

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. – 1857 of 2018

With

C.R.R. 1858 of 2018

IN THE MATTER OF

Mrs. Nandita Sarkar

Vs.

Tilak Sarkar & Ors.

For the petitioner : Mr. Subir Banerjee, Adv.,
Mr. Sandip Bandyopadhyay,Adv.,
Ms. Ruxmini Basu Roy, Adv.

For the Opposite Party :

Mr. Manjit Sing, Adv.,

Mr. G.Sing, Adv.Adv.,

Mr. Abhisekh Bagal, Adv.,

Mr. Biswajit Mal, Adv.,

Mr. R.K. Sing, Adv.

Judgment on : **21.12.2022**

Subhendu Samanta, J

This is an application U/s 482 read with Section 401 of the Code of Criminal Procedure 1973, preferred against a Judgment and Order dated 07.04.2018 passed by the Learned Additional Sessions Judge, First Track 1st Court Howrah, in criminal appeal no. 111 of 2015 and 116 of 2015 thereby setting aside the judgment and order of awarding monitory relief including compensation and other reliefs to the petitioner by the order dated

31.07.2015 passed by the Learned Judicial Magistrate 4th Court Howrah, in Misc case No. 269 of 2012 U/s 12 read with Section 18,20,22,23 of the Protection of Women from Domestic Violence Act 2005(PWDV Act).

The present petitioner is the widowed daughter-in-law of present opposite party Nos. 1 and 2. The petitioner filed an application U/s 12 read with Section- 18,20,22,23 of the Protection of Women from Domestic Violence Act 2005(PWDV Act) against the opposite party Nos. 1 and 2 before the Learned Jurisdictional Magistrate. The Magistrate awarded monitory relief including compensation in favour of the petitioner.

Opposite parties preferred an appeal before the Learned Sessions Judge for setting aside the award; the petitioner also preferred another appeal before the Sessions Judge, against the same order for inadequate monitory relief.

Learned Additional Sessions Judge, First Track 1st Court Howrah, heard both the appeals and passed a common judgment thereby set aside the judgment of the Magistrate for monitory relief towards the petitioner. Thereby, appeal preferred by opposite party was allowed and the appeal preferred by the petitioner was rejected. Hence, both this criminal revisional applications were preferred by the petitioner against the order of the Ld. Additional Judge, First Track 1st Court, Howrah.

Both the appeals were disposed of by separate Judgments; however this court disposing of the both instant criminal revisional applications by this common Judgment.

It is the case of the petitioner that marriage between this petitioner with Saugata Sarkar, since deceased, the son opposite Nos. 1 and 2, was solemnised on 10.05.2009 according to Special Marriage Act 1954. After the said marriage the petitioner started to reside at the house of opposite party Nos. 1 and 2 along with her husband and in-laws. After the marriage all the ornaments and other valuable articles which were gifted by the parents and parental relations of the petitioner as well as the other gifted items were kept at the in-laws house of the petitioner under the custody of the opposite parties. He further argued that a domestic relationship had cropped up

between petitioner and O.P. No. 1 and 2, during her stay at her matrimonial home.

It is the case of the petitioner that after few days of marriage the petitioner found that her husband was not physically fit and was addicted to alcohol with other bad habits. The petitioner tried to her level best to restrain her husband from taking alcohol but the same was in vain. Finally the husband of the petitioner expired on 29.10.2010.

It is the further case of the petitioner that the opposite parties no. 1 and 2 along with other in-laws blamed the petitioner for the death of her husband and ultimately on the next day of death of her husband, the petitioner was forced to live her matrimonial home keeping all valuable articles and ornaments with the custody of the opposite parties.

It is the further case of the petitioner that the parents of the petitioner were forced to sign on some receipt and blank papers on the same day when she was forced to live her matrimonial home. It is the further case of the petitioner that all her streedhan articles including household goods ornaments e.t.c. were in the custody of the opposite parties and they did not return the same to the petitioner instead of demand. Since then the petitioner had no other option but to stay with her father at Shrinath Bose Lane, Howrah. It is the further case the petitioner that the petitioner wrote several letters requested the opposite parties to return the streedhan articles but they did not return the same. They also did not hand over a copy of death certificate of her husband in spite of several requests.

For which the petitioner had to lodge One G.D. with Bagnan Police Station. It is the further case of the petitioner that she has no sufficient means to maintain herself and thereby completely dependent on her well wishers and family friends.

When the opposite parties did not return the streedhan articles the petitioner was compelled to file a criminal case U/s 406 IPC. After filing the criminal case and by virtue of the order of the Magistrate some articles were recovered from the house of the opposite party Nos. 1 and 2. It is the further

case of the petitioner that opposite party No. 1 being the father- in-law is a moneyed man and an employee of UCO Bank. O.P. No. 1 is the owner of two houses, one of which two storied and another is three storied. O.P. No. 1 has also some other sources of income from which he received substantial income. It is the positive fact of the petitioner that opposite parties have several source of income wherefrom they used to earn Rs.-45,530/- per month.

