

CRR 21 of 2020
(Through Video Conference)
Dipika Ghosh
-vs-
Bhim Chandra Ghosh & Ors.

Mr. Md. Sabir Ahmed for the petitioner

Ms. Baisali Basu or the State

In spite of service of notice as per order dated 6th January, 2021 upon the opposite party by the Inspector-in-Charge, Narendrapur P.S., the opposite party remains absent and is unrepresented. Therefore, this Court has no other alternative but to take up the hearing of the instant criminal revision in the absence of the learned advocate for the opposite party. The petitioner as well as the opposite party no. 1-State of West Bengal are duly represented by their learned counsels.

Petitioner's grievance in the instant revision that the learned Magistrate while disposing of an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (after hereinafter described as the said Act) vide an order dated 4th August, 2016 refused to grant relief to the petitioner upon a prayer under Section 21 of the said Act. It is observed by the learned Magistrate :-

“with regard to the reliefs sought by the aggrieved person under Section 22, after considering the evidence as well as documents filed by the aggrieved person failed to prove that she had suffered injury to her person caused by the respondents. As such, I am not inclined to pass any order to the respondents to pay compensation or damages to the

aggrieved person.

Hence relief under Section 22 of the Protection of Women from Domestic Violence Act cannot be granted to the aggrieved person.”

In an appeal, the learned Additional Sessions Judge, Fast Track 4th Court at Alipore also refused relief under Section 22 of the said Act on the following observation- “as also mentioned there is no separate application praying for relief under Section 22 of the said Act, but the facts regarding the specific injuries, mental torture and emotional distress is also vague and sketchy. The application of the aggrieved person under Section 12 (1) of the Protection of Women from Domestic Violence Act does not specifically mention the nature of her injuries or how she suffered mental torture or emotional distress. That apart in her ex parte evidence she does not give specific evidence regarding the facts that would entitle her to compensation. Medical documents have not been exhibited and the cause of mental torture has not been specified.”

On perusal of the observation made by the learned Magistrate and affirmed by the learned appellate Court it is ascertained that the relief under Section 22 of the said Act was not granted to the petitioner because she failed to adduce a specific evidence in support of her mental torture and emotional distress as well as physical injuries and secondly no separate application has been filed under Section 22 of the said Act seeking relief thereof.

I have heard Mr. Ahmed at length.

At the outset I like to record that Section 22 deals with compensation so far as this Section lays down that in addition to other reliefs which may be granted under the said act, the Magistrate may pass an order directing the respondents to pay compensation or

damages or both to the aggrieved person for the injuries, including mental torture and emotional distress opt to her by domestic violence by the respondents. The phrase in Section 22, “in addition to other relief” goes to suggest that a composite application with various reliefs and the reliefs for compensation or damages can be made by the petitioner. Therefore, this Court is of the view that no separate application under Section 22 is necessary to give proper relief to the aggrieved lady. Next comes the question as to whether the petitioner was able to adduce sufficient evidence in support of her claim for compensation.

Mr. Ahmed rightly draws my attention to para 4 of the affidavit in chief of the petitioner where she referred to series of GD entries which she made before the local P.S, alleging physical and mental torture. She also stated that respondent no. 4 used to abuse her making circustic remark and interference into her personal affair. They also abused with filthy languages.

It is to be borne in mind the application was heard ex parte, therefore, except the evidence in chief on affidavit, there would be naturally no other document before the learned Magistrate to consider the case. If the learned Magistrate was not satisfied with the evidence in chief on affidavit, he could have opted for production of GD entries or the medical documents. Mr. Ahmed further draws my attention to medical documents showing injuries received by the petitioner at her residence which was actually filed by her by a firisti, but it was not considered by the learned Magistrate.

In view of such circumstances, impugned order passed by the learned Magistrate and affirmed by the learned Additional Sessions Judge, Fast Track 4th Court at Alipore cannot stand and accordingly are set aside, so far as it relates to the finding with regard to the relief under Section 22 of the said Act.

Learned Judicial Magistrate, 6th Court at Alipore is directed to reconsider the affidavit in chief filed by the petitioner taking into account the GD entries made by her and the medical documents filed with a firisti by her afresh to come to a finding as to whether any relief under Section 22 of the said act can be granted to the petitioner or not.

If required, the learned Magistrate is at liberty to direct the petitioner to produce at least some of the GD entries and other documents which she wants to rely upon for proper adjudication of the prayer under Section 22 of the said act in the light of her evidence in chief on affidavit.

The learned Magistrate is directed to dispose of the application expeditiously and preferably within three months from the date of communication of this order.

The instant revision is, thus, disposed of.

However, without costs.

(Bibek Chaudhuri, J.)