

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.R. 46 of 2020

Swarup Guhu Roy

-Vs-

The State of West Bengal & Anr.

For the Petitioner:

Mr. Kallol Mondal,
Mr. K. Roy,
Mr. A. Chel,
Mr. S. Das,
Mr. A. Banerjee

For the Opposite Party No.2:

Mr. Manjit Singh,
Mr. Pratip Kr. Chatterjee,
Mr. Abul Hassan,
Mr. Biswajit Mal,
Mr. G. Singh.

Heard on: 27th January, 2021.

Judgment on: 11th March, 2021.

BIBEK CHAUDHURI, J. : –

1. Legality, validity and propriety of an order dated 17th July, 2019 passed by the learned Additional Sessions Judge, Fast track 4th Court at Alipore in Criminal Appeal No.283 of 2018 and 290 of 2018 modifying an order dated 16th November, 2018 passed on an application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 in AC No.423 of 2018 and directing the petitioner to pay monetary relief in

favour of the opposite party No.2 at the rate of Rs.10,000/- per month is under challenge in the instant criminal revision.

2. Undisputedly, the petitioner and the opposite party are legally married husband and wife. Both of them were divorcee, the opposite party No.2 having a child from her first marriage. Their marriage was solemnised on 25th December, 2009. It is the case of the petitioner that after marriage they happily maintained their marital life. Subsequently the opposite party No.2 started treating the petitioner with cruelty. She used to raise protest against the petitioner's act of looking after his old ailing mother. The dispute between the husband and wife took serious turn where the petitioner was compelled to file Matrimonial Suit No.144 of 2018 praying for divorce against the opposite party No.2. The opposite party No.2 after receiving summons of the matrimonial suit only on retaliation filed an application under Section 12 and Section 23 of the Protection of Women against Domestic Violence Act. The said application was registered as AC No.423 of 2018.

3. The application under Section 23 of the Domestic Violence Act was taken up for hearing by the learned Judicial Magistrate, 3rd Court at Alipore. The learned Magistrate passed an order against the petitioner/husband directing him to pay monetary relief at the rate of Rs.8000/- per month to the opposite party No.2/aggrieved person and Rs.4000/- per month for her minor child from the date of filing of the case.

4. The petitioner challenged the said order in appeal. The Appellate Court disposed of the appeal being Criminal Appeal No.283 of 2018 and 290 of 2018 directing the petitioner/husband to pay monetary relief to the petitioner at the rate of Rs.10,000/- per month. The grounds of attack in the instant revision are as follows:

- a) The Application under Section 12 read with Section 23(2) of the Protection of Women from Domestic Violence Act was filed by the opposite party No.2 on retaliation after receiving notice of the matrimonial suit filed by the petitioner against the opposite party.
- b) The opposite party No.2 is a practicing Advocate at Alipore court. She has her independent income. She also is the owner of landed properties and a portion of residential house at Canning in the district of South 24 Parganas and she does not require any monetary relief.
- c) The learned Judge failed to consider the income of the opposite party and the income tax return filed by him in court during the hearing of the appeal. In order to look after her old ailing mother, the petitioner has resigned from his job and now he is earning a paltry sum of Rs.17,000/- per month as a part time teacher in a private academic institution.
- d) The petitioner himself has no source of income to maintain himself therefore he has prayed for alimony pendent lite

against his wife, opposite party No.2 in Matrimonial Suit No.144 of 2018.

- e) The learned Judge in First Appellate Court failed to consider that the petitioner spent almost the entire money for medical treatment of her mother and he has no source to pay monetary relief to the petitioner.

5. The opposite party No.2 has been contesting the instant revision by filing an affidavit-in-opposition denying and controverting all allegations made out against her in the revisional application. The opposite party No.2 specifically stated that the petitioner works as a Free Lancer Marketing Expert. The petitioner has good experience and strong hold in the field of marketing and he visits various companies for settlement of marketing strategy etc and gets remuneration amounting to Rs.15,000/- to Rs.20,000/- for each visit. Apart from the said income, he earns Rs.89,000/- from G.C Chemie Pharmie Limited where he works as Zonal Sales Manager. He is also a partner of limited liability partnership firm under the name and style of Horisant Skill and Business Development L.L.P. He is also associated with another institution under the name and style of Isha Learning wherefrom he gets monthly salary of Rs.46476.76. Therefore, it is absolutely false to state that the petitioner gets Rs.17,000/- per month. It is further submitted by the opposite party No.2 that he is a junior Advocate of Alipore Court Bar Association and earns Rs.8,000/- to Rs.10,000/- per month. She also denied of having landed property and ancestral residential house at Canning. It is submitted by

the petitioner that in her application under Section 12 read with Section 23 of Protection of Women from Domestic Violence Act she discloses her monthly income as an Advocate of Alipore Court. She approached the Court with clean hand. The learned Appellate Court below allowed monetary relief in favour of the petitioner considering her monthly income as an Advocate. It is also alleged that the petitioner have created some false and fictitious documents in the form of income tax return only to deprive the petitioner of her lawful claim.

6. The husband/petitioner has filed an affidavit-in-reply to the affidavit-in-opposition submitted by the opposite party No.2 and reiterated that he earns Rs.17,000/- only per month and it is not possible for him to pay Rs.10,000/- per month in favour of the opposite party No.2. The petitioner has also filed certain documents to show that the opposite party No.2 is the owner of some landed and ancestral residential property.

7. I have heard the learned Advocates for the petitioner and the opposite party, perused the application, affidavit-in-opposition and affidavit-in-reply and considered.

8. It is on record that the learned Judge in First Appellate Court granted monetary relief under Section 23 of the Protection of Women from Domestic Violence Act in favour of the opposite party No.2 after giving opportunities to both the parties of hearing.

9. At the time of hearing the husband/petitioner and the wife/opposite party annexed various documents to prove their respective cases.

However sitting in revision, I am not in a position to consider the documents submitted by the parties to the proceeding in order to adjudicate as to whether the impugned judgment/order suffers from any intrinsic illegality or gross irregularities. The income of the respective parties shall be adjudicated on the basis of the evidence adduced by the parties, both oral and documentary. The revisional court cannot even prima facie assess the documents filed by the parties to the proceeding.

10. It is not disputed that opposite party No.2 is the legally married wife of the petitioner. It is the bounden duty of the petitioner to maintain his wife. Considering the status of the parties this Court is of the view that the order passed by the learned Judge in Appeal does not suffer from any infirmity. I do not find any reason to interfere with impugned judgment/order passed by the learned Judge in Appeal.

11. The instant revision being devoid of any merit is dismissed on contest however without cost.

12. It is made clear that this Court does not venture upon the merit of the case and the documents filed by the parties. It is open for the contesting parties to adduce evidence in the trial court and prove the document for proper consideration and in such event the learned Magistrate shall dispose of the application under Section 12 of the Protection of Women from Domestic Violence Act in accordance with law.

13. The revision is thus dismissed on contest however, without cost.

(Bibek Chaudhuri, J.)