

11.07.2022
DL - 5
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 5190 of 2022

Suranjit Biswas
Vs.
Union of India & Ors.

Mr. Manoj Kumar Roy
....for the petitioner.

Mr. Subit Majumdar
...for Union of India.

The petitioner is a L/NK in the Army and is working at 21 Corps Sig. Regt. The petitioner is presently posted at Madhya Pradesh. The petitioner's wife, Smt. Beauty Rani Biswas (respondent no.6) has lodged a complaint at Habra Police Station, being P. S. Case No.20/2021, G.R. Case No.98/2021 under Section 498A/34 of Indian Penal Code and Section 3/4 of Domestic Violence Act, 2005 against the petitioner. It is also an admitted position that the petitioner has filed a matrimonial suit, being Matrimonial Suit No.336/2021 under Section 9 of Hindu Marriage Act, 1955 (hereinafter referred to as the 1955 Act), inter alia for restitution of conjugal life. The said suit is pending before the learned Additional District and Sessions Judge, 5th Court at Barasat, North 24-Parganas. The petitioner's wife (respondent no.6) had made a prayer before the competent authority of Indian Army for maintenance allowance from the petitioner. This complaint is being processed by the competent authority. It is an admitted position that the petitioner was served with a notice to produce his last pay slip at his present place of posting at Madhya Pradesh. The petitioner

says that though he was informed about the complaint lodged by his wife (respondent no.6), but he has not been supplied with the complaint and documents in support thereof. There is as such, according to the petitioner, violation of principles of natural justice against the petitioner while the complaint made by his wife (respondent no.6) is being processed.

The petitioner being posted at Madhya Pradesh had received the notices at Madhya Pradesh. The petitioner has challenged the action of the employer in this High Court. The claim for maintenance as against the petitioner at the instance of his wife squarely falls under the provisions of section 3(o) of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as the 2007 Act).

Even though the petitioner contends that the proceedings does not arise out of a matter relating to the conditions of the service but for the provisions of section 3(o)(ii) of 2007 Act, I am of the view that the petitioner's case is covered under this Act. I am also unable to accept the petitioner's argument that the cause of action relating to matrimonial discord between the petitioner and respondent no.6 having arisen within Habra jurisdiction, this Court has the territorial jurisdiction to receive the writ petition challenging the proceedings initiated against him on the complaint of respondent no.6. The petitioner by filing the matrimonial suit under section 9 of 1955 Act has admitted the respondent no.6 to be his wife. The petitioner, being the husband and a member of disciplined force, is bound to maintain his wife. The petitioner has clearly indicated that he is not interested to pay the maintenance of his wife as,

according to the petitioner, she is staying separately out of her own volition though he wants his wife to be back. The allegation whether the respondent no.6 is staying separately out of her own volition is the subject matter of the suit filed by the petitioner before the Barasat Court.

The writ Court neither can usurp the jurisdiction of such court nor can make any observation, which is likely to have an impact on the said suit. The petitioner's allegation as against his wife, therefor, cannot be gone into at this stage while deciding this writ petition. The end result is that the petitioner is required to maintain his wife in befitting standard to that of his until there is a verdict of a competent court of law. The petitioner is also liable in law to meet the legal expenses of his wife. The writ petition also appears to be premature as no order has been passed against the petitioner as yet. The petitioner's contention that the provisions of Hindu Marriage Act, 1955 Act has an overriding effect over the Army Act, 1950 or the rules framed thereunder cannot also be gone into this writ petition as there is no prayer challenging the provision under the Army Act, 1950 and the rules framed thereunder to be repugnant and has no application to proceedings against the petitioner originating out of a complaint being lodged by his wife (respondent no.6).

The judgments relied upon by the petitioner reported in (2000) 7 SCC 640 (Navinchandra N. Majithia Vs. State of Maharashtra & Ors.) and (2018) 7 SCC 303 (Lieutenant Colonel Vijaynath Jha Vs. Union of India & Ors.) have no manner of application in the instant case. Navinchandra (supra) is on territorial jurisdiction. The facts which persuaded the

Supreme Court to pass such judgment has no resemblance to the facts of the instant case. Vijaynath (supra) does not persuade me to hold that the case in hand falls outside the domain of 2007 Act.

The petitioner, therefor, is not entitled to any relief as claimed in the writ petition. The writ petition is misconceived firstly, as the writ petition is not maintainable before this Court for lack of territorial jurisdiction. Secondly, for the bar in view of the provisions of 2007 Act. Thirdly, the petitioner, being a part of disciplined force, has to obey the order and command of his superior officers. A member of the disciplined force is expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not allow his feelings to fly in a fancy as held in **Anil Kumar Upadhyay v. The Director General, SSB & Ors.** reported in **2022 SCC Online SC 478**. The petitioner has been directed to submit his pay slip. Instead of submitting his pay slip, the petitioner has questioned the proceedings by alleging violation of principles of natural justice when no final order has yet been passed.

The writ petition is, therefor, dismissed with cost awarded at Rs.10,000/- as against the petitioner payable to the respondent no.6. The payment of cost is a pre-condition for the petitioner taking recourse of any other provisions before any other forum against the respondent no.6.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)

