

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(Circuit Bench at Jalpaiguri)**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 53 of 2020

With

CRAN 1 of 2021

Sri Naveen Kumar Jain @ Naveen Ghiya

-vs.-

State of West Bengal & Ors.

For the Petitioner : Mr. Suresh Kumar Mitruka,
Mr. Mantosh Bhowmick,
Mr. Solan Chakraborty.

For the State : Mr. Arun Kumar Sarkar,
Mr. Sourav Ganguly.

For the Opposite
Nos. 2 to 4 : Ms. Sidhi Sethia,
Ms. Rima Sarkar.

Reserved on : 07.09.2022

Judgment on : 30.09.2022

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the order dated 24.09.2019 passed by the learned Additional District and Sessions Judge, (First Court) Siliguri in Criminal Appeal No. 8(3) of 2014 wherein the learned Appellate Court refused to grant the reliefs in part in connection with the order dated 30.01.2014 passed by the Learned Judicial

Magistrate, 2nd Court, Siliguri regarding maintainability of the said proceedings.

Records of the revisional application reflects that Misc. Case no. 17 of 2013 was filed by Miss Arjoo Jain (aged about 15 years), Chetan Jain (aged about 13 years and Piyush Jain (aged about 9 years) who were represented by their maternal uncle before the Court of law. The case was initiated for reliefs claimed by the three child under the Prevention of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'The PWDV Act, 2005') against Praveen Jain, Babulal Ghiya, Umrav Ghiya and Naveen Ghiya who happen to be the father, grand-father, grand-mother and uncle of the minor petitioners. Learned Magistrate was pleased to issue notice and on receipt of such notice the present petitioner filed an application challenging the maintainability of the proceeding. It would be apposite to state that the contention amongst others included that the mother of the minors were allegedly murdered pursuant to which Bharalumukh Police Station case no. 245/09 dated 25.09.2009 was registered for investigation under Section 326/302/34 of the Indian Penal Code.

It has been contended that after death of their mother the petitioners were residing with their maternal uncle who have been bearing all the expenses and the paternal family were not showing any interest of bearing any maintenance of the three children. They are in need of monetary relief and proper education and upbringing as the paternal family is financially solvent and having business under the name and style 'Assam Road King'. The children/opposite parties, therefore, prayed for relief before the learned

Magistrate under the different provisions of the PWDV Act, 2005. The present petitioner filed an application challenging the maintainability of the proceedings.

I have perused the contents of the show cause along with the point of maintainability application which has been filed before the learned Magistrate and I find that the only issue which requires consideration is regarding the territorial jurisdiction as also the relief claimed which was opposed at the instance of the petitioner. The learned Judicial Magistrate, Second Court, Siliguri Darjeeling by its order dated 30.01.2014 was pleased to observe as follows:

“On perusal of the case record I find that the crux of the contention of the respondent no.4 is that since the instant case has been filed by the representative of the aggrieved persons, this case is not maintainable in its present form under the Act.

On the other hand, ld. Advocate for the aggrieved persons strenuously refuted the said contention of the respondent concerned.

Upon careful scrutiny of record this court upon considering all the facts and circumstances as well as domestic incident report passed an order of interim monetary relief in favour of the aggrieved persons concerned and thus presumably after being satisfied about its maintainability this order had been passed. Hence there is no scope for recalling the said order under this Act at this stage. Further I find no basis in declaring the application u/s 12 of the Act as not maintainable merely on the ground that the aggrieved persons were represented by their maternal uncle. Since as per law of the land a minor person can only file a case

through its guardian only _ it cannot in its own capacity sue or be sued. Hence it is quite natural that in this case also the aggrieved persons being minor persons were properly represented by their maternal uncle as their local guardian in absence of their mother, who is deceased.”

The present petitioner being aggrieved by the aforesaid order dated 30.01.2014 approached the Appellate Forum under Section 29 of the PWDV Act, 2005 and the learned Appellate Court by its order dated 24.09.19 was pleased to order as follows:

“The instant Criminal Appeal is allowed in part on contest without costs. Misc Case no. 17 of 2013 is maintainable so far as the respondent no.1 Miss Arjoo Jain is concerned. The Misc Case is not maintainable in relation to the respondent nos.2 and 3 being Master Chetan Jain and Master Piyush Jain. Let the names of Master Chetan Jain and Master Piyush Jain be struck off from the cause title.

Accordingly, the order dated 30.01.2014 passed by the Learned Judicial Magistrate, 2nd Court at Siliguri in Misc Case no. 17 of 2013 is modified.”

