

CRR 906 of 2023

In Re: An application under Sections 401 read with Section 482 of the Code of Criminal Procedure, 1973 arising out of order dated 30.12.2019 under Protection of Women from Domestic Violence Act, 2005.

Chandrani Mondal
-Versus-
Soumen Mondal & Anr.

Mr. Swapan Kumar Mallick, Adv.,
Mr. Partha Pratim Mukhopadhyay, Adv.

...for the petitioner.

Affidavit of service filed on behalf of the petitioner be kept with the records.

In spite of service, no one appears on behalf of the private opposite party.

The petitioner is aggrieved by the judgment and order dated 17.01.2023, passed by the learned Additional Sessions Judge, 5th Court, Howrah in Criminal Appeal No.12 of 2020, wherein the learned Appellate Court below was pleased to affirm the order dated 30.12.2019, passed by the learned Judicial Magistrate, 4th Court, Howrah in Misc. Case No. 481 of 2013 under the relevant provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'PWDV Act').

I find that both the learned Magistrate and the Appellate Court below were disturbed by non-disclosure of the first marriage and the amount so received by the present petitioner at the time of divorce of the first marriage. The provisions of the

PWDV Act do incorporate separate reliefs and the learned Magistrate as well as the Appellate Court below should have taken into account that the legislature intended to incorporate such reliefs because simple monetary claim for relief may not suffice the regular needs of a married lady. The drafting of application under Section 12 of the PWDV Act is obviously on the advice of a professional although it is expected that the instructions should be there from the lady concerned.

Having regard to the fact that the purpose of the PWDV Act was completely different from the quantum of maintenance although granted under the other Acts, I am of the view that both the Courts below should have considered the prayer of the present petitioner in a proper perspective.

Accordingly, the order dated 17.01.2023, passed in Criminal Appeal No.12 of 2020 and the order dated 30.12.2019, passed by the learned Judicial Magistrate 4th Court, Howrah, in Misc. Case No. 481 of 2013 under the provisions of the PWDV Act is hereby set aside.

The learned Magistrate is directed to issue fresh notice and direct the parties to file all assets and liabilities and thereafter consider afresh as to whether there is any requirement of the present petitioner according to the price index, the reliefs relating to residential accommodation with other reliefs so prayed for. The learned Magistrate, on an application made by the petitioner, would call for the affidavits and thereafter dispose of the application as early as possible

preferably within six months from the date of communication of the order.

In case any dispute is raised regarding the earnings of the opposite party/husband, the learned Magistrate would exercise his jurisdiction for ascertaining the earnings of the husband from the employer concerned by exercising appropriate provisions of law.

With the aforesaid observations, the revisional application being CRR 906 of 2023 is disposed of.

Pending connected application, if any, is consequently disposed of.

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

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

(Tirthankar Ghosh, J.)