It is the further fact of this case that the petitioner filed an application before the Jurisdictional Magistrate U/s 12 read with Section- 18,20,22,23 of the Protection of Women from Domestic Violence Act 2005(PWDV Act) against the opposite parties for getting monitory relief of Rs. 15,000/- per month and for a direction to return all streedhan articles in default, to pay a Sum of Rs. 4,00000/- as damages and or compensation at the tune of Rs 8,00000/- for causing Domestic Violence. An application was also filed by the petitioner for interim monitory relief and interim residence U/s 23 of the (PWDV) Act.

The prayer of the petitioner interim relief was turned down, against which one criminal appeal before the Learned District Judge, was preferred. Learned Additional District Judge, First Track 1st Court dismissed the appeal and confirm the order of the Learned Magistrate. The petitioner being aggrieved by the said order of the Learned A.D.J. First Track 1st Court Howrah preferred CRR No. 2846 of 2013 before this court. One Co-ordinate Bench of this court disposed of the CRR with a direction that the widowed daughter-in-law is entitled to get maintenance from her father-in-law provided contingencies as enumerated in Hindu Adoption and maintenance Act 1956 are satisfied. Thereafter, the present petitioner preferred an application for amendment of the original application which were allowed by the Learned Magistrate.

After conclusion of the hearing Learned Magistrate pleased to allow the application of the petitioner partly; and directed the respondent No. 1 to pay monthly monitory relief to the petitioner at the rate of Rs.10,000/- per month from date of the order with further direction to pay a sum of Rs.

2,00,000/- of compensation for mental torture and emotional distress caused upon her.

Being aggrieved by and dissatisfied with the said order opposite party Nos. 1 and 2 preferred Criminal appeal No. 111 of 2015 for setting aside the award, the petitioner also filed another appeal before the Learned District Judge being Criminal appeal No. 116 of 2015 on the ground of inadequacy.

Ld. 1st Appellate Court initially dismissed the Cr. Appeal No-111 of 2015 and allowed Cr. Appeal No. 116 of 2015 by reducing the Amount of compensation from Rs. 2,00,000/- to Rs. 1,50,000/-

Against the Order of appeals, two Revisions were preferred before this court being No. C.R.R.-2516 of 2017 and C.R.R.-2517/2017. Both the revisions were heard by a co-ordinate bench of this court and orders passed by the 1st Appellate Court were set aside. The appeals were remanded back with some specific directions.

On remand, Ld. A.D.J., Fast Track 1st Court after hearing the parties, set aside the Order/Judgment passed by the Magistrate and thereby allowed the Criminal Appeal No. -111/2015 and dismissed the Criminal Appeal No. - 116 of 2015. Hence, these revisions.

Learned Advocate appearing on behalf of the petitioner submits that marriage between the petitioner and her husband was solemnised on 10.05.2009 her husband died on 29.10.2010. She left her matrimonial home on the next day i.e. on 30.10.2010. He argued that actually petitioner was forced to leave her matrimonial home due to the yield behaviour of opposite parties and other in-laws, who was accusing her to be responsible for her husband's death. Now the petitioner is residing with her at her father's house had the mercy of her father. She had no sufficient means to maintain herself. No material relief or help has ever been advanced by the opposite parties towards the petitioner. Finding no other alternative she filed the application before the Learned Magistrate with prayer for adequate reliefs under the provisions of PWDV Act.

Learned Advocate appearing for the petitioner further submitted that impugned order passed by the Learned Court below is very much illegal and cannot be sustained in the eye of law. The observations of Learned 1st Appellate Court is baseless and without applying his mind and without considering the provisions of law, he passed the impugned order. He again argued that in passing the impugned order, Learned Court below overlook the sufficient evidence on record whimsically came to an improper finding. He argued that the observation of the Learned Court below regarding the point that widowed daughter-in-law is not entitled to get the monitory relief from her parents-in-law, is not a basis on the proper knowledge of law. The Hon'ble Apex Court in **Satish Chandra Ahuja vs. Sneha Ahuja** reported in **2001(1) SCC414** has specifically answered the point that the Parents-in law can variably turned as respondents as enumerated under the provisions of PWDV Act and daughter-in-law is entitled to receive monitory relief from her parents-in-law by virtue of PWDV Act 2005.

He further argued that the observation of Learned Court below regarding the fact that the application under the provisions of PWDV Act was filed by the petitioner after long delay and the delay has not been properly explained as to why such delay has been caused. He argued that in **Kamatchi Vs. Lakshminaraynan** Hon'ble Apex Court has formulated that there is no limitation to file an application U/s PWDV Act.

He further argued that the observation of the Learned Court below regarding the issue that no Domestic Violence has been proved by the petitioner – is also not true. The opposite party has retained the streedhan of the petitioner for which she had to file a proceeding U/s 406 of IPC. The Hon'ble Apex Court in **(2016) 2 SCC 705 [Krishna Bhattacharya Vs. Sarathi Chowdhury]** has specifically observed that the retention of streedhan is a continuing offence.

