

14.01.2021

Sl. No. 17

Srimanta

D/L

Ct. No. 30

CRR/861/2020

Soma Chowdhury

-Vs.-

Rabi Shankar Chowdhury & Ors.

(Via Video Conference)

Mr. Sabyasachi Bhattacharjee, Adv.,
Ms. Chaitali Mukhopadhyay, Adv.

...for the petitioner.

Mr. Sachit Talukdar, Adv.

...for the opposite parties no. 1 to 3.

The petitioner of Misc. Case No. 173 of 2018 being an application under Section 12 of the Protection of Women against Domestic Violence Act, 2005 (hereafter described as the said Act) has challenged the legality, validity and propriety of the order dated 13th January, 2020 passed in Criminal Appeal No. 6 of 2020 by the Learned Additional Sessions Judge, 1st Court, Serampore staying the operation of the order dated 18th November, 2019 passed in the above-mentioned miscellaneous case.

It is pertinent to mention at the outset that the said miscellaneous case was disposed of *ex parte* against the present respondents. Besides the restraining and accommodation order by directing the respondent no. 1 to make payment of Rs.6,000/- per month towards monthly rent in respect of alternative accommodation for the petitioner, he was also directed to pay further sum of Rs.6,000/- as monetary relief under Section 20 of the said Act to the petitioner.

The respondents were also directed to pay compensation to the tune of Rs.1,00,000/- to the petitioner.

The respondents preferred Criminal Appeal No. 6 of 2020 assailing the judgement passed by the Learned Magistrate in Misc. Case No. 173 of 2018 on the ground that they did not receive any notice of the case and without service of notice the application under Section 12 of the said Act was disposed of *ex parte* by the Learned Magistrate.

The appeal was admitted by the Learned Additional Sessions Judge, Fast Track Court at Serampore and entire order dated 18th November, 2019 was stayed.

The said order is under challenge in the instant revision.

I have heard the Learned Advocates for the petitioner and the respondents. The issue involved in the instant revision is absolutely limited to consider as to whether the order of stay granted by the Learned Appellate Court after admission of appeal suffers from any illegality or material irregularity without considering the petitioner's *bona fide* need and statutory right of separate accommodation and monetary relief.

Learned Advocate for the opposite parties submits that the respondent no. 1 is going on paying maintenance allowance as per the order passed in a proceeding under Section 125 of the Code of Criminal Procedure at the rate of Rs.1,500/- per month. The said fact was recorded in the order of the Learned Magistrate. However, the Learned Appellate Court while staying the order failed to consider that for a minimum sustenance of the petitioner blanket order of stay without imposing any condition should not be granted.

Learned Advocate for the opposite parties, on the other hand, submits that the respondents could have agitated the matter before the Appellate Court. She could have prayed for modification of the order of stay in the Appellate Court itself. On the contrary, she challenged the order passed by the Learned Additional Sessions Judge in Criminal Appeal No. 6 of 2020 on 13th January, 2020 by filing the instant revision.

Having heard the submission made by the Learned Advocates for the parties and on perusal of the entire record, this Court is of the view that the Learned Additional Sessions Judge ought to have considered the minimum need of the petitioner while granting stay of the operation of the impugned order in appeal.

For the reasons stated above, the instant criminal revision is disposed of modifying the order passed by the Learned Additional Sessions Judge, Serampore in Criminal Appeal No. 6 of 2020 in the following manner. There shall be an order of stay of operation of the order passed in Misc. Case No. 173 of 2018 by the Learned Judicial Magistrate, Serampore subject to payment of monetary relief at the rate of Rs.6,000/- granted in favour of the petitioner by respondent no. 1.

All other matters are open to the parties to agitate before the Appellate Court.

It is made clear that the above order is passed by this Court only for the limited purpose to dispose of the instant revision and any observation will not be binding upon the Learned Appellate Court while disposing of the Criminal Appeal No. 6 of 2020.

The Learned Judge in the Appellate Court is directed to dispose of the appeal expeditiously and preferably within three months from the date of communication of the order.

Parties are at liberty to act on the server copy of the order.

(Bibek chaudhuri, J.)