

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.407 of 2022

Lipika Swain @ Patra

.... Petitioner

Mr. B.K.Routray
Advocate

-versus-

Sarojkanta Patra and others

.... Opposite Parties

Mr.R. Tripathy,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER
15.12.2022.

Order No.

05. 1. This matter is taken up through hybrid mode.
2. The State counsel informs that notice was duly served upon Opposite Party Nos.2, 3, and 4 physically and through Whatsapp on Opposite Party No.1. Notice is held to be sufficient. There is however, no appearance from their side. The Revision is therefore, taken up for final disposal.
3. The Petitioner is aggrieved by judgment dated 19th July, 2022 passed by learned 3rd Additional Sessions Judge, Cuttack in CrI. Appeal No.30/2020 whereby the said appeal was dismissed. The appeal was filed by the Petitioner seeking to challenge the judgment dated 26th February, 2020 passed by

learned J.M.F.C. (R), Cuttack in CrI. Misc. Case No.93/2016. Such application was filed under Section 12 of the Protection of Women from Domestic Violence Act (PWDV Act) seeking different relief(s) and specifically under Sections 18, 19, 20 and 22 of the Act. The case was disposed of by learned Magistrate by passing the following the order:-

“(i) The respondents are prohibited from committing any act of domestic violence, aiding or abetting in the commission of acts of domestic violence against the aggrieved person under Section 18 of the Act.

(ii) The aggrieved person is directed to live in her in-laws' house and the respondents are prohibited from restraining her there from or, in the alternative, the respondent-husband shall pay Rs.2,000/- (Rupees Two Thousand), in total per month to the aggrieved person towards house rent under Section 19 of the Act.

(iii) Respondent-husband is directed to pay a sum of Rs.3,000/- (Three Thousand) (in absence of any pay-particulars of the respondent as the father's income is no way of any help to the aggrieved) per month to the aggrieved persons towards their maintenance under Section 20 of the Act.

(iv) The payment shall be made from the date of this order and shall be payable within 10th of each succeeding English Calendar month, failing which, the aggrieved person is at liberty to take recourse to law for realization of the same within three months from passing such order. Issue free copy of this order to both parties, Protection Officer, Collectorate,

*Cuttack, IIC, Choudwar P.S., Cuttack/
Pattamundai P.S., Kendrapada for
implementation of this order.”*

Feeling aggrieved, the Petitioner preferred the aforementioned Criminal Appeal, which was dismissed and the Court below was directed to dispose of the Misc. Case within a stipulated period.

4. Mr. B.K.Routray, learned counsel appearing for the Petitioner, submits that the impugned judgment warrants interference for several reasons.

Firstly, the observation that in course of hearing the counsel for the parties confined the argument relating to the question of quantum of maintenance and financial relief is not correct because no such submission was ever made. Mr. Routray also submits that he was himself the counsel for the Petitioner in the Court below and had never made any such submission.

Secondly, while remanding the matter to the Court below for hearing afresh with regard to the prayer of the Petitioner for return of dowry articles along with cash of Rs.70,000/- and payment of lump sum compensation of Rs.5 lakhs, learned Appellate Court has not passed any order as regards the monetary relief already granted by the Court below. As a result, such relief is deemed to have been taken

away even though no appeal was preferred against such order by the Opposite Parties.

Thirdly, the Appellate Court proceeded on the erroneous premise that the respondents had not got any opportunity to participate in the hearing of the case despite noting that they were set ex parte, which obviously means they had willfully not appeared after sufficient service of notice. According to Mr. Routray, this cannot be equated with non-grant of opportunity of hearing.

5. After considering the submissions of Mr. Routray and on going through the impugned order as also the order passed by learned J.M.F.C., this Court is unable to agree with the reasoning adopted by learned Appellate Court below to dispose of the appeal in the manner stated above. While interfering with the order passed by the Magistrate, the Appellate Court has not considered the fact that there was no challenge as such by the Opposite Parties to the order passed by the Magistrate. Even otherwise, the Appellate Court itself could have considered the materials available on record to decide the question relating to return of dowry articles, cash and compensation as claimed by the Petitioner.

6. This is a case under the PWDV Act filed by a woman, who was found by learned Magistrate to have been subjected to domestic violence by the Opposite Parties. This Court is therefore, of the considered view that the matter should have

been considered by the Appellate Court with more sensitivity as implicitly required by the statute.

7. In such view of the matter, the impugned judgment is set aside. The matter is remitted to the Appellate Court to hear the appeal afresh after granting due opportunity of hearing to both parties. Since the order passed by the Magistrate was never challenged by the Opposite Parties, the same ought to be treated as final and the appeal shall be confined only to the grounds raised by the Petitioner-wife. It is further directed that the appeal shall be disposed of as expeditiously as possible, preferably within a period of two months.

8. The CRLREV is accordingly disposed of.

AKB

(*Sashikanta Mishra*)
Judge