He again argued that the petitioner has sufficiently proved before the Learned Magistrate that she has no personal earning to maintain herself. On the other hand the opposite parties failed to prove before the Learned Magistrate regarding any income of the petitioner. Thus, the petitioner is

entitled to get the monitory relief has per provisions of PWDV Act. He again argued that the impugned order passed by the Learned Appellate Court is improper and illegal and it need be set aside.

Learned Advocate appearing on behalf of the opposite parties submitted written notes of argument and raised several points as follows. It is argued by the O. P. That to decide this revisional application. This court has to decide

- (a) *Has the Learned Appellate Court erred in holding that domestic violence has not been proved?*
- (b) *Even if it is assumed that domestic violence has been proved, has the petitioner been able to prove the conditions set out in Section 19 of the Hindu Adoption and Maintenance Act, 1956(hereinafter "HAMA")?*
- (c) *Has the petitioner been able to prove any "expenses incurred" or "losses suffered" within the meaning of Section 20 of the Protection of Women from Domestic Violence Act (hereinafter "DV Act")?*
- (d) *Whether the Hon'ble High Court, in criminal revisional jurisdiction, can go into the findings on fact by the Learned Appellate Court by re-examining the evidence or is the Hon'ble High Court required to only look into whether the impugned judgment suffers from any illegality or material impropriety?*

He further argued that Learned Appellate Court has not committed any error in holding that Domestic Violence has not been proved because:-

2.1 The Learned Appellate Court has been pleased to hold that the petitioner/wife has been unable to prove domestic violence against

the opposite parties who are her father-in-law and mother-in-law respectively.

2.2 In this regard, the Learned Appellate Court has been pleased to hold, after a perusal of the application under Section 12 of the DV Act and the evidence recorded during the trial, inter alia, that:

(a) The delay in filing her application under the DV Act complaining of domestic violence has not been satisfactorily explained.

(b) The petitioner has sought to rely on her oral evidence that she was in constant communication with the opposite parties for return of her articles but the same has not been substantiated by any documentary evidence, i.e., the said letters (including advocate's letter) has not been exhibited in the trial.

(c) The father of the petitioner has himself admitted as PW2 that he gave a declaration in writing to the panchayat that he was voluntarily taking away Nandita to his house.

(d) There is no proof that the petitioner was deprived of her articles or that the opposite parties tried to convert any such property to their own use. The theory of usurpation of the nuptial gifts/stridhan, by the opposite parties, is therefore not proved.

(e) The evidence on record indicates that the opposite parties' version that the

petitioner left on her own rather than being driven out is more believable because of:

(i) The admission by PW 2(petitioner's father) about giving a declaration in writing to the panchayat that he is taking away his daughter,

(ii) no efforts taken by the petitioner or her father to initiate any criminal action against anybody initiated right after the alleged incident of being driven out.

(f) There is no averment about physical and mental torture in the application under Section 12 of DV Act, and only a line to this effect was stated in the evidence on affidavit without any details or "foundational support".

(g) The allegation against the opposite parties of denying the petitioner a copy of the death certificate of the deceased husband is inconsequential since the death certificate is a public document and can be obtained easily.

On the basis of the above findings, the Learned Appellate Court has come to the conclusion that the petitioner has not been able to prove domestic violence either in the form of being driven out of her matrimonial home, or deprivation of her articles(since she left her matrimonial home on her own), or further any mental or physical torture.

2.3 *It is most humbly submitted that all of the findings of the Learned Appellate Court are supported by the evidence recorded in the trial. It is pertinent to state that at the time of argument, the Learned Advocate for the petitioner has focused only on “economic abuse” and argued that domestic violence has been committed as she has suffered from “economic abuse” due to denial of her stridhan articles.*

2.4 *At the outset, it is stated that the key terms in the definition of “economic abuse” at Section 3, Explanation I (iv) of the DV Act are “deprivation”; “disposal”; “prohibition or restriction to continued access”.*

2.5 *It is not the case of the petitioner that any of her items were disposed of by the opposite parties. It is further stated that in order to prove “deprivation” or “prohibition” or restriction to continued access”, the petitioner has to prove that she was driven out of her matrimonial home. In the event the Learned Appellate Court comes to a finding that the petitioner has left out of her own accord, the question of “deprivation” or “prohibition” or restriction to continued access “does not arise. This is because it was the decision of the petitioner to leave her matrimonial home and the opposite parties had taken no decision to drive her out while depriving her of her articles. It flows from the above that if the*

Learned Appellate Court comes to a finding that the petitioner has left on her own accord, the question of economic abuse or domestic violence does not arise.

2.6 it is stated that if the petitioner had been driven out, she and her father would have taken prompt steps to lodge a complaint against her in-laws. However, as has been observed by the Learned Appellate Court, no such steps were taken by her. The petitioner has said during evidence that she sent some letters including an advocate's letter requesting her in-laws to return her articles. However, none of these letters have been exhibited in the trial. Perhaps, it is most important to note that in her cross examination, the petitioner has stated as follows:

"It is not a fact that my father sent to letters to the Ops for return of my stridhan articles to me. It is not a fact that I sent two letters to the OP on 29.11.10 and 17.01.11 for claiming my remaining stridhan articles."

