

**(2010) 10 CAL CK 0061**  
**In the Calcutta High Court**  
**Case No : C.R.R. 1835 of 2010**

Sri Sujoy Kumar Sanyal

APPELLANT

Vs

Smt. Shakuntala Sanyal (Halder) and Another

RESPONDENT

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**Date of Decision :** 06-10-2010

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482  
Hindu Marriage Act, 1955 — Section 24  
Penal Code, 1860 (IPC) — Section 498A  
Protection of Women From Domestic Violence Act, 2005 — Section 12, 12(1), 17, 18, 19

**Citation :** (2011) 1 CHN 265

**Hon'ble Judges :** Syamal Kanti Chakrabarti, J

**Bench :** Single Bench

**Advocate :** Sudipto Moitra and Ashok Das, for the Appellant; S.S. Roy, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Syamal Kanti Chakrabarti, J.—The present revisional application u/s 482 Cr.P.C. is directed for quashing the proceedings being Misc. Case No. 180/2010 corresponding to T.R. Case No. 85/2010 u/s 12 of the Protection of Women From Domestic Violence Act, 2005 now pending before the 5th Court of Learned Judicial Magistrate, Srirampore at District Hooghly.

2. The petitioner contends that he is a school teacher and married O.P. No. 1 in the month of May, 1994 according to Hindu Rites and Customs and thereafter led conjugal life with her at 21, Library Lane, P.S. Srirampore, District - Hooghly, A female child was born out of their wedlock. Subsequently O.P. No. 1 suffered from various ailments and lastly on 26.01.2010 father of O.P. No. 1 took her at the paternal house and on 29.01.2010 their daughter was also taken to her paternal house but subsequently she has declined to come back. So he has filed a suit for restitution of conjugal rights being MAT Suit No. 176 of 2010 on 23.02.2010. In the meantime the O.P. No. 1 filed an application u/s 12 of the

Protection of Women from Domestic Violence Act, 2005 seeking the reliefs under Sections 17/19A/19D/29 of the Act. In addition, she has repeatedly claimed monthly maintenance allowance for herself and the child u/s 125 Cr.P.C. and reliefs to be awarded u/s 24 of the Hindu Marriage Act. On receipt of such application Learned Court below by order dated 10.03.2010 called for a report from the Protection Officer, Hooghly fixing 15.03.2010 for report. On 18.03.2010 the aggrieved women filed another petition for interim relief u/s 23(2) of the Act. Learned Court below also called for a domestic incident report thereon from the Protection Officer, Hooghly within the date fixed. On 05.04.2010 the Protection Officer, Hooghly submitted his report which was placed before the Learned Court below. On 03.05.2010 the Learned Court below considered her prayer for exparte interim relief u/s 23 of the Act as per provision of Section 17 of the Act. At the relevant time he was inclined to grant the relief regarding right of residence and all other reliefs as prayed for by her shall be considered after hearing the respondent. Therefore, by such order dated 03.05.2010 the Learned Court below decided that the aggrieved women Smt. Shakuntala Sanyal will get the right of residence in the shared household and the respondent/husband was restrained from dispossessing the aggrieved women from the dwelling unit till final disposal of the case and fixed 07.05.2010 for service return of notice upon the respondent/husband and for hearing of the petition of complaint.

3. Being aggrieved by and dissatisfied with such order the respondent/husband has preferred this revisional application praying for quashing of such proceedings which is not in conformity with the mandatory provisions of Section 12 of the Act. The Learned Lawyer for the petitioner herein has raised the following points in support of his contention: -

A. Such type of exparte order cannot be passed by the Learned Court below after issue of summons to the respondent/husband and before his appearance.

B. The aggrieved women has claimed several reliefs at different courts u/s 125 Cr.P.C., Section 24 of the Hindu Marriage Act and also lodged a complaint u/s 498A IPC in addition to the reliefs claimed under the Protection of Women from Domestic Violence Act, 2005 which may be opposed to the process of law seeking same relief at different fora.

C. The learned Court below has granted the relief without considering properly the report of the Protection Officer.

4. The Learned Lawyer for the O.P. No. 1 opposed the move and had contended that such type of revisional application u/s 482 Cr.P.C. is not maintainable at all since the impugned order is appealable. Secondly, the object of the present Act of 2005 is to concentrate the claims of wretched and deserted women who are victims of domestic violence to seek relief through single window system instead of roaming at different courts/places for certain reliefs.

5. So far as the question of maintainability is concerned. Learned Lawyer for the petitioner has claimed that u/s 29 of the Act of 2005 there shall lie an appeal to

the Court of Session within 30 days from the date on which the order made by the Magistrate is served on the aggrieved persons or the respondent, as the case may be whichever is later. But the petitioner has challenged the entire proceeding u/s 482 Cr.P.C. which is a general right conferred under a separate code and the provision of Section 482 Cr.P.C. and Section 29 of the Act, 2005 shall be treated as mutually exclusive. In fact if the proceeding is quashed the reliefs sought to be granted u/s 17 of the Act read with Section 23 thereof, the impugned order dated 03.05.2010 passed under Sub-Section 2 of Section 23 of the Act will have to be set aside and thereby the appellate authority of the Court of Session contemplated in Section 29 of the Act will be usurped under the sweep of Section 482 Cr.P.C. When the legislature has prescribed an appellate authority, i.e., the Court of Session for challenging the legality and propriety of any order made by a Magistrate under the Protection of Women from Domestic Violence Act, 2005 the inherent power conferred u/s 482 Cr.P.C. cannot be exercised usurping the jurisdiction of the appellate authority without reasonable cause. It has been set at rest in Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others, that a right of appeal is not merely a matter of procedure. It is a matter of substantive right. To disturb an existing right of appeal is not a mere alteration in procedure. Such a vested right cannot be taken away except by express enactment of necessary intendment. The Act of 2005 is a special beneficial legislation containing specific provision of appeal. Where such special law provides Provision for appeal, with period of limitation u/s 29 of the Act, no external aid is permissible to interpret such express provision in terms of general inherent powers u/s 482 Cr.P.C. in a round about way by quashing entire proceedings to make one specific order inoperative. Therefore, I hold that such argument is not tenable in law and the instant application is not maintainable in law in view of Section 29 of the Act.

