

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 667 of 2020

Priyanka Malik

-Vs-

State of West Bengal & Anr.

For the Petitioner: Mr. Biplab Mitra,
Mr. Narayan Ch. Das,
Mr. Ashok Kr. Chowdhury.

For the Opposite Party No.2: Mr. Sourav Chatterjee,
Ms. Amrita Pandey,
Ms. Anamika Pandey.

Heard on: March 18, 2021.

Judgment on: September 21, 2021.

BIBEK CHAUDHURI, J. : –

1. The instant criminal revision under Section 401 read with Section 482 of the Code of Criminal Procedure is filed by one Priyanka Malik (hereafter described as the aggrieved person) against her husband Pankaj Malik (hereafter described as the opposite party) challenging legality, validity and propriety of the order dated 22nd November, 2019 passed by the learned Additional Sessions Judge, 3rd Fast Track Court at Barasat in Criminal Appeal No.51 of 2018 under Section 29 of the Protection of Women from Domestic Violence Act.

2. By passing the order impugned the learned Judge in the court of appeal modified an order dated 18th August, 2018 passed by the learned Judicial Magistrate, 2nd Court at Barasat in Misc Case No.2692 of 2015 upon an application under Section 23 of the said Act.

3. On factual score, indisputable marriage of the aggrieved person was solemnised on 1st December, 2000 with the opposite party at New Delhi. In the said wedlock the aggrieved person gave birth to two daughters in the year 2003 and 2008 respectively. Unfortunately, matrimonial life of the parties was not sweet and happy. It is alleged by the aggrieved person that opposite party used to abuse her with filthy language. Not only she was subjected to domestic violence in mental form, she was subjected to physical torture by her husband too. Failing to bear such torture she lodged a written complaint against her husband on 17th August, 2015 under Section 498A of the Indian Penal Code to the Inspector, Nacharam Cyberabad Police Station, Hyderabad. Subsequently, on 30th November, 2015 the aggrieved person filed an application under Section 12 of the said Act before the learned Judicial Magistrate at Barasat which was registered as Case No.2692 of 2015 praying for protection order under Section 18, residence order under Section 19, monetary relief under Section 20 and custody of the children of the parties under Section 21 of the said Act. In the said proceeding prayer was made by the aggrieved person for interim monetary relief for herself and minor daughters at the rate of Rs.2,10,000/- per month.

4. The learned Magistrate passed an order directing the opposite party to pay monetary allowance at the rate of Rs.80,000/- per month for maintenance of the minor daughters of the aggrieved person in favour of her.

5. The opposite party challenged the above noted order in appeal under Section 29 of the said Act before the learned Sessions Judge at Barasat. The said appeal was registered as Criminal Appeal No.51 of 2018 and subsequently it was transferred to the 3rd Fast Track Court of the learned Additional Sessions Judge at Barasat for disposal.

6. By passing the impugned judgment the learned judge in appellate court directed the opposite party to pay Rs.40,000/- per month to the aggrieved person towards monetary relief for her daughters till the disposal of the case.

7. Being aggrieved the aggrieved person has filed the instant revisional application.

8. Mr. Biplab Mitra, learned Advocate for the petitioner submits that the learned Judge in the appellate Court failed to appreciate the need of the daughters of the aggrieved person. He also submits that the order of the appellate court fixing interim monetary relief at the rate of Rs.40,000/- per month was passed on consideration of some extraneous matters which did not deserve to be considered. In support of his contention he refers to paragraph 10 of the impugned judgment where the learned judge in the appellate court observed that if the amount has allowed by the learned Magistrate be paid to the aggrieved person she

would misutilised the fund since she is living adulterous relationship with one Raja Mukherjee. It is submitted by Mr. Mitra that while disposing of an application under Section 12 or Section 23 or an appeal arising out of an order passed under Section 23 the learned Magistrate or court of appeal, as the case may be shall confine to the actual need of the aggrieved person for herself and the children of the parties inconsonance to their social status and economic background.

