

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 2467 of 2022

**Raja Ram Shaw & Anr.
Vs.
The State of West Bengal & Anr.**

Mr. Pawan Kumar Gupta
Mr. Awadesh Kumar Rai
Ms. Sofia Nesar
Mr. Santanu Sett
...for the petitioner

Item No.155ML

Heard & Judgment on: 03.08.2022

Bibek Chaudhuri, J.

In a proceeding instituted by the opposite party No.2 against her husband and all other matrimonial relations under Section 12 read with other relevant provisions of interim relief contained in Protection

of Women from Domestic Violence Act warrant of arrest was issued by the trial Court vide impugned order dated 18th June, 2022.

The present petitioners are the father-in-law, married sister-in-law and her husband who have been arraigned as opposite party/respondents in the said proceeding under PWDV Act.

The learned advocate for the petitioner has filed the certified copies of the entire order sheets passed in Misc. Case No.749 of 2018 instituted by the opposite party against her husband and present petitioners. During the pendency of the above stated Misc. Case, the husband of the private opposite party has already submitted the affidavit of assets. On the basis of the affidavit of assets interim prayer made by the opposite party No.2 might be disposed of by the learned Magistrate. However, he insisted upon personal appearance of all the opposite parties. This Court fails to understand as to why such personal appearance is felt necessary by the learned Magistrate.

In **Siladitya Basak and Ors versus State of West Bengal and Anr.** reported in **2010(2) Crimes 858** this Court was pleased to hold that in paragraph 14 and subsequent paragraphs as hereunder:-

"14. As to non-submission of affidavit in Form III , it has to be said that affidavit has been appended to the application but it may be that the affidavit did not contain the all information as per Form III. If the learned Magistrate so desires and permits the petitioner, another

affidavit may be sworn in pursuant to the prayer under Section 23 (2) of the Act.

15. Undoubtedly, the learned Magistrate has committed illegality in asking the petitioners to appear in person. Form VII clearly provides that the learned Magistrate may direct that the respondents may appear either personally or through a duly authorized Counsel. Therefore, since the application under Section 12 of the Act is meant for certain reliefs under Sections 18, 19, 20, 21, 22 & 23, it is not necessary that the "respondent" has invariably to appear in person. Of course, the Magistrate has judicial discretion to direct appearance of a respondent in person provided such appearance is found necessary for adjudication of the dispute. But the matter of the fact is that the Section 12 of the Act does not relate to any offence punishable under the Indian Penal Code. Therefore, personal appearance of a respondent is not a must."

In view of such circumstances and considering the ratio of the decision of a Co-ordinate Bench in **Siladitya Basak** (supra) I find that the impugned order dated 18th June, 2022 is illegal, invalid and inoperative. No warrant of arrest is required to be issued in a proceeding under Section 12 and other cognate provisions of the PWDV Act when the opposite party has already filed affidavit of assets and the trial Court could very well dispose of the application for

interim relief filed by the opposite party No.2 on the basis of domestic incident report and the affidavit of assets.

For the reasons stated above, the instant revision is allowed. The impugned order dated 18th June, 2022 is set aside. Warrant of arrest issued against the petitioners be recalled.

Since the proceeding under Section 12 of the PWDV Act is pending for long, the learned trial Judge shall take serious endeavour to expedite the hearing of the case.

(Bibek Chaudhuri, J.)