

27.03.2023
Ct. No.34
S/L No.29
KS

C.R.R. 1291 of 2021
Smt. Tanusree Das @ Tanusree Das Karmakar
Vs.
Sri Sibaji Das & Ors.

Mr. Sanjib Kumar Dan
Mr. Saryati Datta
.....For the Petitioner
Mr. Arijit Ganguly
Mr. Koushik Kundu
.....For the State

Report so submitted by the State be kept with the record.

In spite of service none appears on behalf of the opposite parties.

Attention of this Court has been drawn by Mr. Saryati Datta, learned advocate appearing for the petitioner in respect of the order dated 08.08.2019 passed by the learned Judicial Magistrate, 8th Court, Alipore and the observations made by the appeal Court in Criminal Appeal No.228 of 2019. The learned Judicial Magistrate, 8th Court, Alipore was of the opinion that there is no urgency for the interim reliefs, as prayed for although there were grounds that the petitioner's brother would be married and the paternal house is consisting of two rooms. The learned Appellate Court while reasoning was of the opinion that the provisions of P.W.D.V. Act is a quasi civil legislation and the principle of Explanation – V of Section 11 of the Civil Procedure Code speaks that any relief claimed not expressly granted shall be deemed to have been refused, so far as the return of the "Streedhan Articles" are concerned no specific statement is there as to change of fact situation

and circumstances after passing of the order dated 30.10.2013 as observed by the learned Sessions Judge.

I have considered the observations of the learned Magistrate as well as the Appellate Court and I am of the view in case there is any reasonable reluctance of the learned Magistrate for granting any accommodation in the shared household, the learned Magistrate should have taken into account at least alternate accommodation or rent towards such alternate accommodation.

In view of the prayers or grievance so expressed by the petitioner, I am of the opinion that the order dated 08.08.2019 passed by the learned Judicial Magistrate, 8th Court, Alipore and the judgment and order dated 24.03.2021 passed in Criminal Appeal No.228 of 2019 is hereby set aside. The learned Magistrate would consider regarding the factum of accommodation either in the shared household or as an alternate accommodation or rent towards alternate accommodation, afresh, so far as the said part of the order is concerned in the order dated 08.08.2019, the same is set aside. Consequently, the order of the learned Appellate Court is also set aside.

With this above observation, C.R.R. 1291 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)

