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Ct. 30

CRR 522 of 2021

(Via Video Conference)

**Sri Dhananjoy Tewary
Vs.
State of West Bengal & Anr.**

Mr. Soumitra Deb
...for the petitioner

Mr. Shamik Chatterjee
...for the opposite party No.2

Legality, validity and propriety of an interim order passed in Criminal Appeal No.59 of 2020 under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereafter described as the said Act) is under challenge in the instant criminal revision.

Suffice it to say that the opposite party No.2 being the legally married wife of the petitioner filed an application under Section 12 read with Section 23 of the said Act praying for monetary and other reliefs.

After filing of the application, notice was served upon the opposite party herein and he was given three successive opportunities to file written objection. The petitioner, however, did not file any written objection against the application under Section 23 of the said Act. By an order dated 10th February, 2020 the learned Magistrate held on the basis of an affidavit filed

by the opposite party No.2 that the present petitioner earns Rs.5,00,000/- per month from his mining business. In her petition itself the petitioner /opposite party No.2 claimed Rs.35,000/- each for herself and her daughter, total being Rs.70,000/- per month.

The learned Judicial Magistrate, 7th Court at Alipore passed an order dated 10th February, 2020 directing the opposite party/petitioner herein to pay Rs.70,000/- per month towards monetary relief for herself and her daughter under Section 23 of the said Act read with Section 20 of the said Act on interim basis till the disposal of the application under Section 12 of the said Act.

The petitioner herein challenged the said order in appeal before the learned Sessions Judge, Alipore in Criminal Appeal No.59 of 2020.

The learned Sessions Judge by an order dated 6th February, 2021 admitted the appeal and stayed the operation of the impugned order dated 10th February, 2020 for a limited period of time subject to payment of Rs.65,000/- per month by the petitioner to the opposite party No.2. The said order is assailed in the instant revision.

It is found from the materials annexed with the instant revisional application and submission made by the learned advocates for the parties that except statement on solemn affirmation, the opposite party No.2 did not produce any document in support of monthly income of the present

petitioner. On the other hand, the petitioner has filed a photostat copy of his pension pass book wherefrom it is ascertained that the petitioner gets Rs.13,238/- per month from his pension.

Learned advocate for the petitioner submits that the petitioner is a retired Government employee and he has no business as alleged by the opposite party No.2. The learned Judge did not consider the specific case of the opposite party No.2 and overstepped his jurisdiction in passing the amount of interim monetary relief as a condition precedent for stay of operation of the order passed by the learned Judicial Magistrate on 10th February, 2020.

Having heard the learned advocate for the parties and on careful perusal of the entire materials on record it is ascertained that the opposite party No.2 in her application under Section 12 read with Section 23 of the said Act did not file any document to show the business of her husband (petitioner herein). On the contrary, the petitioner has filed photostat copy of his pension pass book wherefrom it is ascertained that he earns Rs.13,238/- per month as pension.

Considering such aspect of the matter, the instant revision is disposed of directing both the parties to file supplementary affidavit before the trial Court as well as the Appellate Court in terms of Annexure –1 of the judgment of the Hon'ble Supreme Court in the case of **Rajnesh versus Neha and another** reported in **(2021) 2 SCC 324** within 10 days from the date of this order. Learned Judge in the Court of Appeal is directed to dispose of the

appeal on the basis of the statement on affidavit made by the parties as aforesaid within 15 days thereafter.

The learned trial Judge is also directed to dispose of the application under Section 12 of the said Act within two months from the date of communication of the order passed by the learned Appellate Court.

In the meantime, the petitioner shall go on paying a sum of Rs.10,000/- to the opposite party No.2 till disposal of the application under Section 12 of the said Act.

However, I have not gone into the merit of the petitioner's monetary condition and his monthly income. The above order and quantum of maintenance is passed considering the aspect that the petitioner being the husband has legal and moral duty to maintain his wife and daughter and such order is passed so that the opposite party No.2 and her daughter may not fall in vagrancy. It is made clear that the learned Court of Appeal and the learned Trial Judge are at liberty to decide the issue independently and fix the quantum of maintenance.

(Bibek Chaudhuri, J.)