

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble JUSTICE BIVAS PATTANAYAK

CRR 3711 of 2016

Chandra Rani Gupta

Vs.

Swapan Kumar Gupta and Anr.

For the Petitioner: Ms. Chandreyi Alam, Adv.

Heard on: 30.06.2022

Judgment on: 23.08.2022

BIVAS PATTANAYAK, J. : –

1.The present revisional application has been filed by the petitioner-wife under Section 401 of the Code of Criminal Procedure for setting aside order dated 17.06.2016 passed by Learned Additional District & Sessions Judge, 13th Court, at Alipore, 24-Parganas (South) in Criminal Appeal No.162/2014.

2.The brief fact of the case is as follows:-

(i) On 21.01.2010 the petitioner filed an application being AC-113/2010 under Sections 18,19,20 and 22 of the Protection of Women from Domestic Violence Act, 2005 with a prayer for a direction upon

the opposite party no.1-husband to pay rent to the tune of Rs.3000/- per month and maintenance of Rs. 5000/- per month.

(ii) Upon hearing the Learned Judicial Magistrate, 10th Court, at Alipore, 24-Parganas (South) disposed of the application on 10.07.2013, directing the opposite party no.1-husband to pay Rs. 2000/- per month towards alternative accommodation and Rs. 4000/- per month as monthly maintenance.

(iii) On 11.09.2013, the petitioner-wife filed an application under Section 25 (2) of the Act for modification and enhancement of the amount that was granted in her favour towards alternative accommodation and monthly maintenance, which was registered as Misc. Case no. 01/2013.

(iv) The learned Judicial Magistrate, 10th Court, at Alipore, disposed of the said application on 19.07.2014, directing the opposite party no.1-husband to pay Rs. 2500/- per month towards alternative accommodation and Rs.5000/- per month as maintenance.

(v) Challenging order dated 19.07.2014 as above, both petitioner and opposite party no.1 herein filed separate appeals before the Learned Sessions Judge, at Alipore, 24-Parganas (South) being no. 162/2014 and 152/2014 respectively under Section 29 of the Protection of Women from Domestic Violence Act, 2005.

(vi)Both the aforesaid appeals were disposed of by a common judgement by learned Additional Sessions Judge,13th court, at Alipore, 24-Parganas(South) on 17.06.2016 as follows:-

“that the Criminal Appeal no.152 of 2014 and Criminal Appeal no.162 of 2014 be and the same are hereby partly allowed on contest but without cost. The impugned order dated 19.07.2014 passed in Misc. Case no.1/13 is hereby modified to the effect that the appellant of Criminal Appeal no.152 of 2014 who is the respondent of Criminal Appeal no.162 of 2014 namely Swapan Kumar Gupta is directed Under Section 19(f) of P.W.D.V Act to pay Rs. 2000/- per month to Chandra Rani Gupta, appellant of Criminal Appeal no.162 of 2014 and respondent no.2/A.P of Criminal Appeal no. 152 of 2014 as rent for alternative accommodation. He further directed under section 20(d) of the P.W.D.V Act to pay Rs. 4750/- per month to Chandra Rani Gupta, appellant of Criminal Appeal no.162 of 2014 and respondent no.2/A.P of Criminal Appeal no.152 of 2014 as monetary relief for her maintenance. He shall make payment of Rs. 6750/- per month to Chandra Rani Gupta, appellant of Criminal Appeal no. 162 of 2014 and respondent no.2/A.P of Criminal Appeal no. 152 of 2014 on the 10th day of each succeeding English Calendar month. The other parts of the impugned order are to remain as before”.

3.Being aggrieved by and dissatisfied with the aforesaid judgment and order the petitioner-wife has preferred the present revisional application.

4.None appeared on behalf of the opposite party no.1-husband inspite of service of notice.