This lends further weigh to the theory that she must have left on her own as she has been unable to prove that she sent any letters for return of her stridhanarticles. It is also pertinent to state that she has given oral evidence regarding a complaint case filed by her for offence u/s 406, IPC but there is no way to say what the particulars of such complaint are as the same has not been exhibited in the trial.

2.7 The Learned Appellate Court has also sought to rely on the petitioner's father PW2's evidence that " It is a fact that I reduced in writing before Panchayat that I voluntarily

took my daughter with me” Had the petitioner’s father been forcibly made to write such a false declaration, naturally he would have made attempts to inform the police authorities or file a complaint, but it is an admitted position that no such efforts were taken.

2.8 It is also pertinent to state that no local witness, being any neighbour or resident of the village, has been examined to support the petitioner’s case that she was thrown out of her matrimonial house.

2.9 The petitioner has sought to make out a case during the hearing before the Hon’ble High Court that the President of the Panchayat. Samiti, Alok Gnguly, has exercised his influence with the Panchayat. However, it is pertinent to state that this was never the case of the petitioner and no oral evidence to this effect was given by any of the PWs. Rather, it was during the cross examination of OPW 1, the opposite party no. 1, that the name of Alok Ganguly has come for the first time. There is nothing on record or in the evidence that indicates that he exercised undue influence over the panchayat.

2.10 As such, upon perusal of the evidence on record, the Learned Appellate Court came to a finding that the opposite parties’ case that the petitioner left of her own accord is more believable than the case of the petitioner that she was driven out.

2.11 As is stated in further detail in Section 5 of these written notes, as a Revisional court, the Hon'ble High Court has to inquire whether there is a material irregularity in the finding of the Learned Appellate Court without going in-depth into the evidence. As such, since the findings of the Learned Appellate Court is supported by evidence on record, it is most humbly submitted that the same should not be interfered with.

He further argued that the petitioner has failed to prove the conditions set out Section 19 of Hindu Adoption and Maintenance Act 1956 for which the petitioner is not at all entitled to get maintenance from her father-in-law she specifically argued that Section

3.1 Section 19 of the HAMA provides that a Hindu widow is entitled to maintenance by her father-in-law. However, the obligation to maintain his daughter-in-law is not enforceable against the father-in-law if he does not have any coparcenary property in his possession from which the daughter-in-law has not received a share from which to maintain her.

3.2 A Co-ordinate Bench of this Hon'ble Court in CRR 2846 of 2013, Nandita Sarkar nee Sen vs. Tilak Sarkar & others, vide order dated 28.10.2014 (at page 33, Annexure P-1 of CRR 1857 of 2018), arising out of this very litigation, had stated that the petitioner was required to establish on evidence the

conditions laid down in Section 19 of the HAMA. It is only if she is able to prove these conditions would she be liable to be maintained by her father-in-law under the provisions of the DV Act.

3.3 Nowhere in the evidence on record has it come to light that the opposite party, father-in-law, has possession of any coparcenary property. Therefore, without admitting, even if it is assumed that the petitioner has been successful in proving domestic violence suffered by her, she has not been able to show that the opposite party has any coparcenary property, and as such, in light of the judgment of the Hon'ble Co-ordinate Bench in CRR 2846 of 2013, she is not entitled to maintenance from the opposite parties.

He again argued that petitioner also failed to prove any “expenses incurred” or losses suffered within the meaning of Section 20 of PWDV Act. Thus she has not entitled to have any monetary relief. Learned Appellate Court has correctly pointed out the same provision for which the petitioner has/had no answer.

Lastly, Learned Advocate, appearing on behalf of the opposite parties submitted that the Hon'ble High Court in exercising criminal revisional jurisdiction is only required to look into whether the impugned Judgment suffers any illegality or impropriety. Hon'ble high court in a Criminal Revision cannot get into the finding of fact by the Learned Appellate Court by re-examining the evidences on record. He pointed out that

5.1 In the instant case, the Learned Appellate Court has reached a finding upon examining the evidence on record that the petitioner left

the matrimonial house on her own and therefore the question of economic abuse or deprivation of her stridhan articles does not arise. To this effect, the Learned Appellate Court has cited the lack of documentary evidence seeking her stridhan articles from her in-laws; as well as the petitioner's father's admission that he gave an undertaking to the panchayat that he took his daughter voluntarily. The Learned Appellate Court has also sought to support his findings by stating that no prompt steps were taken to make suitable criminal complaints to the relevant authorities to back the claim that the petitioner was forcibly thrown out of the matrimonial home on the death of her husband.

5.2 The findings of the Learned Appellate Court are based on cogent findings from the evidence. It is most humbly submitted that as a Revisional Court, the Hon'ble High Court should not go into questions of evidence. Rather, the Hon'ble Court is required to limit itself to whether the findings of the Learned Appellate court suffer from material irregularity or illegality, or whether the Learned Appellate Court has proceeded on the basis of evidence which is not on record, or whether the court has ignored vital evidence on record.

