

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 1796 of 2020

Sri. Nand Kishore Rajak

-Vs-

Smt. Rashmi Rajak & Anr.

For the Petitioner: Mr. Dev Kumar Sharma.

For the Opposite Party: Mr. Aniket Mitra

Heard on: March 26, 2021.

Judgment on: June 16, 2021.

BIBEK CHAUDHURI, J. : –

1. The instant revision under Article 227 of the Constitution of India has been filed by the opposite party of Misc Case No.2 of 2018 challenging, legality, correctness and propriety of the judgment and order dated 1st February, 2020 passed by the learned Additional Sessions Judge ,5th Court at Howrah in Criminal Appeal No.11/2019 dismissing the appeal filed by the petitioner and affirming the order dated 18th December, 2018 passed by the learned Judicial Magistrate, 1st Court at Howrah in the above mentioned misc case.

2. The petitioner is the husband of the opposite party No1 herein. The opposite party No.1 filed an application under Section 12/18/19/20/22/23 of the Protection of Women from Domestic Violence Act, 2005 (hereafter DV Act for short) which was registered as Misc Case No.2 of 2018. The said misc case was transferred by the learned Chief Judicial Magistrate, Howrah to the 1st Court of the Judicial Magistrate at Howrah for trial and disposal.

3. In the said proceeding upon an application under Section 23 of the said Act filed by the petitioner, the learned Magistrate passed an order directing the opposite party to pay interim monetary relief at the rate of Rs.10,000/- per month from the date of filing of the application.

4. The petitioner preferred Criminal Appeal No.11 of 2019 against the above mentioned order passed by the learned Judicial Magistrate. The said appeal was heard by the learned Additional Sessions Judge at Howrah on 1st February, 2020. Upon hearing, the said appeal was dismissed and the order passed by the learned Judicial Magistrate 1st Court at Howrah was affirmed.

5. It is contended by the petitioner that on 27th February, 2020 an adjournment petition was filed on behalf of the appellant/petitioner stating, inter alia, that he has engaged a new Advocate, namely Dev Kumar Sharma and Mr. Sharma was not ready to represent the appellant in the appeal. The learned appellate court fixed 1st February, 2020 for hearing of the appeal. It is also stated by the petitioner that remaining four days between 29th January, 2020 to 31st January, 2020 were

declared holidays on account of Saraswati Puja. The cause list of the court was updated on 28th February, 2020 and neither the petitioner nor his learned Advocate had any opportunity to know that the next date of hearing was fixed on 1st February, 2020. Therefore, the learned Advocate for the appellant could not take any step on 1st February, 2020 and without considering the appellant's grievance, the said Criminal Appeal No.11 of 2019 was disposed of by the learned Sessions Judge, 5th Court at Howrah.

6. Mr. Dev Kumar Sharma, learned Advocate for the petitioner submits that the appellant did not get any opportunity to place his case before the learned appellate court below. The appeal under Section 29 of the DV Act was disposed of without hearing the appellant. According to Mr. Sharma the impugned order is bad and illegal because though the appeal was shown as disposed of on merit, it was actually not disposed of on merit and therefore the impugned order is bad in law and accordingly it should be set aside.

7. Mr. Aniket Mitra, learned Advocate for the opposite party No.1 (wife) on the other hand draws my attention to the impugned judgment passed by the learned Additional Sessions Judge, 5th Court at Howrah in Criminal Appeal No.11 of 2019. It is clearly recorded in the judgment passed by the learned appellate court below that one Subir Kumar Naskar, Advocate appeared on behalf of the appellant/petitioner before the learned Court below. In the body of the judgment the defence of the

appellant was recorded at Page-2. The learned Appellate Court below further held,

“On perusal of the written objection dated 14.5.2018 of the respondent/husband I find that in point No.11 the respondent had admitted the contents of Para-11 of the Misc Petition No.2 of 2018 wherein the petitioner/wife has made out a case that the respondent/husband is an employee of Ordinance Factory at Jabalpur, Madhya Pradesh as ITI carpenter and earns Rs.40,000/- per month as salary.”

8. Since the judgment passed in Criminal Appeal No.11 of 2019 shows that the appellant/petitioner was duly represented by his Advocate Mr. Subir Kumar Naskar and it is further found from the case record that Mr. Dev Kumar Sharma, learned Advocate for the petitioner did not file Vokatnama before the learned Appellate Court after obtaining no objection from the erstwhile learned Advocate for the appellant, I am not in a position to hold that the petitioner was not represented before the learned Appellate Court in Criminal Appeal No.11/2019.

9. In view of the above discussion, I do not find any scope of interference on the order passed by the learned Appellate Court below in Criminal Appeal No.11 of 2019.

10. Accordingly the instant criminal revision is dismissed on contest, however without cost.

(Bibek Chaudhuri, J.)