6. The Second contention of Learned Lawyer for the petitioner is that the aggrieved woman has sought for same reliefs at different courts which is opposed to the principle of natural justice because the husband cannot be forced to concede to her same demand repeatedly at different proceedings. In this connection learned Lawyer for the O.P. No. 1 has drawn my attention to Sub-Section 2 of Section 26 of the Act which provides that any relief referred to in Sub-Section 1 may be sought for in addition to and alongwith any other relief that the aggrieved person may seek in such suit or legal proceedings before a civil or criminal court. A safeguard has been made against abuse by such process of law in Sub-Section 3 of Section 26 of the Act in which it is provided that in case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under the Act of 2005, she shall be bound to inform the Magistrate of the grant of such relief. Admittedly the O.P. No. 1 has not been granted any relief u/s 125 Cr.P.C. or Section 24 of the Hindu Marriage Act which she is supposed to inform the Learned Magistrate concerned. Therefore, pendency of her application elsewhere cannot stand in the way of seeking her urgent relief u/s 12 of the Act of 2005.

7. Learned Lawyer for the petitioner has argued at length that when an application u/s 12 of the Act has been filed and the Learned Magistrate has issued summons to the respondent/ husband to appear and contest, when the report of the Protection Officer called for is not available, no relief can be granted violating mandatory provisions laid down therein. I fear that this is not the true proposition of law in connection with the present relief granted.

8. From the certified copy of the relevant order sheet it will appear that on 18.03.2010 the aggrieved woman filed a petition for interim relief u/s 23(2) of the Act on which Learned Magistrate called for a domestic incident report. Said report was received by him on 05.04.2010. From the impugned order dated 03.05.2010 I find that the Learned Court below perused the petition of complaint, the domestic incident report submitted by the Protection Officer, Hooghly and the submissions made by learned Lawyer for the petitioner/ aggrieved woman and on perusal of the available materials on record he has decided to grant exparte interim relief contemplated in Section 17 of the Act in the shared household. Such relief granted u/s 17 of the Act is an appealable order u/s 29 of the Act and as such the same cannot be challenged u/s 482 Cr.P.C. for the reasons cited above. The special self-contained law shall prevail upon the general procedural law embodied in procedural law i.e. Cr.P.C.

9. While considering the urgent need for conferring the right of residence, Learned Court below has reserved his consideration for other reliefs claimed by the petitioner under Sections 12, 19A/D, Section 20 and 22 of the Act. Learned Court below was not inclined to give any other relief to the complainant aggrieved woman which shall be considered after hearing the respondent. Sub-Section 2 of Section 23 provides that if the Magistrate is satisfied that an application prima facie discloses that the respondent is committing or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an exparte order on the basis of affidavit in such form, as may be prescribed, of the aggrieved person u/s 18, 19, 20, 21 or as the case may be, Section 22 against the respondent. Now Section 19(1) (a) of the Act provides that while disposing of an application under Sub-Section 1(a) of Section 12, the Magistrate may on being satisfied pass a residence order restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household. Therefore, in exercising the power conferred under Sub-Section 2 of Section 23 of the Act, Learned Magistrate has dealt with matters which is specifically provided in Section 19 of the Act by way of granting temporary relief subject to final decision upon hearing the respondent/husband.

10. Needless to say that the legislature in its wisdom has enacted the Protection of Women from Domestic Violence Act, 2005 to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of

violence of any kind occurring within the family and for matters communicated therewith or incidental thereto through single window system. In the instant case unfortunately the marital tie of the contending parties is on the verge of collapse after leading conjugal life for more than 15 years. It is alleged by the petitioner that his wife is suffering from serious ailments along with her child and has undergone operations in 2000. Therefore, she needs her husband's care and for this purpose learned court below has temporarily granted the right of residence in their shared house which is neither illegal nor opposed to public policy rather quite consistent with the object of this beneficial special legislation.

11. Learned lawyer for the petitioner has also drawn my attention to Annexure A to the application u/s 12 of the Act containing as many as sixteen allegations against the husband originating from the date of their marriage in 1994 while the Act was not in force. Since the Act has no retrospective effect such types of claims cannot be entertained u/s 12 of the Act.

12. From the own averment of the petitioner it will appear that the wife is residing separately from the husband with effect from 26.01.2010 (paragraph 8) and learned court below by the impugned order dated 03.05.2010 has granted relief for temporary residence at her matrimonial home in the context of pending litigation between the spouses being MAT Suit No. 176 of 2010 for restitution of conjugal right which has also been sought for by the husband. Therefore, I do not find any merit in this revisional application which is dismissed.

13. In CRAN No. 2480/10 the petitioner has prayed for interim order of stay of the aforesaid Misc. Case No. 180/2010 which need not be considered in view of the final disposal of the main revisional application. Learned court below is directed to proceed with the case as per law.

14. The parties will act upon signed plain copy of this order.