Learned Advocate for the OP also cited some decisions in support of his contention. They are state of **Maharastra Vs. Jagmahan Sing Kuldeep Sing Anand** passed by Hon'ble Supreme Court in criminal appeal **No. 952-953 of 2004**, decided another Judgment of Hon'ble Supreme Court reported

in **2008(4)SCC649**. He also filed two judgments of Hon'ble Bombay High Court reported in **2018SCC Online Bombay 2807** and **2014ALL-MR(Cri)2398**.

After going through the entire judgment laws as well as the argument advanced by the parties it would be prudent for this court to decide first-what are the power of this Court in Criminal Revisional Jurisdiction.

Learned Advocate for the OP's submitted that the High Court in Criminal revisional Jurisdiction cannot go into the findings of fact of the Learned Appellate Court by re-examining the evidences. He further argued that the High Court required to look into whether the impugned Judgment suffers any illegality or material impropriety. He cited the decision of Hon'ble Supreme Court in **Jagmahan Sing Kuldeep Sing Anand's** case (supra).

Paragraph 21 and 22 of the said judgments read as follows :-

*21. In embarking upon the minutest re-examination of the whole evidence at the revisional stage, the learned Judge of the High Court was totally oblivious of the self-restraint that he was required to exercise in a revision under Section 397 Criminal Procedure Code On behalf of the accused, reliance is placed on the decision of this Court to which one of us (Justice Sabharwal) is a party, i.e. Criminal Appeal No. 523 of 1997 decided on 9.3.2004. **[RamBriksh v. AmbikaYadav]. 2004(2) RCR (Criminal) 182(SC)]**. That was the case in which the High Court interfered in revision because material evidence was overlooked by the courts below.*

22. The Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions

contained in Section 410(401?) Criminal Procedure Code Section 401 Criminal Procedure Code is a provision enabling the High Court to exercise all powers of Appellate Court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions court. Section 397 Criminal Procedure Code confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity or any proceeding of such inferior court. "It is for the above purpose, if necessary, the High Court or Sessions Court can exercise all appellate powers. Section 401 Criminal Procedure Code conferring powering of Appellate Court on the Revisional Court is with the above limited purpose. The provisions contained in Section 395 to Section 401 Criminal Procedure Code, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

Hon'ble Supreme Court in
Chandrababu Vs. State (2015)3SCC(CRI)

851 has discussed about the power of High Court in revisional jurisdiction as follows:-

“ Normally revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must plays in the accused of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the Court.

The object of the revisional jurisdiction unlike appellate jurisdiction is to correct miscarriage of justice. Whether substantial justice has been done is the main consideration”.

Thus, after considering the dictum of the Hon’ble Apex court and several High Courts in the issue of revisional power of High Court this can be safely hold that the High Court can exercise its power in Revisional Jurisdiction-

- a) Where there are illegality and impropriety in the impugned order.
- b) Where the trial court had wrongly shut out the evidence.
- c) Where the Appellate Court had wrongly hold evidences admitted by the trial court to be inadmissible.
- d) Where material evidences has been overlooked by the Trial Court or the Court of Appeal.
- e) Where the finding of the appellate court is so perverse that it causes miscarriage of justice.

More emphasise has to be exercised when Appellate Courts finding is contrary to the findings of trial court.

In the present case the finding of trial court has been reversed by the appellate court. Whether failure of justice has been caused to the litigants or whether the order impugned is perverse or not, is the prime question here. In my view this court in exercising the Revisional Jurisdiction can look into the judgments of both the trial court and Appellate Court to apprise the value of the judgments on the matrix of the facts pleaded.

Learned Appellate Court has passed the impugned order and the prayer of the present petitioner was turned down on three points-

- (1) The application of the petitioner before the Learned Magistrate under the provisions of Section 12 of PWDV Act is filed in delay; there is no explanation for such delay. Thus the application for getting relief under the PWDV Act cannot be entertained.
- (2) The petitioner cannot claim any relief under the PWDV Act from the private OP as private opposite party is the father-in-law of the petitioner.
- (3) The petitioner has failed to prove the fact of Domestic Violence so she is not entitled to get any relief

Decision on Point No.-1:- Learned Advocate for the opposite party submitted that the application U/s 12 of DV Act was filed by the petitioner after two years from the alleged date when she left her matrimonial home. He further argued that the petition does not disclose the cause of delay for preferring the application in such belated stage. He further argued that Appellate Court is justified in finding that the petitioner has failed to address the

court regarding any ground for which the petition was filed in such belated stage.

Learned Advocate for the petitioner submitted before this court that the petitioner was driven out from her matrimonial home and thereafter she was residing on her father's home at the mercy of her father. She tried to contact several times to the opposite parties but all the times her effort was frustrated. He again argued that there is no bar or limitation to file the application U/s 12 of PWDV Act. In support of his submission he cited a decision passed by the Hon'ble Supreme Court in Criminal Appeal No. 627 of 2022 (**Kamachi Vs. Lakhsminrayanan**) para 15 of the said judgment read as follows:-

15. Let us now consider the applicability of these principles to cases under the Act. The provisions of the contemplate filing of an application under Section 12 to initiate the proceedings before the concerned Magistrate. After hearing both sides and after taking into account the material on record, the Magistrate may pass an appropriate order Under Section 12 of the Act. It is only the breach of such order which constitutes an offence as is clear from Section 31 of the Act. Thus, if there be any offence committed in terms of the provisions of the Act, the limitation prescribed under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the Act, Such a starting point for

limitation would arise only and only after there is a breach of an order passed under Section 12 of the Act.

