

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 2699 of 2021

Dayanjan Biswas

Vs.

Reba Mitra (Biswas)

For the Petitioner : Mr. P. Srivastawa
Mr. Subhamay Patra

Heard on : 24.03.2022

Judgment on : 24.03.2022

Jay Sengupta, J.:

This is an application for quashing of a proceeding in Complaint Case No. 551 of 2017 under Section 12 of the Protection of Women from Domestic Violence Act including an order dated 18.07.2018 passed by the learned Judicial Magistrate, 2nd Additional Court, Basirhat, North 24 Parganas.

Learned counsel appearing on behalf of the accused petitioner submits as follows. The opposite party/wife had filed a compliant under Section 12 of the Protection of Women from Domestic Violence Act. The same was adjudicated and a final order was passed on 18.07.2018 granting certain reliefs in favour of the wife. The

petitioner's case is that the child in question is not his. The date of the marriage as mentioned in the complaint is wrong. It should actually be 03.02.2001 in stead of 20.11.1999. Moreover, the opposite party suppressed the fact that she was earning from her job as a nurse at a hospital. On the question of maintainability of this application vis-à-vis Section 29 of the said Act, reliance is placed on a decision of an Hon'ble Single Judge of this Court passed on 22.07.2021 in CRR 2911 of 2019.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner and have perused the revision petition.

For a proper exposition of the question in law involved in this case, it would be necessary to quote Section 29 of the said Act as under-

“S.29. Appeal.—There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.”

Therefore, there is a statutory provisions which requires that in the event an order passed by learned original Court under provisions of the Protection of Women from Domestic Violence Act is challenged, the same has to be done by way of an appeal under Section 29 of the said Act.

Challenging an order, especially a final order passed in a proceeding is quite different from moving an application for quashing of a proceeding under Section 482 of the Code.

It is trite law that Section 29 of the said Act does not bar an application under Section 482 of the Code for quashing of a proceeding even in respect of provisions of Protection of Women from Domestic Violence Act.

However, what has been done in the garb of Section 482 of the Code here is that a final order passed under Section 12 of the Protection of Women from Domestic Violence Act has been challenged. The bar of Section 29 of the said Act would squarely apply in this case.

The decision relied on by the petitioner in the case of Chaitnya Singhania and another (supra) is not at all relevant to the present facts. In the said case it was decided that in the event the respondent takes up an issue of maintainability of an application under Section 12 of the said Act, an aggrieved party may file an appeal under Section 29 of the said Act and thereafter, file a revision against the appellate court's order, if necessary. Alternatively, the respondent can also file an application under Section 482 of the Code taking up the point of maintainability of the proceeding. This is clearly not the case here.

Therefore, I do not find any merit in this application as the same is not maintainable.

Accordingly, the revisional application is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta,J.)

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