

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 649 of 2020

Sri Saktipada Chakraborty

Vs

Smt. Anima Chakraborty & Anr.

For the Petitioner : Mr. Amlan Jyoti Sengupta,
Mr. Abhijit Pal,
Mr. Soumen Mondal.

For the Opposite Party No. 1 : None.

Heard on : 20.02.2023

Judgment on : 20.03.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred against the Judgment and Order dated 20.04.2018 passed by the Additional District Judge (F.T.C.), 1st Court, Contai, Purba Midnapore in C.R.Rev. 1 of 2014 (Sri Saktipada Chakraborty Vs Anima Chakraborty) affirming the Judgment and Order dated 16th October, 2012 passed by the Learned Judicial Magistrate, 1st Class 1st Court, Contain in Misc. Case No. 37 of 2012.

The petitioner's case is that the petitioner married the opposite party no. 1 about **31 years ago** under Hindu rites and customs and a male child was born out of their wedlock who is now about 31 years old.

The petitioner states that **on 24.12.1984** the respondent left her matrimonial house with her brother on the pretext that her father was ill and since then did not come back to the petitioner's house. The petitioner subsequently went to bring back the opposite party no. 1 but she did not come and several reconciliation proceedings were held but failed.

On the basis of a Complaint U/s. 156(3) of Cr.P.C. Bhupati Nagar P.S. Case No.61 of 2003 dated 20.12.2003 U/s. 498A/307/34 of IPC was started against the petitioner and his other family members.

That after trial G.R. No. 518 of 2003 was dismissed by acquitting all the accuseds on 28.05.2007. No appeal was preferred by the opposite party no. 1.

The petitioner had no other alternative but to file an application U/S 13 of the Hindu Marriage Act with a prayer for decree for divorce, being MAT Suit No. 203 of 2010 before the Ld. Additional District Judge, Contai and the said Mat Suit was finally disposed of by allowing the prayer of the petitioner.

The opposite party no. 1 and her men during pendency of Criminal Case under Section 498/307, 134 of I.P.C. against the petitioner came to the house of the petitioner, damaged the house, looted crops and drove out the petitioner, his aged mother and his deaf and dumb brother from their own house.

The opposite party then filed an application U/s. 12 read with Section 18, 19, 20 and 21 of Protection of Women from Domestic Violation Act 2005 before the Ld. Judicial Magistrate, 1st Class, Contai and the petitioner appeared before the Ld. Court and filed his written objection denying all her allegation.

The Ld. Magistrate disposed of the Misc. Case without appreciating evidence adduced by the petitioner, by allowing the prayer of the respondent No.1 herein by granting residence order and also order of injunction restraining the petitioner and respondent No. 2 from

entering into the said premises and also not to dispose of the said residence.

Being aggrieved by and dissatisfied with the judgment and order dated 16th October, 2012, the petitioner preferred a Criminal Appeal bearing Cri. Rev. No. 1 of 2014 (Shakti Pada Chakraborty – Vs – Smt. Anima Chakraborty) before the Ld. Additional District Judge, Contai bearing Criminal Revision No. 1 of 2014 and the said appeal was finally heard and disposed of by the Ld. Additional District Judge (F.T.C) 1st Court, Contai, dismissing the appeal by affirming the Judgment and Order passed by the Ld. Magistrate.

Mr. Amlan Jyoti Sengupta, learned counsel for the petitioner has submitted that the learned Trial Court has erred both in law and facts.

That the learned Courts have failed to appreciate that the respondent No. 1 had initiated a false case under Section 498A/307/34 of I.P.C. against the petitioner and other members as such subsequently they have been acquitted.

That the judgment and order dated 16th October, 2012 and judgment and order dated 20.04.2018 passed by the Ld. Magistrate and Ld. Additional District Judge (F.T.C.) 1st Court, Contai are not in accordance with law and should be set aside.

In spite of due service there is no representation on behalf of the opposite party no. 1.

The parties in the present case have been **divorced** by a decree dated **08.09.2011** in Matrimonial suit No. 203/10 passed by the Learned District & Sessions Judge, Contai.

The application filled by the opposite party no. 1, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is in the year 2012 being no. 37/2012, in the Court of the learned Judicial Magistrate, 1st Court, Contai.

The said proceedings was disposed of by a judgment date 16th October, 2012.

The learned Magistrate held:-

“First of all, on a bare perusal of the affidavit-in-chief filed by the applicant, and her examination-in-chief, I find that allegations of any form of domestic violence, are totally absent in the same. The affidavit-in-chief contains only a single-lined allegation that she has been rendered homeless owing to torture by the respondents and she has been compelled to live in a government home. Neither have any particulars of such torture been given, nor the date, venue or time thereof.