After going through the judgment of the Hon'ble Apex Court in Kamachi (supra) I am of a clear view that there is no limitation to file the application U/s 12 of DV Act. The application filed by the present petitioner before the learned Magistrate is not barred by limitation. The finding of Appellate Court regarding the fact that the application was filed in belated stage is appears to me not good one.

Decision on point No. 2- A long discussion was made in the impugned judgment by the Appellate Court regarding the fact that widowed daughter-in-law is not entitled to have any relief against her father-in-law under the provisions of PWDV Act.

Learned Appellate Court is also of view that it is not codified in the PWDV itself that the father-in-law can be compelled to private maintenance to her widowed daughter-in-law. Learned Appellate Court is also of view that the widowed daughter-in-law may have any relief or claim over the notional income of her deceased husband but not beyond that. Ld. Court is also of a specific view that father-in-law is not primarily liable to pay compensation his widowed daughter-in-law.

Learned Advocate for the opposite party submitted before this court that the daughter-in-law is not entitled to have any maintenance by her father-in-law under the provisions of PWDV Act. He argued that Section 19 of Hindu Adoption and Maintenance Act provides that Hindu widow is entitled to maintenance by her father-in-law subject to the Limitation and Restrictions and Conditions as enumerated in Hindu Adoption and Maintenance Act itself. The widowed wife has only right over the coparcenaries property of her deceased husband. He also point out that during the proceeding of the instant matter of co-ordinate bench of this Hon'ble High court in CRR No. 2846 of 2013 vide its order dated 28.10.2014 held that the petitioner is required to establish all evidences and conditions

laid down in Section 19 of the Hindu Adoption and Maintenance Act. Thus after such order being made the petitioner preferred amendment before the Learned Trial Court to prove the conditions as directed by the Hon'ble court. The petitioner has failed to prove any criterion as envisaged under the provisions of Section 19 of HAMA Act. Thus the finding of Learned trial court is very much correct to hold that the petitioner being widowed daughter-in-law is not entitled from her father.

Learned Advocate for the petitioner submitted before this court that the PWDV Act has a large scope. The neglected and destitute women can claim maintenance under the PWDV Act from the respondents. The term of respondent has been defined in the PWDV Act in a manner that the person having family relationship with the petitioner may be directed to pay maintenance under the PWDV Act. He further argued that irrespective of other provisions regarding claiming maintenance by the wife from her husband, the scope of PWDV Act is very wide. He again argued that the widowed daughter-in-law i.e. the petitioner is very much entitled to maintenance by her father-in-law. The question was raised before the Hon'ble Apex court in several occasions and there were conflicting judgments finally, Hon'ble Supreme court vide its order of three Judges Bench in **Satish Chandra Ahuja vs. Sneha Ahuja (2021(1)SCC414)** has clearly held that a daughter-in-law is entitled to have relief under the PWDV Act from her father-in-law.

Heard, the Learned Advocates perused the order passed by this Hon'ble Court in CRR No. 2846 of 2013. A Co-ordinate bench of this court is of a view in passing order of a criminal revision that petitioner being the widowed daughter-in-law is entitled to have the maintenance by her father-in-law subject to the conditions being fulfilled and enumerated U/s 19 of the Hindu Adoption and Maintenance Act (HAMA). I have also carefully perused the judgment by Hon'ble Apex Court passed in **Satish Chandra Ahuja vs. Sneha Ahuja's** case; on perusing the entire judgment of the Hon'ble Court it appears to me that the Hon'ble three Judges bench is of their finding that judgment passed by Hon'ble Supreme Court in **S.R Batra vs. Taruna Batra**

is not good law. The Hon'ble three Judges Bench is also categorically pointed out several other issues and is of clear view that the daughter-in-law is entitled to have the maintenance and any relief from her father- in- law. The facts and circumstances of **Satish Chandra Ahuja's** case and principal thereof very much applicable in this case thus after considering the entire circumstances and after considering the judgment of Hon'ble Apex court three Judges bench I am of view the present petitioner being the widowed daughter-in-law is entitled to have maintenance and other relief from her father-in-law according to the provisions of PWDV Act.

The judgment of Hon'ble Apex Court in **Satish Chandra Ahuja vs. Sneha Ahuja(supra)** has its overriding effect upon the finding of Co-ordinate Bench of this Hon'ble Court passed in CRR 2846 of 2013.

In conclusion thereof the finding of Learned Appellate Court on point No. -2 as mentioned above is not legal or proper, and it is not acceptable.

