

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.R 717 of 2019

Biswajit Samanta

-Vs-

Arati Samanta

For the Petitioner:	Mr. Ayan Bhattacharya, Mr. Syed Nurul Arefin, Mr. Rahul Singh.
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For the Opposite Party :	Mr. Shayak Chakraborty.
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Heard on: 23 March, 2021.

Judgment on: 07 April, 2021.

BIBEK CHAUDHURI, J. : –

1. Appellate order dated 31st January, 2019 passed by the learned Sessions Judge, Fast Track, 2nd Court at Contai under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereafter described as the PWDV Act for short) is under challenge in the instant revision.

2. The opposite party as petitioner filed an application under Section 12 of the PWDV Act against the petitioner herein praying for reliefs under the provisions of Sections 18/19/20/21/22/23 of the PWDV Act before

the learned Additional Chief Judicial Magistrate, Contai which was registered as Misc Case No.144 of 2016. In the said proceeding, the learned Judicial Magistrate, 3rd Court at Contai passed an order on 20th March, 2018 directing the present petitioner to pay interim monetary relief at the rate of Rs.15000/- per month from the date of order in favour of his wife/opposite party under Section 23 of the PWDV Act.

3. The said order was assailed by the husband/petitioner in Criminal Appeal No.5 of 2018. The learned Judge in the court of Appeal was pleased to dismiss the appeal affirming the order passed by the learned Judicial Magistrate in Misc Case No.144 of 2016.

4. In order to adjudicate legality, validity and propriety of the impugned order, it is important to narrate the following facts leading to the dispute between the parties:

1. The opposite party as petitioner has claimed that her marriage with the present petitioner was solemnised on 14th August, 2013.
2. The husband/petitioner has challenged the factum of marriage between him and the opposite party. He has filed a suit for declaration of nullity of marriage against the opposite party in the jurisdictional Civil Court which was registered as O.S No.143 of 2016.
3. The opposite party/wife filed an application under Section 125 of the Code of Criminal Procedure against the petitioner. Initially, application for interim maintenance

was rejected by the learned Magistrate and the said order was affirmed by this Court in revision being CRR No.1722 of 2017. Subsequently however, the application under Section 125 of the Code of Criminal Procedure was allowed on contest directing the present petitioner to pay maintenance under Section 125 of the Code of Criminal Procedure at the rate of Rs.8000/- per month. The said order passed in Misc Case No.81 of 2016 by the learned Judicial Magistrate, 1st Court at Contai is affirmed by this Court in revision.

5. The opposite party has filed affidavit in opposition denying the allegations made out by the petitioner in the revisional application. She has further reiterated that she is the married wife of the petitioner and filed certain documents in support of her claim.

6. The petitioner in turn has also filed affidavit in reply and supplementary affidavit denying the opposite party's claim and marital status with him.

7. Mr. Ayan Bhattacharya, learned Advocate for the petitioner submits that the opposite party has claimed to be the married wife of the petitioner on the strength of her ration card where the name of the petitioner is recorded as her husband, a certificate issued by the Contai Municipality and an LIC Policy standing in the name of the opposite party. None of the above documents are proof of marriage between the petitioner and the opposite party. It is also submitted by him that all the abovementioned

documents are in the nature of private documents. Therefore, the trial Court as well as the Court of Appeal below committed gross illegality by accepting those documents even as prima facie proof of marriage. Mr. Bhattacharya draws my attention to the following observation of a Coordinate Bench of this Court in the judgment passed in CRR No.1722 of 2017. The said judgment was passed by this Court upon an application under Sections 397 read with 401 of the Code of Criminal Procedure filed by the opposite party challenging an order of refusal of interim maintenance under Section 125 of the Code of Criminal Procedure. The following observation made by a Coordinate Bench in the aforesaid revision is referred by the learned counsel for the petitioner:-

