

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 314 of 2022

With

CRR 663 of 2022

Garima Shaw alias Guddi Shaw

-Vs-

Umesh Kumar Shaw & Anr.

For the Petitioner: Mr. Dinabandhu Chowdhury, Adv.,
Mr. Iresh Paul, Adv.,

For the Opposite Party No.1: Mr. Debajyoti Deb, Adv.,
Mr. Shyamal Mondal, Adv.,

For the State: Ms. Manisha Sharma, Adv.

Heard on: 20 June, 2022.

Judgment on: 20 June, 2022.

BIBEK CHAUDHURI, J. : –

1. Both the criminal revisions are taken up together for hearing as the above mentioned two revisions are filed by the wife/petitioner against the husband/opposite party.

2. In CRR 314 of 2022, order dated 7th December, 2021 disposing of Criminal Appeal No.100 of 2021 by the learned Chief Judge, City Sessions Court setting aside an order dated 23rd March, 2021 passed by the

learned Metropolitan Magistrate, 6th Court at Calcutta in Miscellaneous Case No.9 of 2009 and remanding back the said misc case for hearing afresh of the petition under Section 23 of the Protection of Women against Domestic Violence Act has been challenged by the petitioner.

3. In CRR No.663 of 2022 the petitioner has challenged the order dated 8th February, 2022 and 23rd February, 2022 passed by the learned Metropolitan Magistrate, 6th Court at Calcutta in Misc Case No.9 of 2019 granting an order of stay of execution proceeding in respect of the order dated 23rd March, 2021 until further order.

4. It is not disputed that in both the revisional application the petitioner is legally married wife of the opposite party No.1. She filed an application under Section 12 read with section 23(2) of the said Act before the learned Additional Chief Metropolitan Magistrate-II at Calcutta, which was registered as Misc Case No.9 of 2019. On 23rd March, 2021, the learned Metropolitan Magistrate 6th Court at Calcutta passed an order directing the opposite party to pay Rs.39,000/- per month as maintenance to the petitioner till the disposal of Misc Case No.9 of 2019. The said order was challenged by the opposite party No.1 as appellant in Criminal Appeal No.100 of 2021 before the learned Judge, City Sessions Court, Calcutta. The learned Chief Judge disposed of the appeal vide order dated 7th December, 2021 setting aside the order passed by the learned Metropolitan Magistrate 6th Court, Calcutta on 23rd March, 2021 and remanding the application under Section 23 of the said Act for fresh hearing. It is the grievance of the petitioner that the prayer of interim

maintenance was earlier rejected in connection with another proceeding under the said Act initiated in the year 2017. Subsequently the application under Section 12 of the said Act also dismissed. The opposite party took the said ground as a ground against maintainability of the prayer for interim maintenance. The learned Magistrate in the trial court duly considered the objection of opposite party No.1 on the point of maintainability and passed a recent order allowing interim maintenance. However, the 1st Court of appeal set aside the order passed by the learned Metropolitan Magistrate, 6th court, Calcutta in Criminal Appeal No.100 of 2021 on the ground that the learned Magistrate failed to consider that similar application filed by the petitioner was rejected by the learned Metropolitan Magistrate, 18th Court, Calcutta in Misc Case No.12927 of 2017. It is observed the learned Judge in the First Court of appeal:-

“It is very surprising that the observation made by the Metropolitan Magistrate, 18th Court, Calcutta has not been echoed in the impugned order though the learned Advocate for the appellants/husband submitted that he had placed all the orders before the learned trial court at the time of hearing.”

5. Mr. Dinabandhu Chowdhury, learned Advocate for the petitioner draws my attention to the order dated 23rd February, 2021 passed by the learned Metropolitan Magistrate, 6th Court, at Calcutta in Misc Case No.9 of 2019. In the 3rd paragraph of the order it is clearly recorded that the

earlier misc case was dismissed for non prosecution. The said Misc Case No.12927 of 2017 was pending in the court of the learned 18th Metropolitan Magistrate, Calcutta and the said court rejected the application for interim maintenance. Subsequently, the learned Metropolitan Magistrate passed the order on the ground that the petitioner did not lose her right to file a subsequent application under Section 12 of the Protection of Women from Domestic Violence Act and the subsequent application is maintainable under the law. The opposite party has not challenged the issue of maintainability of the application under Section 12 and also under Section 23 of the said Act against the order dated 23rd February, 2021.

6. After passing of the aforesaid order, the learned Magistrate passed the order dated 23rd March, 2021 directing the opposite party no.1 to pay interim maintenance at the rate of Rs.39,000 per month. Therefore, observation made by the learned Chief Judge, City Sessions Court in Criminal Appeal no. 100 of 2021 is palpably wrong and liable to be set aside.

7. Mr. Debajyoti Deb, learned Advocate for the opposite party No.1 strenuously argues that the petitioner was not subjected to domestic violence at any point of time. Initially she filed an application under Section 12 of the said Act as well as under Section 23 of the said Act. Both the applications were dismissed for no prosecution. Subsequently the petitioner has filed Misc Case no.9 of 2019 under Section 12 of the said Act. In the said proceeding she filed an application under Section 23

of the said Act. Learned magistrate without considering the fact that her earlier petition was dismissed for no prosecution, passed an order for interim maintenance under Section 23 of the said Act.

8. The learned judge in the Appellate Court directed the applicant under Section 23 of the said Act to be heard afresh after taking into consideration that her previous application was dismissed for non prosecution. Without taking into consideration the said fact, the petitioner has filed the instant revision. According to Mr. Deb, there is no merit in the instant revision of the same is liable to be dismissed.

9. Having heard the learned counsels for the parties and careful perusal of the entire materials on record it is found that in Misc Case No.9 of 2019 the opposite party No.1 challenged the maintainability of the application under Section 12 of the said Act before the trial court. The trial court by passing a recent order on 23rd February, 2021 held that Misc Case No.9 of 2019 being a subsequent application under Section 12 of the said Act is maintainable in law and fact. Subsequently, on 23rd March, 2021 the petitioner's application under Section 23 of the said Act was disposed of by the learned magistrate. The Chief Judge, City Sessions Court, Calcutta did not at all go through the trial court record to see the question on maintainability of the Criminal Misc Case No.9 of 2019 was already decided by the learned magistrate and the said order reached finality because of the fact with that the opposite party No.1 did not challenge the said order before the higher forum. Thus, it can be safely held that the reasons supplied by the First Court of Appeal while setting

aside the order dated 23rd March, 2021 was beyond record and the learned Judge acted with material irregularities in passing the order allowing the appeal being No.100 of 2021.

10. For the reasons stated above the judgment and the order passed in Criminal Appeal No.100 of 2021 is set aside and the order dated 23rd March, 2021 passed by the Metropolitan Magistrate, 6th Court at Calcutta is restored.

11. In view of the above discussion both the revisional applications are allowed on contest, however, without cost.

12. The order of stay passed by the learned Metropolitan Magistrate, 6th Court at Calcutta vide order dated 23rd February, 2022 is vacated.

13. Let a copy of this judgment be sent to court below for information and compliance.

(Bibek Chaudhuri, J.)