his father's exclusive business and he is a mere worker of that business. In my view, present petitioner no. 1 should have produced prima facie evidence regarding his income because it is within his special knowledge. When neither party produced authentic reliable prima facie evidence before learned Magistrate on the question of income of the husband then there was no alternative before the learned Magistrate to assess the income excepting by guess from attending circumstances and to fix the amount of monetary relief considering the real need of the wife (opposite party no. 2) and her child in view of status of the parties and price index of the essential commodities. In the case before me annexures to the revisional application speak about higher middle class status of the petitioners having their petrol pump business. According to said status monetary relief for expenditure of a house wife of such family @ Rs.10,000/- per month and for taking care of a child of that house wife @ Rs.5,000/- per month cannot be said as excessive or unreasonable. I like to mention here that on 17.07.2014 petitioners filed this revisional application claiming that petitioner no. 1 works in his father's business. But at the time of hearing an affidavit of the opposite party no. 2 has been filed annexing a copy of

affidavit of petitioner no. 1 Indranil Dasgupta wherein he stated in substance that he was a partner of partnership business under name and style M/s. Jay Jagannath Service Station and that said partnership has been dissolved on 17.07.2015 and it was published in daily circulated English newspaper "The Telegraph" on 25.07.2015. Copy of said newspaper publication speaks that said partnership between petitioner no. 1 and his father was started as per deed dated 22.08.2005. As such, prima facie it is needless to say that according to the admission of petitioner no. 1 he was not mere a worker in his father's business since 2005 and at the time of filing this revisional application but he was a partner of that business which fact was attempted to be suppressed by him. Significantly, the affidavit of opposite party no. 2 has not been disputed by petitioner no. 1 through any counter affidavit.

6. On close scrutiny I find nothing against legality, propriety and correctness of the impugned judgment. In my view, there is no miscarriage of justice in the impugned judgment. This revisional application is, therefore, found devoid of merits.

7. Consequently, this revisional application is dismissed.

8. Interim order, if any, stands vacated.

9. Urgent Photostat certified copy of this judgment, if applied for, be given promptly to the parties or their advocates on record observing all requisite formalities.