5.Ms. Chandreyi Alam, learned advocate appearing for the petitioner-wife submitted that initially the petitioner-wife was favoured with an order of maintenance to the tune of Rs. 4000/-per month and Rs.2000/- per month towards alternative accommodation in AC 113 of 2010. Thereafter the petitioner-wife filed an application under Section 25 sub-section (2) of the Act for enhancement of maintenance to the extent of Rs.5000/- per month and alternative accommodation to the extent of Rs. 4000/- per month on the ground of escalation of monthly pension of the opposite party no.1-husband from Rs.10,435/-per month to Rs. 13,291/- per month. Upon hearing the learned Magistrate enhanced the maintenance to Rs. 5000/-per month and alternative accommodation to Rs. 2500/- per month. The said order was challenged before the Learned Sessions Judge and the amount so granted in favour of the petitioner-wife by the Learned Judicial Magistrate towards enhancement was scaled down in the appeal. She further submits that admittedly there is increase in the pension of the opposite party no.1-husband. Further the evidence shows that he is a guest lecturer in Ram Mohan College (morning section) and earns Rs.200/- per class. He also receives interest to the tune of Rs. 7,000/- against fixed deposit of Rs. 9 lacs. However, without considering the said aspects the Additional Sessions Judge inspite of allowing the prayer of the petitioner for enhancement, scaled down the amount granted in her favour. In the light of her above submissions she prayed for enhancement of maintenance to Rs.5000/- per month and of

alternative accommodation to Rs. 4000/- per month in favour of the petitioner-wife.

6.At the very outset it is pertinent to note that there is no case made out by the opposite party.1-husband that the aggrieved party(wife) is capable of maintaining herself or she has got an independent source of income. The opposite party no.1-husband has admitted the following facts in the original case and subsequent proceeding for enhancement, *firstly*, he retired as a teacher of Amarendra Vidyapith H.S School, at Uttarpara, Hooghly on 30.11.2008 and received pension to the tune of Rs. 10,435/-; *secondly*, there is enhancement of his pension to the extent of Rs.13,291/-; *thirdly*, he has received Rs. 9 lacs in total as retirement benefit from all sources and the interest from such fixation is Rs.7,000/-; *fourthly*, he is a guest lecturer of Ram Mohan College (morning section) and earns Rs.200/- per class. Although the learned Additional Sessions Judge observed that there is “change in circumstances” to merit an enhancement yet it failed to observe any cogent reason for scaling down the amount as directed by the learned Judicial Magistrate towards enhancement. It appears from the admitted facts indicated above that there is increase in pension of the opposite party no.1-husband. Further there is income of opposite party no.1-husband from other sources too. Accordingly, the petitioner-wife is entitled for enhancement and the impugned judgment and order of the Additional Sessions Judge calls for interference.

7.The order of learned Magistrate in Misc. Case 1 of 2013 shows that the opposite party-husband is aged person and is also suffering from age related ailments. Considering the aforesaid aspect an amount of Rs. 5,000/- per month as monetary relief for maintenance and Rs. 2,500/- per month as rent for alternative accommodation to the petitioner-wife (aggrieved party) will be apposite as was rightly directed by the learned Judicial Magistrate.

8.In the aforesaid backdrop the impugned judgment and order dated 17.06.2016, passed by learned Additional Sessions Judge, 13th Court, Alipore in Criminal Appeal 162 of 2014 is set aside.

9. Accordingly, the opposite party no.1-husband is directed to pay an amount of Rs. 5,000/- per month as monetary relief for maintenance and Rs. 2,500/- per month as rent for alternative accommodation to the petitioner-wife (aggrieved party). Both the aforesaid amount totaling to Rs.7,500/- per month shall be paid to the petitioner-wife (aggrieved party) within 10th day of each succeeding English Calendar month.

10.With the aforesaid observations the present revisional application being no.**CRR no. 3711 of 2016** is disposed of.

11. All connected applications, if any, stand disposed of.

12. Interim orders, if any, stand vacated.

13.Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal formalities.

14.Let a copy of this order be sent to learned trial court for information.

(Bivas Pattanayak, J)