

CRR 1776 of 2020

In the matter of : Anindya Deb

.....Petitioner

Mr. Rohit Banerjee  
Mr. Sarathi Das Gupta  
Mr. Subhamay Karmakar

...for the petitioner

Mr. Dhananjoy Nayak  
Mr. Zafirul Islam

...for the O.P.

**Ajoy Kumar Mukherjee, J. (Oral):**

The present revisional application under section 482 of the code of Criminal procedure has been preferred for quashing of proceeding being C-313 of 2011 pending before the learned 17<sup>th</sup> Metropolitan Magistrate, Calcutta.

Petitioner contended that he has been vexed by false and malicious prosecution under the Protection of Woman from Domestic Violence Act. The allegations are general in nature and the opposite party has denied and disputed all such allegations in his written objection.

The petitioner is paying monetary relief amounting to Rs. 8,000/- (Rs. 4,000/- for respondent and Rs. 4000/- for the child) per month since November, 2013. Earlier CRR 2905 of 2019 was filed in the High Court for early disposal of C-313 of 2011. The petition was heard on 3<sup>rd</sup> December, 2019 and upon hearing of the said application, the High Court had taken note of the fact that the trial court has already been directed to dispose of the case within a period of two months by an order dated 22<sup>nd</sup> November, 2013 passed in CRR 1536 of 2013. The High Court

had directed the trial court to take up the matter very seriously and directed the Registrar (Judicial Service) to obtain a report from the learned Magistrate in failing to comply with the direction passed in the earlier order and further directed the trial court to decide the matter within a period of six months. The said order was communicated and it has not yet been disposed of finally. Said order passed in CRR No. 2905 of 2019 by the High Court on December 3, 2019.

On 6<sup>th</sup> March, 2020, the examination-in-chief was completed and the cross examination of the respondent commenced.

In the cross examination, the wife/respondent herself has stated that she is well versed in English language and has further stated that she did not file any document to show that domestic violence was carried on upon her. She further submitted that it is a fact that truth of the contents of the affidavit in chief has not been stated in the affidavit and she further stated that she has filed the case for maintenance and wants to come back to her matrimonial house and most importantly she has stated that she has not filed this case to prove domestic violence in this case.

In spite of service none appeared on behalf of Respondent Debjani Deb. Learned advocate for the petitioner contended that when respondent has categorically admitted that she has not filed this case to prove any instance of domestic violence, then there is no cause of action available to the respondent no. 2 to continue with the proceeding. Moreover, from the aforesaid admission made during cross examination, it is clear that no instance of domestic violence has been occasioned and after a span of ten years, of filing the case she has expressed no inclination to prove

domestic violence in this case. Accordingly, he has prayed for quashing the entire proceeding.

Considered. Well settled principle of law is that every deposition is to be read as a whole, more specifically deposition during cross examination of the witness will have to be read with the statement made during examination in chief. In the examination in chief said PW-1 Smt. Debjani Deb has stated the case of domestic violence inflicted upon her.

However in a catena of judicial decisions it has now become settled law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under section 482 Cr.P.C. for quashing of proceeding . High Court has no jurisdiction to appreciate the evidence of the proceeding under section 482 of the code because whether there are contradiction and/or inconsistencies in the statement of PW-1, is essentially an issue relating to appreciation of evidence and the same can be gone into by the judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case. No meticulously examination of the evidence is needed for considering whether petitioner will ultimately succeed in getting relief or not at this stage of proceeding for quashment.

Having considered the aforesaid facts and circumstances of the case, I dispose of present application with the observation that the trial court will dispose of C-313 of 2011 positively within a period of three months by conducting day to day trial without granting any unnecessary adjournment to either of the parties, from the date of the communication of the order and keeping open all the points including the point likely to be raised by the

petitioners at the time of argument that there might be some inconsistencies in the statements made by the respondent herein as PW 1 during cross examination, without being influenced by any observation made by this court.

Accordingly, CRR 1776 of 2020 is disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

**(Ajoy Kumar Mukherjee, J.)**