Decision on Point No. 3:- Learned Appellate Court is of clear finding that the petitioner has failed to prove Domestic Violence against the opposite parties who are father-in-law and mother-in-law respectively. On that score Learned Appellate Court has pointed out that the oral evidence of the petitioner regarding her communication with the opposite parties to return streedhan articles was not substantiated in documentary evidences. The petitioner did not prove the fact by producing the so called Advocate's letter before the court and it was not Exhibited in trial. Learned Appellate court also hold that PW 2, that is, the father of the petitioner gave a declaration in writing to the Panchayet that he was voluntarily taking away the petitioner from her matrimonial home. Learned Appellate Court is also of view that the petitioner has failed to prove the fact that the opposite parties retained the streedhan articles and use the same for their own use and petitioner also failed to establish that any physical or mental torture was inflicted upon her at her matrimonial home by the opposite parties. The only allegation of the petitioner against the opposite parties is written on the petition itself; it was not proved by adducing evidence thus the Appellate Court is of view that the petitioner has failed to prove the Domestic Violence.

Learned Advocate for the opposite party supported the findings of the Learned Appellate Court and argued that the fact of driven out of the petitioner from her matrimonial home or deprivation of her streedhan articles or any mental or physical torture was not proved by the petitioner. He argued that the finding of the Learned Appellate Court is on the basis of the evidence on record. It was also not proved by the petitioner that her streedhan articles were disposed of by the opposite parties. The decision of the petitioner to leave her matrimonial home was voluntarily, on that score appellate court is of correct finding that the petitioner left her father-in-law and mother-in-law in great peril and sorrow when their only son died. He further point out that the Learned Appellate Court below is of correct finding that the so called letters stated in the petition itself was not exhibited by the petitioner before the trial court., the petitioner left her matrimonial home on her own accord thus the finding of Learned trial court is not illegal or there is no material irregularity.

Learned Advocate for the petitioner submitted before this court that the Learned trial court has committed error in deciding the matter. There are sufficient materials and evidence on record to prove the fact that the petitioner was physically and mentally tortured at her matrimonial home. He further argued that the case of the petitioner was proved before the Learned trial court by adducing sufficient evidence but the Learned Appellate Court did not enter into the evidences adduced by the petitioner before the Learned trial court below and came to an erroneous finding so his finding is palpably illegal in the eye of law.

Heard, the Learned Advocates perused the materials on record. In deciding this point I refrain myself to look into the evidence on record. I only perused the Judgments and Order passed by the Learned Appellate Court and by the Learned trial court. Learned Trial Court in passing his Judgment is of view that the petitioner has proved the Domestic Violence against the opposite parties; on the other hand Learned Appellate Court is of view that the petitioner has failed to prove the Domestic Violence against the opposite parties Learned Appellate Court has disbelieved the fact of the petitioner on

the basis of two points; No. 1-two Advocate's letters dated 29.11.2010 and 17.01.2011, as stated in the petition of PWDV Act was not placed before the Learned Trial Court and it was not exhibited. No-2- the PW 2 i.e. the father of the petitioner stated before the trial court that he took the petitioner from her matrimonial home voluntarily and a written undertaking was giving before the local Pachayet to that effect. The petitioner stated in a petition regarding the two Advocates letters pertaining to her demand to return all her stridhan articles from the opposite parties. The said two letters were not produced before the Magistrate. Non production of the letters before the Magistrate does not itself disapprove the entire facts of the case.

Non-production of the two letters may weaken the plea of petitioner regarding her demand of stridhan articles from O.P.s; but it is nobody's case that the stridhan articles of the petitioner was not lying under the custody of the OPs and it is also not a case that OPs ever voluntarily returned or tried to return the stridhan articles to the petitioner.

The other circumstances of the cases has to be looked into but the Learned Appellate court did not put any emphasise to looked into other part of the evidence of the petitioner regarding the Domestic Violence. It was pleaded before the trial court that the petitioner was subjected to physical and mental torture at her matrimonial home; which the petitioner stated in PWs before the trial court in trial. Entire testimony of the petitioner was not considered by the Appellate Court; though it is reflected in the judgment of the trial court. Only picking out some point which was not possibly be proved by the petitioner cannot itself disapproved the entire case of the petitioner. Secondly, if the statement of PW 2 is to be considered to be true then also the fact which was pleaded by the petitioner regarding Domestic Violence cannot be construed to be false. The Appellate Court did not ever read the judgment of trial court by observing that- "*The judgment under challenge, a bulky affair spread over twenty two pages with only eight and a half of them being devoted to a lacklustre effort at analysing the evidence does not qualify a happy reading material.*" Learned appellate Court should have considered the entire materials placed before him but he committed

error in pointing only few co-related issues in the petitioner's case which was not specifically proved.

The Domestic Violence has been defined U/s 3 of the PWDV Act. The Domestic Violence includes economic abuse. The deprivation of petitioner to any economic or financial resources which the aggrieved person is entitled under any law- is also Domestic Violence. In this case it is the fact that the petitioner was deprived from her Stridhan articles since long which were under the custody of the opposite parties. This fact tantamount Domestic Violence. The judgment of trial court specify the reason for which he allowed the prayer of Domestic Violence of the petitioner. I find no infirmity in the said finding of the Learned Trial Court.

