

08.03.2021
p.b.
SL No.10

CRR 3551 of 2019

Goutam Sembi & Ors.
vs.
Soma Sembi (Chakraborty)

Mr. Rabi Sankar Chattop-adhyay,
Mr. Somen Sen,
Ms. Payel Shome.
.....for the petitioners.

Mr. Farhat Khan
.....for the opposite party

This is an application under Section 482 of the Code of Criminal Procedure filed by the respondents of a case under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter described as the said Act), registered as A/C 5028 of 2019 before the Chief Judicial Magistrate, 9th Court at Alipore.

By filing the said application, the aggrieved person/opposite party has prayed for monitory relief, right to residence of shared household or in the alternative suitable accommodation for hearing, compensation under Section 22 of the said Act and restraining order under Section 18 of the said Act.

The said application was not only filed against the husband and parents in law but also filed against the maternal aunt in law, maternal uncles in law and sister in law. For proper appreciation, it is pertinent to

note that the sister in law was made respondent no.4 and respondent nos. 5 to 7 are maternal aunt in law and maternal uncles in law.

All the respondents have come up before this Court for quashing the said proceeding under Section 482 of the Code of Criminal Procedure.

It is submitted by Mr. Chattopadhyay, learned advocate for the petitioners that the marriage of the aggrieved person with the petitioner no.1 was solemnised on 27th November, 2015. After marriage, they started to reside at the shared household at 45/2 New Santoshpur Main Road, P.S. Survey Park. Subsequently, the husband and wife stayed elsewhere. It is further stated by the learned advocate for the petitioners that original respondent no.4/petitioner no.3 herein resides at Chinsurah. The respondent nos.5 and 6 reside at Kabi Nabin Sen Road within P.S. Dum Dum. They belong to separate family. The opposite parties never reside in the household of present petitioner nos.3 to 6. It is also submitted by him that primary obligation for maintenance of a married women who suffered from domestic violence is on the husband. The sister in law, the maternal uncles in law or maternal aunt in law are under no obligation to provide monetary relief to the petitioner. Moreover, the opposite party never resides with them in their household so, the opposite party

cannot claim right of residence in the houses of the present petitioner nos.3 to 6.

Of course, she can claim right of residence in the shared household at 1, Janata Road, Survey Park. Or in case of her husband's denial to allow her to stay in the said shared household at premises no.1, Janata Road, Survey Park, the petitioner can claim monetary relief for alternative accommodation from her husband and parents in law.

Learned advocate for the opposite party/aggrieved person, on the other hand, submits that the petitioner has no knowledge about the residential addresses of the petitioner nos.3 to 6 as stated in the instant revision. They used to reside in separate houses in close proximity of the maternal house of the opposite party and regularly used to inflict torture upon her. So, they are also liable under the said Act for appropriate relief.

Having heard the learned advocates for the parties, this Court is of the view that a proceeding under Section 12 of the said Act is applicable against the maternal relations of the aggrieved person who ordinarily used to reside with her at her maternal home. The application under Section 12 of the said Act is not in the nature of a complaint under Section 498A of the Indian Penal Code. The petitioner cannot entangle all

her distant maternal relations for obtaining monitory, residential and other consequential relief.

For the reasons stated above, the proceeding arising out of an application under Section 12 of the said Act is quashed as against the petitioner nos.3 to 6. However, the proceeding is maintainable against the petitioner nos.1 and 2.

The instant revision is, therefore, allowed in part. The proceeding under Section 12 of the said Act is quashed as against the petitioner nos.3 to 6. The learned Chief Judicial Magistrate, 9th Court at Alipore, is directed to proceed with the trial of the instant proceeding against the petitioner nos.1 and 2.

It is made clear that the learned Magistrate shall not be influenced on any of the observation made hereinabove touching the merit of the main case in view of the fact that such observation is made only for the purpose of disposal of the instant criminal revision under Section 482 of the Code of Criminal Procedure.

(Bibek chaudhuri, J.)