

10 20.6.2019

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

C.R.R.34 of 2019

SM

**Sri Tamaghna Das & Anr.
Versus
Smt. Sunetra Das**

Mr. Arijit Ghosh.
....for the petitioners.

Ms. Suman Sehanabis (Mondal).
....for the opposite party.

By the instant application the petitioners have challenged the order dated 26th February, 2019 passed by the Additional Sessions Judge, Mathabhanga, Cooch Behar in Criminal (Misc.) Appeal No.16 of 2018 affirming thereby the order dated 7th September, 2018 passed by the Additional Chief Judicial Magistrate, Mathabhanga in Criminal Misc. (DV) Case no. 83 of 2017 arising out of an application under Section 12 of The Protection of Women from Domestic Violence Act, 2005 whereby the petitioner no.1/husband of the opposite party was directed to pay Rs.6,000/- per month to the opposite party/wife towards interim maintenance under Section 23 (1) of the said Act.

Learned counsel for the petitioners submits that the opposite party/wife is not entitled to any maintenance under the D.V.Act in view of the fact that the marriage between the opposite party and the petitioner no.1 was never consummated due to impotency of the petitioner no.1. In support of such

submission reference has been made to annexure P-2 at page 23 of the application wherefrom it transpires that the wife/opposite party herein submitted before the mediator that she was tortured by her husband who is impotent and incapable of physical relation, so she does not wish to lead conjugal life with him. Learned counsel for the petitioners sought to impress that the opposite party cannot claim any maintenance from the petitioner no.1 since admittedly there was no cohabitation between the parties at any point of time and the wife/opposite party resided with the petitioner/husband only for 83 days. It is further canvassed that the opposite party/wife is an educated lady who has passed Teachers Eligibility Test (TET) and is capable of maintaining herself by giving tuition . It has also been argued that the quantum of interim maintenance awarded by the learned Magistrate and affirmed by the Additional Sessions Judge is unreasonably high. The petitioner no.1 has to maintain his aged mother who is financially dependent on him.

Repudiating the above submissions, learned counsel for the opposite party/wife countered that under the Domestic Violence Act consummation of marriage is not the criterion for awarding maintenance. The fact that solemnization of marriage between the parties has not been disputed and the marital tie between the parties is still subsisting, the opposite party is entitled to claim maintenance. It is pointed out that though impotency is a ground for divorce, it cannot be a ground to

refuse maintenance in favour of the wife. It is contended that the petitioner no.1 is an employee of Indian Railways and has sufficient means to maintain his wife who is unemployed and has no independent means of income.

The marriage between the parties has not been disputed. The opposite party/wife sought for interim maintenance against the husband/petitioner no.1 in view of Section 23 (1) of The Protection of Women from Domestic Violence Act in a proceeding under Section 12 of the aforesaid Act. For the purpose of the present application, it may be beneficial to refer to Section 2 (a) and Section 2 (f) of the Act which are quoted hereinbelow :-

2 (a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

2 (f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

In view of the above definitions it is clear that there is no merit in the argument on behalf of the petitioners that since there was no cohabitation and consummation of marriage, the opposite party is not entitled to claim any maintenance. There is also no substance in the submission that since the opposite

party is no longer residing with the petitioner no.1 or has resided with the petitioner no.1 only for 83 days, interim maintenance cannot be granted in her favour. Nothing could be placed on record to substantiate the contention that the opposite party has independent means of income. On the other hand, admittedly the petitioner no.1 is a Group C railway employee whose salary is approximately Rs.30,000/-to Rs.32,000/- per month. The submission that the opposite party no.1 gives private tuition and has independent means of income is a matter to be decided by evidence at the time of hearing of the application under Section 12 of the aforesaid Act which is pending before the learned Magistrate. On the point of quantum of interim maintenance, having considered the facts and circumstances of the case with reference to the income of the petitioner no.1/husband as well as the escalating prices of the essentials of daily life, I am of the view that the amount awarded towards interim maintenance in favour of the opposite party is just and reasonable.

For the reasons aforesaid, the orders impugned warrant no interference.

The Additional Chief Judicial Magistrate, Mathabhanga shall expedite the hearing of Misc. (DV) Case No.83 of 2017 and dispose of the same in accordance with law preferably within four months from the date of communication of this order without granting unnecessary adjournment to either of the parties.

The application being CRR No.34 of 2019 is, thus,

disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the applicant upon compliance of requisite formalities.

(Asha Arora, J.)