The facts of this case is peculiar in nature. The widow left the matrimonial home on the next day of death of her husband with an undertaking that she left voluntarily. This fact may have two explanations-

First, widow may have felt very alone in absence of her husband and took cozy shelter at her father's home;

Second, they are existed no good terms with her in-laws; that is the lady was not well at her matrimonial home. What prompted the OP to obtain an undertaking at the time? Is they are in a supposition that the widow may proceed against them for their conduct during her living at matrimonial home? Thus, the written undertaking by father of the widow was obtained to avoid future complications/proposed prosecution. This conduct by the Ops strengthen the petitioner's plea of Domestic Violence.

Considering the circumstances and materials and also considering the impugned order passed by the Learned Appellate Court I am of a view that the Appellate Court has committed injustice in not considering the entire petitioner's case before him. The Learned Appellate Court has also not clearly observed that why the observation of the Learned Trial Court is not proper. Considering the same it appears that the finding of Appellate Court regarding the fact that the petitioner has not proved the Domestic Violence against the opposite parties, is not correct.

Learned Advocate for the OPs also argued that the petitioner has failed to prove “expenses incurred” or “loss is suffered” within the meaning of Section 20 of PWDV Act. It is admitted fact by both the parties that the petitioner who is a widow, has no independent income. She is now residing at her father’s home at the mercy of her father. The day by day expenses of livelihood of the petitioner is not a deniable factor. She is only to lay her hand to her father for to meet out the daily expenses. Thus the circumstances incurred and loss suffered by the petitioner is itself proved from the facts and circumstances of this case. The argument advanced by the Learned Advocate on behalf of the opposite party has no merit on that score. Ultimately, it is the irony of fate, that instead of specific legislative intent, the widow lady is roaming doors of Courts since long 10 years without receiving any monetary relief.

Before concluding my observation in this case it is proper to point out that Learned Advocate appearing on behalf of the opposite party has cited the decisions of Bombay High Court as mentioned above but the facts and circumstances of this case are pulpably different to the facts and circumstances of this case so, the principal enumerated in the above decisions are not applicable here. In **2014ALLMR(Cri)2398** the monetary relief was given the wife and the maintenance was short for on behalf of the children and; in case of **2018SCC Online Bombay 2807** already order of maintenance is there in other proceeding thus, the prayer under the PWDV Act regarding monetary relief was not considered.

After careful perusal of the observation of the Learned Appellate Court it appears that the appellate court has observed regarding the scope of PWDV Act which is actually derogatory so far as the purpose of enactment of the statute itself. In **Satish Chandra Ahuja vs. Sneha Ahuja(supra)** three Judges Bench of Hon’ble Supreme Court has defined the scope and purpose of PWDV Act very precisely in Paragraph 28,29,30,31 and 32 which is read as follows:-

28. Before we consider the questions as noted above, we need to notice the statutory Scheme of the

Protection of Women from Domestic Violence Act, 2005.

29. The progress of any society depends on its ability to protect and promote the rights of its women. Guaranteeing equal rights and privileges to women by the Constitution of India had marked the step towards the transformation of the status of the women in this country.

30. The domestic violence in this country is rampant and several women encounter violence in some form or the other or almost every day, however, it is the least reported form of cruel behaviour. A woman resigns her fate to the never ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner or a single woman in her lifetime. This non-retaliation by women coupled with the absence of laws addressing women's issues, ignorance of the existing laws enacted for women and societal attitude makes the women vulnerable. The reason why most cases of domestic violence are never reported is due to the social stigma of the society and the attitude of the women themselves, where women are expected to be subservient, not just to their male counterparts but also to the male's relatives.

31. Till the year 2005, the remedies available to a victim of domestic violence were limited. The women either had to go to the civil court for a decree of divorce or initiate prosecution in the criminal court for the offence punishable under Section 498-A of the IPC. In both the proceedings, no emergency relief/reliefs/is/are available to the victim. Also, the

relationships outside the marriage were not recognized. This set of circumstances ensured that a majority of women preferred to suffer in silence, not out of choice but of compulsion.

32. The enactment of Act, 2005 is a milestone for protection of women in this country. The statement of objects and Reasons of the Protection of Women from Domestic Violence Bill, 2005 marks the objective which was sought to be achieved by the enactment.

Thus, after considering the facts and circumstances of this case and after going through the materials on record and after going through the judgments passed by the Hon'ble Apex Court and Hon'ble High Court I am of a view that the impugned order passed by the Learned Appellate Court is suffered illegality. It is improper by the Appellate court to hold otherwise to that of the scope of PWDV Act. Thus, the instant Criminal revision has got merit and it is liable to be allowed.

The instant criminal revision thus allowed and disposed of.

Impugned order passed by the Learned Appellate court is hereby set aside. The order passed by the learned Magistrate is hereby affirmed.

Pending CRAN applications if any, is disposed of.

Any order of stay passed by this court during the continuation of this instant criminal revision is also hereby vacated.

(Subhendu Samanta, J.)