It would not be out of place to state that earlier by an order dated 01.03.2019 the learned Judicial Magistrate, Second Court, Siliguri was pleased to direct the father of the minors to pay an amount of Rs.60,000/- per month for upbringing of the child as monetary relief under Section 23(2) of the Domestic Violence Act.

Mr. Suresh Kumar Mitruka, learned Advocate appearing for the petitioner argued that the impugned judgment passed by the learned

Appellate Court is against the basic foundation of the provisions of law as the applicants do not fall within the purview of aggrieved person as defined under the provisions of PWDV Act and drew the attention of the Court to Section 2(a) of the said Act. It has further been contended that the applicant is required to be a woman for presenting an application under Section 12 of the PWDV Act. Reliance was placed on the decision of the Hon'ble Supreme Court in Shalu Ojha –Vs.– Prashant Ojha reported in (2015) 2 SCC 99 and it was stressed that under no circumstances the opposite parties/child can claim the reliefs under the PWDV Act, having regard to the provisions of 'aggrieved person' defined under Section 2(a) of the Act and 'domestic relationship' defined under Section 2(f) of the said Act. In respect of the argument reference were also made to Om Parkash Syngal & Ors. –Vs. – Shimla Garg reported in 2016 (3) RCR (Criminal) 310 and Vijay Verma –Vs. – State N.C.T. of Delhi & Anr. reported in 2010(118) DRJ 707. Additionally it was argued that the application was filed belatedly to harass and arm-twist the petitioner, to substantiate his argument the learned advocate relied upon Inderjit Singh Grewal –Vs. – State of Punjab and Anr. reported in (2011) 12 SCC 588 and N. Prasad –Vs. – Haritalakshmi reported in 2020 SCC OnLine Mad 1767.

On the contrary Ms. Sidhi Sethia learned advocate appearing for the private opposite party refuted the contentions advanced on behalf of the petitioner and relied upon the judgment of Prabha Tyagi –Vs. – Kamlesh Devi reported in (2022) 8 SCC 90; Kunapareddy alias Nookala Shanka Balaji –Vs. – Kunapareddy Swarna Kumari & Anr. reported in AIR 2016 SC 2519;

Urvashi Aggarwal & Ors. –Vs. – Inderpaul Aggarwal reported in 2021 SCC OnLine Del 3242; Nachhattar Singh –Vs. Satinder Kaur & Ors. reported in 2007 SCC OnLine P&H 868; Balbir Kaur & Ors. –Vs. Harinder Kaur & Ors reported in 2002 SCC OnLine P&H 824; T. Vimala –Vs. – S. Ramakrishnan reported in 2016 SCC OnLine Mad 12324; Jagmohan Kashyap –Vs. – Government of NCT of Delhi & Anr. reported in 2022 SCC OnLine Del 1609.

I have considered the submissions of the respective parties as also the statement of object and reasons for which the Act was enacted. The provisions of the act definitely were aimed at protection of woman but the same was not without the remedies available to the child of the lady concerned, in fact, Section 20 of the PWDV Act which refers to monetary relief in Sub-Section 1 Clause (d) provides that:

“S. 20(1)(d). the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.”

The background of the present case reflects that the three minors were thrown out of their paternal home and had to take shelter in their maternal uncle’s home. Mother of these three minors as alleged was murdered for which a separate criminal case was instituted at the jurisdictional police station. The maternal uncle is only affirming the oath in the application under Section 12 of the DV Act but the relief which has been claimed in the application before the learned Magistrate is exclusively for the benefit of the children. To question the maintainability that the child is not

entitled to be maintained under the provisions of the Act would be ignoring the purpose for which the act was enacted and make it redundant. To that extent the order of the learned Appellate court restricting itself to only Miss Arjoo Jain also calls for interference and as such the modified order which was passed by the learned Appellate Court by its judgment dated 24.09.2019 requires to be set aside.

Accordingly the order dated 30.01.2014 passed by the Learned Judicial Magistrate, Second Court, Siliguri is affirmed and the order dated 24.09.2019 passed by the learned Appellate Court is set aside by exercising the powers of this Court under Section 482 of the Code of Criminal Procedure. However, so far as the factual aspect is concerned the petitioner in course of trial by way of cross-examination would be entitled to rebut the factual circumstances.

Accordingly, CRAN 1 of 2021 is allowed.

Thus CRR 53 of 2020 is dismissed.

Pending applications, if any, are consequently disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)