

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR/226/2020

**Sri Saptarshi Ghosh Chowdhury
-Versus-
Smt. Moulani Ghosh Chowdhury & Anr.**

**For the appellant : Mr. Prabir Misra, Adv.
Mr. Soumen Dutta, Adv.,
Mr. Shibendra Nath Chattopadhyay, Adv.,
Mr. Priyam Misra, Adv.,
Mr. Subhodeep Chatterjee, Adv..**

**For the opposite : Mr. Anand Keshari, Adv.,
parties Mr. J. S. Mukherjee, Adv.**

Heard & Judgement on : 20.01.2021.

Legality, validity and propriety of order dated 13th December, 2019 passed by the Learned Additional Sessions Judge, Fast Track, 2nd Court at Alipore in Criminal Appeal No. 109 of 2019 under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereafter described as the said Act) are questioned in the instant criminal revision by the original respondent/husband.

It is pertinent to mention at the outset that the opposite party no. 1 herein is the legally married wife of the petitioner. On the allegation of domestic violence perpetrated upon her by the present

petitioner, she filed an application under Section 12 of the said Act praying for various reliefs provided under the Act. The said application was registered as Case No. A. C. 996 of 2018. In the said proceeding, the opposite party no. 1 filed an application under Section 23 of the said Act praying for interim relief. The said application was disposed of by the Learned Magistrate on the basis of affidavits exchanged by and between the parties to the proceeding vide order dated 18th March, 2019 directing the present petitioner to pay monetary relief at the rate of Rs.7,500/- per month to the opposite party no. 1 from the date of order.

The petitioner challenged the said order passed by the Learned Magistrate in appeal which was registered as Criminal Appeal No. 109 of 2019 before the Learned Sessions Judge, South 24-Parganas at Alipore. The appeal was transferred to the Fast Track, 2nd Court at Alipore for disposal. The opposite party no. 1 also filed an appeal against the order passed by the Learned Magistrate on 18th March, 2019 assailing the quantum of monetary relief and praying for enhancement of the same.

Both the appeals were taken up together for hearing by the Learned Judge in Lower Appellate Court and the appeal filed by the present petitioner was dismissed on contest and the appeal filed by the opposite party no. 1 was allowed. The monetary relief which was granted by the Learned Magistrate was enhanced to Rs.20,000/- *per mensem*. Furthermore, the present petitioner was directed to pay a sum of Rs.7,500/- per month towards rent for alternative accommodation for the opposite party no. 1.

The husband/petitioner has challenged the order passed by the Learned Court of appeal below in the instant revision.

I have heard Learned Advocates for the petitioner and opposite party no. 1 at length.

The bone of contention between the parties is the monthly income of the present petitioner and secondly, whether at the time of assessing the quantum of monetary relief to be provided to the aggrieved person the Court should consider the liabilities of the husband which he incurs from his salary and after deducting such liabilities the net amount should be considered for deciding the quantum of monetary relief.

To elaborate the points of dispute between the parties, it is pertinent to mention that the opposite party no. 1 in her application under Section 12 of the said Act stated that the present petitioner is an employee of Tata Consultancy Services and his gross salary plus emoluments was Rs.2,00,000/- - Rs.2,25,000/- per mensem. Learned Advocate for the petitioner, on the other hand, submits that the petitioner gets a sum of Rs.12,00,000/- per annum as consolidated pay from his employer. Thus, his monthly income is Rs.1,00,000/-. It is further stated on behalf of the petitioner that he pays Rs.4,00,000/- per annum towards payment of house building loan. He also pays considerable amount for his own expenses, electricity bill, conveyances and to look after his old ailing parents. If all such liabilities are taken into consideration a man of prudence cannot but hold that the amount of monetary relief and cost for

alternative accommodation is not only excessive but also beyond the capacity of the present petitioner to pay.

In support of his contention the Learned Advocate for the petitioner refers to a decision of the Hon'ble Supreme Court in the case of ***Jasbir Kaur Sehgal (Smt.) -Vs.- District Judge, Dehradun & Ors.*** reported in ***(1997) 7 SCC 7***. The said report is a decision on the question of quantum of maintenance *pendente lite* to be paid by the husband under Section 24 of the Hindu Marriage Act to the wife during pendency of matrimonial suit. It is observed by the Hon'ble Supreme Court in paragraph 8 of the said report as hereunder:-

"No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate. In the circumstances of the present case we fix maintenance pendente lite

at the rate of Rs.5000/- per month payable by the respondent-husband to the appellant-wife”..

He also refers to another decision of the Hon’ble Supreme Court in the case of ***Manish Jain –Vs.- Akanksha Jain, reported in (2017) 15 SCC 801*** wherein it is held that an order of maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is not necessary to a claim of maintenance that the wife is educated and could support herself. The Court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors to draw before it.

