

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 788 of 2019

Smt. Niyati Sonar (Das)

Vs.

State of West Bengal & Anr.

For the Petitioner	: Mr. Chittapriya Ghosh, Mrs. Aiswarjya Ghosh.
For the State	: Mr. Manoranjan Mahata.
For the opposite party no.2	: Mr. Debasis Kar, Mr. Husen Mustafi, Mr. Subhajit Chowdhury.
Heard on	: 14.06.2023
Judgment on	: 03.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against the Judgment and Order being no. 16 dated 01.02.2019 passed by the learned Sessions Judge, Birbhum at Suri in Criminal Appeal No.10 of 2018 thereby allowing the said Appeal in part by setting aside the order of compensation amounting to Rs.1,50,000/- in favour of the petitioner as granted in the Judgment and Order dated 29.01.2018 passed by the learned Judicial Magistrate, 3rd

Court at Suri, Birbhum in Misc. Case No.219 of 2013 filed under Sections 14, 17, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005.

2. The petitioner's case is that the petitioner filed an application under Sections 14, 17, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 before the court of the learned Chief Judicial Magistrate, Birbhum at Suri against the opposite party no.2 herein being Misc. Case No.219 of 2013 stating inter alia, that the petitioner got married with opposite party no.2 on 02.12.2010 as per Hindu rites and customs. At the time of said marriage the father of the petitioner gave Rs.1.50 lakh in cash, 10 Bhores of Gold ornaments, a Hero Honda Motor Cycle and other furniture along with other articles as per the demand of the opposite party no.2 and his family members. That since after the said marriage the opposite party no.2 and his family members started pressuring the petitioner for demand of more money. Out of the said wedlock a son namely Soumyadip Sonar was born who is a minor. In the said application the petitioner further stated that since after the marriage the opposite party no.2 and his family members started physical and mental torture upon the petitioner and the opposite party no.2 is a habitual drunker and being drunk he used to torture the petitioner sexually and also her minor son was tortured both mentally and physically. Due to such torture the petitioner and her minor son became ill and even in such condition she was compelled to do all household works. That father of the petitioner also tried to reconcile but he was abused by her in laws. Sometime after her said marriage the opposite party no.2 got engaged in different illicit relations and also started

ignoring her and her minor son and when the petitioner protested against such activities of the opposite party no.2, she was subjected to mental and physical torture. The opposite party no.2 and his family members started pressurizing the petitioner for Rs.1 lakh and when the petitioner expressed her father's inability, she was brutally tortured both physically and mentally.

3. Ultimately on 10.10.2012 the opposite party no.2 and his family members had driven out the petitioner and her minor son from her matrimonial home and since then the petitioner and her minor son are residing at her parental home. The opposite party no. 2 is an employee of Department of Post, Government of West Bengal and used to earn Rs.15,000/- to 20,000/- per month. The opposite party no.2 also earns from his agricultural land and by filing the instant case, the petitioner prayed for maintenance to the tune of Rs.5,000/- per month for herself and Rs.2,000/- for her minor son. The petitioner also prayed for protection, residence and compensation.

4. After taking evidence and hearing both parties, the learned Judicial Magistrate, 3rd Court at Suri, Birbhum by the judgment and order dated 29.01.2018 was pleased to restrain the opposite parties from inflicting any sort of domestic violence upon the petitioner or upon any person related to her and further directed in the event of any such torture the petitioner would be at liberty to approach the nearest Police Station and in such case the I/C of the said Police Station would be under obligation to provide all necessary assistance on production of a copy of the order. The learned Magistrate further directed payment of monetary compensation of

Rs.1,50,000/- to the petitioner and the child and this amount shall be deposited in the name of the child of the petitioner in a Bank of the opposite party no.2. The learned Magistrate was further pleased to give effect of the said order from the date of the order.

5. Being aggrieved by and dissatisfied with the said order dated 29.01.2018 passed by the learned Judicial Magistrate, 3rd Court at Suri, Birbhum, in Misc. Case No.219 of 2013, the opposite party no.2/husband preferred an appeal before the learned Sessions Judge, Birbhum at Suri being Criminal Appeal No.10 of 2018.

6. The learned Judge after hearing the respective parties vide its impugned Judgment and Order being No.16 dated 01.02.2019 allowed the said Appeal in part by setting aside the order of compensation amounting to Rs.1,50,000/- in favour of the petitioner as granted in the Judgment and Order dated 29.01.2018 passed by the learned Judicial Magistrate, 3rd Court at Suri, Birbhum in Misc. Case No.219 of 2013.

7. The petitioner submits that the learned Judge while passing the order impugned failed to consider that act of domestic violence has been proved by the petitioner since the opposite party no.2 during his cross-examination specifically admitted that one case under Section 498A of the Indian Penal Code is pending trial and as such as per the Act, the petitioner is entitled to get compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the opposite party no.2 and the learned Magistrate has rightly granted compensation of Rs.1.5 lakhs.

8. The petitioner submits that the findings of the learned trial court in the impugned order with regard to payment of compensation is perverse and hence is bad in law and the same is liable to be modified and the order of payment of compensation as awarded by the learned Magistrate should be upheld.

9. That the impugned order is liable to be modified only with regard to payment of compensation to the petitioner which has been wrongly set aside by the learned Judge in view of the illegality patent on the face of the order.

10. **Mr. Debasis Kar, learned counsel for the opposite party no.2** has submitted that the order under revision is in accordance with law and needs to be affirmed and has thus prayed for dismissal of the revision.

11. **Mr. Kar has relied upon the following judgment:-**

(i) 2019(18) SCC 81, Sangita Saha v. Abhijit Saha & Ors.

12. **From the judgment of the Magistrate it appears:-**

i) The opposite party/husband is mail peon at Suri Post Office.

ii) The Magistrate held that the petitioner (wife) failed to show any complaint or any case relevant or near to such date which may hint to her version of the case.

iii) **The petitioner and child have been granted maintenance of Rs.6,000/- in a proceeding under Section 24 of the Hindu Marriage Act and Rs.5,000/- under Section 125 of Cr.P.C. Total Rs.11,000/-.**

iv) **Compensation was granted for loss faced due to failure of the relationship.**

13. **The learned Sessions Judge:-**

- a) Considered the provision of Section 22 of the Act.
- b) And rightly held that as the petitioner there in could not prove suffering any mental torture/emotional distress by acts of domestic violence, the order of compensation passed by the Magistrate was not in accordance with law.
- c) The order granting compensation was thus, set aside.

14. The said order is now under revision, which for the reason discussed earlier is affirmed being in accordance with law.

15. **Thus, the revisional application being CRR 788 of 2019 is dismissed.**

16. The impugned Judgment and Order being no. 16 dated 01.02.2019 passed by the learned Sessions Judge, Birbhum at Suri in Criminal Appeal No.10 of 2018 thereby allowing the said Appeal in part by setting aside the order of compensation amounting to Rs.1,50,000/- in favour of the petitioner as granted in the Judgment and Order dated 29.01.2018 passed by the learned Judicial Magistrate, 3rd Court at Suri, Birbhum in Misc. Case No.219 of 2013 filed under Sections 14, 17, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005, is affirmed.

17. No order as to costs.

18. All connected applications stand disposed of.

19. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)