

09.04.2021
Item no.18
Ct. No.30
AKG

C.R.R. No. 643 of 2021

In the matter of:-

Ajay Debnath

...Petitioner

Mr. Amitabha Ghosh,

Mr. Madan Mohan Roy

....for the Petitioner.

Mr. Sujoy Sarkar

...for the Respondent No. 2.

The only point raised in the instant appeal filed by the respondent/husband is that both the learned Magistrate in Misc. Case No. 121 of 2016 and the learned Session Judge in Criminal Appeal No. 19 of 2020 did not at all consider the aspect of the monetary relief entitled by the opposite party/aggrieved person without taking into account the expenses incurred and losses suffered by the aggrieved person.

It is submitted by the learned advocate for the petitioner/husband that the monetary relief under Section 20 of the Protection of Women from Domestic Violence Act is not similar to an order of maintenance under Section 125 of the Code of Criminal Procedure because an aggrieved person is entitled to get

monetary relief only to meet the expenses incurred and losses suffered by her and her child as a result of domestic violence.

It is pointed out by the learned advocate for the petitioner that nowhere in the order passed by the trial court in Misc. Case No. 121 of 2016 or in Criminal Appeal No. 19 of 2020 the learned court of appeal framed any issue with regard to the expenses incurred by the aggrieved person and the losses suffered by her due to domestic violence. Without ascertainment of the said two points, no order of monetary relief can be passed. Therefore, the impugned judgments and orders by both the courts below are wrong against the statutory provision and liable to be set aside.

It is further submitted by the learned advocate for the petitioner that no Domestic Incident Report (DIR) was filed before the trial court before institution of the case and both the courts below erred in granting monetary relief in favour of the opposite party without considering the Domestic Incident Report.

Learned advocate for the opposite party/aggrieved person on the other hand submits that Domestic Incident Report was filed before the trial court by the Protection Officer and it was duly considered by the said trial court. Therefore, the objection raised by the learned advocate for the petitioner with regard to non-consideration of Domestic Incident Report does not stand.

Section 20 of the said Act runs thus :-

20. Monetary reliefs.- (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay

monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

- (a) the loss of earnings;*
- (b) the medical expenses;*
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and*

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition of to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the

parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

On careful reading of Section 20, it is found that the Section empowers the learned Magistrate to pass orders for grant of monetary relief in favour of the aggrieved person against the respondent to meet the expenses incurred and losses suffered including losses and earnings, medical expenses, loss to property and the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition of to an order of maintenance under section 125 of the Code of Criminal Procedure.

Therefore, the monetary relief is not confined to the only expenses incurred and losses suffered by the aggrieved person. It

also includes maintenance under Section 125 of the Code of Criminal Procedure.

The learned advocate for the opposite party submits that the opposite party/aggrieved person is a student of law. In support of his contention, he has filed a certificate issued by the Principal, it is learnt that the petitioner is a student of law. It is needless to say that a student has no earning. Therefore question of losses suffered by the opposite party as a result of loss of earnings does not arise in the instant case.

Both the courts below granted monetary relief @ Rs. 8,000/- per month in favour of the opposite party. The opposite party is a student. It is very natural that she incurs certain expenses for her sustenance when there was a domestic relationship between the parties and from the conduct of the appellant, it is clear that he has put the opposite party under economic abuse without making any payment for her sustenance. Such specific act comes within the definition of domestic violence within the meaning of Section 3 of the said Act.

It is submitted by the learned advocate for the opposite party/aggrieved person that the opposite party very cunningly avoided to state his income and in the affidavit appended to the instant revision, he mentioned his profession as domestic work but one four wheeler and three motor bikes stand in the name of the petitioner. It shows the extent of luxurious life led by the petitioner. Therefore considering the status of the parties, the

learned advocate for the aggrieved person submits that the amount of monetary relief ought to be extended by this court.

This court sitting in revisional jurisdiction cannot appreciate the evidence adduced by the parties during trial of the case. The court of appeal is the last court where appreciation of evidence on record can be made. The jurisdiction of the revisional court is confined to see as to whether there is any illegality, material irregularity or improper exercise of jurisdiction by the courts below in passing the impugned order.

Bearing this principle in mind, I am not in a position to accede to the submission made by the learned advocate for the opposite party/aggrieved person.

However, in view of the above discussion and considering the provisions of law, I do not find any reason to interfere with the orders passed by the learned Trial Judge which was confirmed by the learned Session Judge in Criminal Appeal No. 19 of 2020.

Accordingly, the instant criminal revision is dismissed on contest, however, without any costs.

(Bibek Chaudhuri, J.)