Though both the decisions referred to by the Learned Advocate for the petitioner are not under the P.W.D.V. Act, the Hon’ble Supreme Court laid down the principle of granting maintenance to the wife and held that status of the parties must be taken into consideration while granting maintenance to the wife. It is submitted by the Learned Advocate for the petitioner that the principle so far as it relates to granting monetary relief under the said Act and the quantum of such monetary relief must be taken into consideration on the basis of the status of the parties and the capacity of the husband to pay such relief.

Learned Advocate for the opposite party no. 1, on the other hand, refers to an unreported decision of the Supreme Court passed

in Civil Appeals No. 2564 and 2589 of 1966. This is a judgement with regard to payment of maintenance under the Hindu Adoptions and Maintenance Act, 1956. Paragraph 19 of the said judgment is relevant and quoted below:-

"19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income Tax Department in assessment proceedings under the Income Tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges. The expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view some of these deductions are not allowable for the purpose of assessment of "free income" as envisaged by the Judicial Committee. Income Tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as allowed by the income-tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car."

Thus, the learned Advocate for the opposite party No.1 submits that the learned Judge in the First Appellate Court considered the gross income of the present petitioner and fixed interim monetary relief in favour of the opposite party No.1 at the rate of Rs.20,000/- per month and a sum of Rs.7,500/- is directed to be paid by the petitioner towards the rent of alternate accommodation to her. It is

submitted that if the submission made by the learned Advocate for the petitioner regarding monthly salary of the petitioner is taken into consideration, then also it ought to be held that the amount of monetary relief is not excessive because the petitioner practically has been directed to pay 27.50% of his monthly salary towards the monetary relief of the opposite party No.1.

Having heard the learned Advocates for the petitioner and the opposite Party No.1 and on perusal of the entire materials on record, I like to state at the outset that under Chapter IV of the said Act, the Court can grant the following reliefs to an aggrieved person:-

- (1) Protection order under Section 18;
- (2) Residence order under Section 19;
- (3) Monetary relief under Section 20;
- (4) Custody order under Section 21; and
- (5) Compensation order under Section 22.

Section 23 is the provision for granting interim order by the Magistrate on his satisfaction that the application *prima facie* discloses that the aggrieved person is subjected to domestic violence by the respondent and there is likelihood that the respondent may commit such act of domestic violence. It is no longer *res integra* that interim relief can be granted in respect of the reliefs under Sections 18,19,20,21 and 22.

So far as monetary relief under Section 20 of the said Act, I am of the considered view that the petitioner's income excluding the statutory deduction is to be taken into consideration to fix monetary relief payable by the petitioner. The petitioner may have various liabilities but when he is in a marital relationship, it is first and foremost duty to maintain his wife if the aggrieved person is subjected to domestic violence and compelled to live the association of the petitioner/husband, husband is statutorily bound to pay monetary relief.

So far as the residence order is concerned, as provided in Section 19(1)(f) of the said Act, I like to point out that under the said provision, the respondent may be directed to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so required. In the instant case, it is pleaded by the opposite party No.1 in her application under Section 12 of the said Act that the opposite party No.1 has been residing presently at her paternal home. I have already held that the question of securing alternative accommodation for the aggrieved person will arise only when "circumstance so required". The opposite party No.1 nowhere pleaded that her accommodation at her paternal home is not sufficient or that she does not possess adequate accommodation at her paternal home or that her paternal relations are objecting to her stay in her paternal home so at the interim stage without considering the evidence on record monetary relief for residential order, in my considered opinion should not be granted in favour of the opposite party No.1 by the learned Judge in the First Appellate Court.

However, with regard to monetary relief under Section 20 of the said Act as passed by the learned Judge in First Appellate Court, in my view, is legal, valid and proper. The learned Judge did not commit any illegality by making the petitioner to pay 20 per cent of his salary towards monetary relief of his wife.

In view of the above discussion, instant revision is partly allowed on contest, however, without costs.

The order as regards payment of interim monetary relief to the opposite party No.1 passed by the learned Judge in First Appellate Court in Criminal Appeal No.109 of 2019 is affirmed. However, the order as regards monetary relief payable by the petitioner in favour of the aggrieved person so far as it relates to Section 19(1) (f) of the said Act is set aside.

There shall be no order as to costs.

The learned Judicial Magistrate, 9th Court at Alipore is directed to dispose of the application under Section 12 of the said Act after giving opportunity to the parties to adduce evidence in support of their respective cases within 60 days from the date of communication of this order.

Petitioner is directed to make current monetary relief as directed by this Court month by month. So far as it relates to arrear payment, the petitioner is directed to deposit all such payments in eight monthly installments.

It is made clear that the observations made hereinabove in respect of this case, relates to payment of interim maintenance and the learned Magistrate will not be influenced over any finding or observation made by this Court while disposing of the main application under Section 12 of the said Act.

(BIBEK CHAUDHURI, J.)

**Srimanta
A. R. (Court)**