“It is evident from the documents on record that there is a dispute between the parties with regard to the matrimonial relation between the petitioner and the opposite party no.1 though admittedly there was love affairs between them. The authenticity of the documents produced by the petitioner in support of her claim of marriage with the opposite party no. 1 has been questioned by the opposite party no.1 on the plea that those have been created only for the purpose of this case and have not been tested in trial. It is true that proceeding under Section 125 of Cr.P.C. do not require the factum of marriage to be proved strictly but at the same time claimant must establish factum of marriage or living together for sustaining her claim of maintenance. In the instant case the factum of marriage between the parties has been denied by the opposite party no. 1 and as such under the circumstances in the absence of any evidence of the parties it will be very difficult to draw any such inference on the basis

of the documents which have not been tested in trial. Learned court below taking into account the above circumstances was of the opinion that in the absence of any evidence it will not be proper to pass any order of interim maintenance in a haste as there will be chance of causing prejudice to the party. Taking into account the above situation there appears no illegality or irregularity in the order impugned. Admittedly, case is at the stage of evidence and as such I am the view in order to set the controversy at rest evidence is required and for this reason learned Magistrate be requested to expedite the hearing of the main application under Section 125 Cr.P.C. and dispose of the same within a stipulated period and this will also not cause any prejudice to either of the parties.”

8. Mr. Bhattacharya next draws my attention to the following definitions of the PWDV Act, 2005:

Section 2(a) of the PWDV Act defines “aggrieved person”

in the following words:-

(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

Section 2(f) of the Act defines “domestic relationship” which runs thus:-

(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a

relationship in the nature of marriage, adoption or are family members living together as a joint family;”

Section 2(q) of the Act speaks of the expression “respondent” in the following words:-

(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

9. It is submitted by the learned advocate for the petitioner that the opposite party was never in a domestic relationship with the petitioner. She has failed to prove even prima facie, that her marriage was solemnised with the petitioner or they lived together “through a relationship in the nature of marriage”. Therefore, an application praying for interim monetary relief under Section 23 of the PWDV Act is not maintainable against the petitioner and the impugned order cannot be sustained.

10. Learned Advocate for the petitioner refers to an observation made by the learned Judicial Magistrate, 3rd Court at Contai in his order dated 20th March, 2018. The said observation runs thus:

“More so, the Domestic Incident Report (DIR) prima facie establishes the domestic violence upon the

petitioner and the live in relation between the petitioner and the OP no.1 as husband and wife in a same residence”.

11. It is pointed out by the Learned Advocate for the petitioner that the learned Magistrate committed patent illegality in holding that there was live-in relationship between the parties. In order to substantiate his contention, learned Advocate for the petitioner refers to the decision of the Hon’ble Supreme Court in the case of **Indra Sharma vs V.K.V Sharma** reported in **(2013) 15 SCC 755**. Paragraph 37 of the said report is relevant and quoted below:

The distinction between the relationship in the nature of marriage and marital relationship has to be noted first. The relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest, etc., even if they are not sharing a shared household, being based on law. But live-in relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression “in the nature of”.

12. In paragraph 56 of the aforesaid judgment, the Hon’ble Supreme Court has formulated certain guidelines for testing under what

circumstances, a live in relationship will fall within the expression “relationship in the nature of marriage”. These are :-

56.1. Duration of period of relationship. -[Section 2\(f\)](#) of the DV Act has used the expression “at any point of time”, which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

56.2. Shared household.-The expression has been defined under [Section 2\(s\)](#) of the DV Act and, hence, need no further elaboration.

56.3. Pooling of Resources and Financial Arrangements.- Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

56.4. Domestic Arrangements.- Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

56.5. Sexual Relationship.- Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

56.6. Children.- Having children is a strong indication of a relationship in the nature of marriage. The parties, therefore, intend

to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

56.7. Socialization in Public.- Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

56.8. Intention and conduct of the parties.- Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

13. Thus, Mr. Bhattacharya concludes submitting that the opposite party has failed to prove her marital relationship or live in relationship in the nature of marriage. Therefore in the absence of any domestic relationship with the petitioner, the opposite party cannot claim any relief under the PWDV Act.