9. Mr. Mitra next draws my attention to the series of annexures filed by the aggrieved person with the instant revisional application. It is needless to say that two daughters of the parties were born in the year 2003 and 2008. Their present ages are 18 years and 13 years respectively. In 2015 the elder daughter of the aggrieved person was a student of class seven her admission fee in the school was Rs.85,000/-. Yearly admission fee of the younger daughter of the aggrieved person was also Rs.85,000/-. The school authority used to take approximately Rs.17,000/- per month towards miscellaneous charges. The aggrieved person has submitted her monthly expenditure wherefrom it is ascertained that on the date of filing of the instant application she used to spent Rs.10,100/- towards tuition fee and transportation for her two children. She pays Rs.11,000/- as monthly salary to the private tutors of the said two children. For co-curriculum activities and all round development of the children she spent Rs.6000/- per month for books stationary etc for her two children she spent Rs.10,000/-. Of such expenditure are exclusive of food, nourishment, medical expenses and

other essential expenses met by the aggrieved person for bringing up of her children.

10. Mr. Mitra further submits that the opposite party earns more than Rs.58 lakhs per annum. The said has not been denied by the opposite party by filing any affidavit in opposition in the instant proceeding. Considering such financial background of the father the monetary allowances passed by the learned Judicial Magistrate was just proper and adequate. Learned Judge in first appeal without considering such fact and on the basis of some extraneous consideration reduced the monetary allowance arbitrarily.

11. Mr. Sourav Chatterjee, learned Advocate for the opposite party No.2 on the other hand submits that the aggrieved person left the association of her husband without any cogent reason. The allegation made by her that she was mentally and physically tortured by her husband had no basis. It is further submitted by Mr. Chatterjee that the aggrieved person falsely stated that she took shelter in Kolkata initially in a hotel at Gariahat. However, the said premises at Gariahat is owned by none other than the father of the aggrieved person. Practically, aggrieved person was misdirected by her parents. There was no reason for her to stay in a rented accommodation at New Town. He has also raised question on the authenticity of the claim of the aggrieved person for the maintenance of her children. According to Mr. Chattejee the claim of the aggrieved person for educational expenses of her children to the tune of Rs.18,250/- each may be held to be justified but she cannot claim proportionate amount of

house rent, electricity charges, food and grocery, cloth and essential medical expenses and essential recreation and weekend outing pocket money, mobile bill etc for the said two children. The aggrieved person equally has the responsibility to maintain their children. Therefore, according to the learned Counsel for the opposite party there is no reason to interfere with the order passed by the court of appeal under Section 29 of the said Act. The learned Judge in the court of appeal before settling the amount of interim monetary relief observed as hereunder:

16. Whatever may be, at this stage it would not be wise for this court to go for any thread bearing discussion regarding the merits of arguments of respective parties because it would effect the final hearing of the case pending before the Ld. Judicial Magistrate. What, it prima-facie apparent from the respective pleading filed before the Ld. Trial Court as well as argument advanced before this Court that both the husband and wife i.e litigating parties of this case are placed in respective high position and thus both are duty bound to maintain their minor daughters. In this context it is relevant to point out, mere sufficient income of the aggrieved person can no be exonerated the biological father from his legal obligation to maintain his daughters. Arguments on this score is devoid of merits.

17. Considering prima-facie materials, as adduced regarding the school fees and other maintenance costs as filed before the Hon'ble Supreme Court., this court feels that for the purpose of maintenance of the minor daughters,, this court has no hesitation to hold that the order passed by the Ld. Magistrate as regards monthly maintenance of the daughters exceeding their requirements. The Ld. Magistrate even did not

award the maintenance amount which is admitted that she used to spend.

18. So with all humility this court must held that the order of maintenance passed by Ld. J.M. warrants interference by this Court.

12. This court fails to understand that in spite of the finding arrived at by the learned Judge in the court of appeal that the litigating parties are placed in very high position; secondly even after accepting the affidavit filed by the aggrieved person before the Hon'ble Supreme Court on the issue of expenses towards academic cost and maintenance of her children, how he reduced interim monetary relief from what was granted by the learned Judicial Magistrate.

13. In my considered opinion, the order passed by the learned Additional Sessions Judge, 3rd Fast Track Court, Barasat cannot sustain and is liable to be set aside.

14. For the reasons stated above the instant criminal revision is allowed on contest, however without cost.

15. The order passed by the learned Additional Sessions Judge, 3rd Fast Track Court at Barasat is set aside and the order passed by the learned Judicial Magistrate, 2nd Court at Barasat is restored.

16. The opposite party No.2 is directed to comply with the order passed by the learned Judicial Magistrate, 2nd Court at Barasat in entirety.

(Bibek Chaudhuri, J.)