On a bare perusal of Exhibit-A, which is the certified copy of the judgment dated 7/3/07 passed in S.T. II/August/2005 arising out of GR 518 of 2003 u/s 498A/323/307/34 IPC, instituted on the basis of the complaint lodged by this applicant it becomes clear that all these

alleged incidents dated 20/2/02, 21/10/03 etc., formed the basis of that case, and the Ld. Court recorded its findings in respect of those allegations on the basis of the evidence adduced. The said Sessions Case ended in an acquittal of the accused persons, being respondents of this case. Further, the conclusive findings of the Ld. Court, in respect of those allegations, as recorded in the judgment, are of particular relevance. The Ld. Court inter-alia recorded as follows:- “....She did not come to her matrimonial home for 15 years. She has been staying on the homestead land of her husband....She has been enjoying with the properties of her father-in-law. Some ancestral properties are given to Mantu Maity, Badal Giri and others for cultivation. She use to take usufructs of those landed properties after coming from her father’s house (page 6 and 8).....Presently it is admitted position that accd. Shakti and his brother have been dispossessed from their ancestral property.....Incident of torture from time to time meted upon Anima have not been established by producing any diary and/or injury report. Fact of negligence in maintaining the victim and her son are totally disbelieveable. Rather, they have been enjoying property of the accused persons. Such belated application has been made in a planned manner with a view to deprive the accused persons from their property.....(page 9).

These are the findings of fact recorded by a superior court, being the Sessions Court, on the basis of Evidence. No case has been made out by the applicant that these findings of fact have been set aside in any appeal. It is therefore needless to say that he said findings are binding on this court as well, so far as those self-same allegations are concerned. Hence, the contents of Exhibit-A, disproves the allegations of “physical abuse, verbal and emotional abuse and economic abuse by way of deprivation of maintenance”, as contemplated in section 3 of the PWADV Act 2005, so far as the alleged incidents which resulted in lodging of the former case, are concerned. From the testimony of PW-1

it comes out as an admitted position that since the date of institution of the former case u/s 498A/323/307/34 IPC (i.e. in the year 2003) till today, she has never resided together with the accused persons (respondents) ever. It therefore becomes evident that since that day, the applicant and the respondents have never resided together in any 'domestic relationship' is a 'shared household' and thus, there apparently was no occasion before the respondents to inflict any 'physical, verbal or emotional' abuse upon the applicant."

Finally the Learned Magistrate granted a "Residence Order" in favour of the opposite party no.1 herein.

On appeal the order of the Magistrate has been affirmed by the learned Additional District Judge, (F.T.C.), 1st Court, Contai, Purba Midnapore.

Hence the revision.

The Supreme Court in **Prabha Tyagi vs Kamlesh Devi, Criminal Appeal No.511 of 2022, on 12th May, 2022**, held:-

"Para 43.....

The further question is, whether, such a domestic relationship should be subsisting between the aggrieved person and the respondent against whom relief is claimed at the time of claiming the relief. Before answering the same, it would be useful to analyse the relationships noted in the D.V. Act as under:

(a) Any relationship by consanguinity is a lifelong relationship.

(b) Marriage is also a lifelong relationship unless a separation by a decree of divorce is ordered by a competent authority of law.

(i)

(ii) In the event of a divorce, marriage would be no longer be subsisting, but if a woman (wife) is subjected to any domestic violence either during marriage or even subsequent to a divorce decree being passed but relatable to the period of domestic relationship, the provisions of this D.V. Act would come to the rescue of such a divorced woman also.

(iii).....

(iv) Therefore, even when the marital ties cease and there is no subsisting domestic relationship between the aggrieved woman and the respondent against whom relief is claimed but the acts of domestic violence are related to the period of domestic relationship, even in such circumstances, the aggrieved woman who was subjected to domestic violence has remedies under the D.V. Act.

(c) Even in the case of relationship in the nature of marriage, during which period the woman suffered domestic violence and is thus an aggrieved person can seek remedies subsequent to the cessation of the relationship, the only pre-condition is that the allegation of domestic violence must relate to the period of the subsistence of relationship in the nature of marriage.”

In the present case the Learned Magistrate has clearly held that:-

- 1) **There was no domestic violence** upon the opposite party as there is no allegation of any form of domestic violence in the

affidavit of chief filed by the opposite party herein before the Magistrate.

- 2) The Session Judge also held that **incident of torture and negligence has not been proved.**

Thus subsequent to the cessation of the relationship, the only pre-condition that the allegation of domestic violence must relate to the period of subsistence of relationship in the tenure of marriage is clearly absent in this case and as such the remedies under the D.V. Act is not available to the opposite party no. 1 herein **(Prabha Tyagi (Supra))**.

The parties were also divorced prior to the initiation of the proceedings under Domestic Violence Act.

Accordingly the Judgment of the Learned Additional District Judge(F.T.C.), 1st Court, Contai, Purba Midnapur, in CRR 1 of 2014 and Order dated 16th October, 2012 passed by the Learned Judicial Magistrate, 1st Class, 1st Court, Contai, in Misc. Case No. 37 of 2012, **are set aside being not in accordance with law.**

CRR 649 of 2020 is allowed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)