14. Mr. Sayak Chakraborty, learned Advocate for the opposite party, on the other hand, submits that in a proceeding under the PWDV Act, strict proof of marriage between the parties is not necessary. If the Domestic Incident Report (DIR) shows that there is domestic relationship between the parties and the aggrieved person was subjected to domestic violence, she is entitled to relief under various provisions of the statute.

15. In the instant case, the learned Magistrate came to the finding that the opposite party was in domestic relationship with the petitioner and she was subjected to domestic violence from DIR. At the stage of interim relief, the opposite party does not require to prove anything more.

16. It is also pointed out by the learned Advocate for the opposite party that the opposite party as petitioner filed Misc Case No.81 of 2016 under Section 125 of the Code of Criminal Procedure. The learned Judicial Magistrate, 1st Court, Contai by a judgment dated 10th May, 2018 allowed the said prayer for maintenance under Section 125 of the Code of Criminal Procedure. In the said proceeding also the husband/opposite party took a specific defence that there was no marriage between him and the wife/petitioner. The learned Magistrate on conclusion of trial held that the petitioner is the legally married wife of the opposite party.

17. The said order was affirmed by this Court in CRR No. 1722 of 2017.

18. Thus, in a coordinate proceeding, the opposite party was held to be the legally married wife of the petitioner. The said order is upheld by this Court. Therefore, the petitioner cannot claim at this stage that there is no domestic relationship between the parties.

19. In **Dwarika Prasad Satpathy vs Bidyut Prava Dixit and Another** reported in **AIR 1999 SC 3348**, the Hon'ble Supreme Court held that no strict proof of marriage is required; if the claimant prima facie satisfied the court that claimant and her husband lived as husband and wife, she is entitled to maintenance under Section 125 (1) of the Code of Criminal Procedure. The Hon'ble Supreme Court also observed that the standard of proof of marriage in proceedings under Section 125(1) of the Cr.P.C is not as strict as requires in trial of offences under Section 494 of the Indian Penal Code. The same principle is also laid down in **Sethurathinam Pillai vs Barbara** reported in **(1971) 3 SCC 923**.

20. The same principle is applicable in a proceeding under Section 12 read with Section 23 of the PWDV Act in deciding a question as to whether a woman is having domestic relationship with a man by marriage. I have already stated that in a proceeding under Section 125 of the Code of Criminal Procedure between the parties, the opposite party was held to be the wife of the petitioner. The said order was affirmed by this Court in CRR No. 1722 of 2019.

21. Therefore, this Court has no hesitation to hold that there exists domestic relationship between the parties. The petitioner has failed and neglected to provide maintenance to the opposite party which is obviously instances of economic abuse and accordingly domestic violence.

22. At the same time I am not unmindful to note that since the opposite party was awarded maintenance in a proceeding under Section 125 of the Code of Criminal Procedure, the petitioner is entitled to have adjustment of the amount of maintenance already paid by him to the opposite party under Section 125 of the Code of Criminal Procedure against the amount of interim monetary relief to be paid by the petitioner under the DV Act.

23. In **Rajnesh vs. Neha & Anr.** reported in **(2021) 2 SCC 324** it is observed by Hon'ble Supreme Court as hereunder:-

“It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Cr.P.C., or under H.M.A. It would, however, be inequitable to direct the husband to

pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.”

24. Therefore Hon’ble Supreme Court in unequivocal terms has observed that adjustment of maintenance allowance granted in a previous

proceeding is permissible in a subsequent proceeding filing even under the different statute but substantially for the same relief.

25. For the reasons stated above the instant revision is disposed of on contest directing the petitioner to pay an interim monetary relief at the rate of Rs.7000/- per month from the date of order passed in Misc Case No.144 of 2016 by the learned Additional Chief Judicial Magistrate, Contai within ten of each succeeding month.

26. There shall however be no order as to cost.

(Bibek Chaudhuri, J.)