

06.04.2021

Sl. No. 20

Srimanta

Ct. No. – 30

D/L

**CRR/1513/2020
(Via Video Conference)**

In Re : An application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973.

In the matter of : Apurba Das @ Apu Das

... petitioner.

Mr. Rahul Ganguly, Adv.,

Mr. A. Bhattacharyya, Adv.

... for the petitioner.

Mr. Sujoy Sarkar, Adv.

...for the respondent nos. 2 & 3.

The aggrieved persons, opposite party nos. 2 and 3 herein filed an application under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereafter described as the said Act) before the Learned Judicial Magistrate, 3rd Court, Suri in Misc. Case No. 153 of 2018. The said application was disposed of by Learned Magistrate *ex parte* directing the respondent to pay monetary relief of Rs. 10,000/- to the aggrieved person/wife and Rs.10,000/- to the minor daughter of the parties from the date of filing of the case within 10th of each succeeding months.

The respondent preferred an appeal before the Learned Sessions Judges, Birbhum in Criminal Appeal No. 30 of 2019 under Section 29 of the said Act assailing the order passed by the Learned Magistrate directing the respondent to pay interim monetary relief to the aggrieved person/wife. The said appeal was disposed of by the Learned Sessions Judge, Birbhum by a Judgement dated 9th July, 2020. The Sessions Judge directed the appellant to pay monetary relief to the respondent/petitioner no. 1 at the rate of Rs. 5,000/- per month and to the respondent/petitioner no. 2 at the rate of

Rs. 10,000/- per month from the date of filing of Misc. Case No. 153 of 2018 within 10th of each succeeding month. The appellant also directed to pay a sum of Rs. 3,00,000/- as compensation to the respondent no. 2 within a fortnight from the date of the order.

Legality, validity and propriety of the order passed by the Learned Sessions Judge in Criminal Appeal No. 30 of 2019 is under Challenge in the instant revision at the instance of the respondent/husband (hereafter described as the petitioner).

Marriage between the petitioner and opposite party no. 1 is not a dispute. It is also not in dispute that in the wedlock between the petitioner and the opposite party no. 2, opposite party no. 3 was born. In the instant revision the validity of the Lower Appellate Court's Order is challenged on the ground that the Learned Court of appeal failed to consider that the Learned Magistrate passed order under Section 23 of the said Act *ex parte* without considering the fact that the notice of the case was not actually served upon the petitioner and the petitioner did not get the opportunity to contest the said application under Section 23 of the said Act. Secondly, it is urged by the learned Advocate for the petitioner that the petitioner owns a small hardware shop as per the Income tax return to annual income varies from 1.5 lakh to 2.5lakh. Under such meager income it is not possible for the petitioner to pay a sum of Rs.15,000/- per month to the opposite party nos. 1 and 2.

Learned Advocate for the opposite parties, on the other hand, submits that the petitioner is not only an owner of a hardware shop but also an enlisted Government Contractor. He earns lucrative amount from his business. He maintains a

private car for his personal use. Since the petitioner is in private employment, no reliance should be placed on the income tax return filed by the petitioner.

Learned Advocate for the opposite party also draws my attention that the petitioner not only violated the order passed by the Learned Appellate Court below so far as it relates to payment of compensation but also violates the order of this Court passed in C.R.R.No. 3678 of 2019. In C.R.R. No. 3678 of 2019 the petitioner prayed some accommodation to pay the compensation awarded by the Learned Court of Appeal and a Coordinate Bench of this Court disposed of the said criminal revision allowing the petitioner four weeks' time from the date of the order to deposit the said compensation amount. The said order in C.R.R.No. 3678 of 2019 was passed on 16th December, 2019 but till date he is not complied with the order passed by this Court.

The petitioner filed Criminal Appeal No. 30 of 2019 challenging the order dated 30th March, 2019 passed in Misc. Case No. 153 of 2018. He participated and contested the hearing of the appeal. It is needless to say that the appeal is continuous of the original proceeding. When the petitioner contested the appeal on merit, he cannot after disposal of the appeal urge the question that he was not served with notice of Misc. Case No. 153 of 2018 and the original order under Section 23 of the said Act dated 30th March, 2019 was passed *ex parte*. The *ex parte* order was challenged and tested in appeal at the instant of the petitioner. Therefore, the petitioner cannot have any grievance against the *ex parte* order passed in Misc. Case No. 153 of 2018.

Now, let me consider as to whether the Court of appeal was justified in passing the impugned order.

It is, needless to say that the scope of the revisional Court is very limited. The revisional Court cannot re-assess and re-examine any evidence and documents filed by the parties at the time of hearing of the appeal. The scope of the revisional Court is to consider as to whether the learned Sessions Judge acted illegally or with material irregularity in passing the impugned order.

I have carefully gone through the impugned order. It is held by the Learned Appellate Court that the petitioner has sufficient means to pay interim monetary relief as granted by the learned Court of Appeal till the disposal of Misc. Case No. 153 of 2018. The Learned Court of Appeal came to such finding on the basis of the Memorandum of Appeal and the original application filed by the opposite parties in the Trial Court. At the time of hearing of the instant application, the Learned Advocate for the petitioner has submitted a document from which it is ascertained that the petitioner maintains a private car for his personal use. A man earning 1.5 lakh to 2.5 lakh per annum under the present situation and marked price of essential commodities cannot maintain private car for his personal use. It is not denied that the petitioner is an able bodied person and can be to open. Considering all such circumstances, I find any illegality and material irregularity the impugned order passed by the Learned Sessions Judge, Birbhum in Criminal Appeal No. 30 of 2019.

The instant revision being devoid of any merit is **dismissed** on contest, however, without costs.

(Bibek Chaudhuri, J.)