

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR/3076/2022

Mitra Pramanik Maity
-Vs-
State of West Bengal & Anr.

For the Petitioner: Mr. Anirban Mitra,
 Mr. Amit Halder.

For the State: Mr. Tanmoy Kr. Ghosh,
 Ms. Sonali Bhar.

Hearing concluded on: 28 July, 2023.

Judgment on: 28 July, 2023.

BIBEK CHAUDHURI, J. : –

1. This is an application under Section 407 of the Code of Criminal Procedure filed by the wife of the petitioner praying for transfer of a proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 which was registered as AC 3167 of 2016 from the 4th Court of the Judicial Magistrate at Alipore to the file of the learned Chief Metropolitan Magistrate, Calcutta.

2. It is the case of the petitioner that she filed an application under Section 12 of the Protection of Women From Domestic Violence Act, 2005 before the learned Additional Chief Judicial Magistrate, Alipore being Case No.AC3167 of 2015 claiming an amount of Rs.20,000/- per month for her maintenance, Rs.8000/ per month for her household expenses and

Rs.2500 per month on account of medical expenses, total being Rs.30,500/- per month. The said application was transferred to the 4th Court of the learned Judicial Magistrate at Alipore. The opposite party entered appearance in the said proceeding and filed his written objection that on 18th April, 2019 the learned Magistrate, 4th Court at Alipore passed an order directing the opposite party to pay interim maintenance at the rate of Rs.5000/- towards the petitioners and Rs.4000/- per month towards alternative accommodation of the petitioner, total being Rs.9000/- per month payable according to English calendar month. The opposite party intentionally did not comply with the said order which laid the petitioner to file a execution case being M Execution Case No.470 of 2019 for recovery of arrear rent of Rs.1,76,000/- per month. The said proceeding under Section 12 of the PWDV Act was pending for ex-parte hearing on 10th June, 2022. However, on that date the opposite party entered appearance, next date was fixed on 10th August, 2022 for filing affidavit of assets by the opposite party. It is the grievance of the petitioner that the learned Magistrate without hearing the petitioner unilaterally vacated the said ex-parte order. It is also alleged by the petitioner that the opposite party threatened her with dire consequences in the court premises and asked her immediately to withdraw the said case. The petitioner informed the said incident to the jurisdictional police station by GD entry No.733 dated 10th June, 2022. Under such circumstances, it is submitted on behalf of the petitioner the petitioner is not in a position to proceed with the hearing of the aforesaid application

in the court at Alipore because she is seriously apprehensive of her life. It is also stated that the opposite party may cause serious injury on her life. Therefore, the petitioner has prayed for transferring the case from the Court of the learned Judicial Magistrate, 4th Court at Alipore to the Court of the learned Chief Metropolitan Magistrate at Kolkata.

3. In spite of service of notice the opposite party did not appear. Therefore, the instant criminal revision was heard ex-parte. It is submitted by the learned Advocate for the petitioner that in the aforesaid proceeding under the PWDV Act the trial court passed an order of interim maintenance of Rs.9000/- per month on 18th April, 2019. From April, 2019 to June 2022, total unpaid amount was Rs.3,51,000/- out of which the petitioner received Rs.2,26,000/- towards her maintenance. Subsequently, the arrear amount payable to the petitioner rose to Rs.1,89,000/- till January, 2023. The petitioner previously filed a criminal revision before this Court being CRR No.754 of 2021 which was disposed of on 12th March, 2021 directing the opposite party to pay arrear maintenance. After the order of this Court the opposite party paid a sum of Rs.70,000/- to the petitioner. This Court vide order dated 23rd September, 2021 directed the trial court to take step for recovery of the arrear amount of maintenance without granting any adjournment. However, on 9th March, 2023 the petitioner could not reach the court till 12 pm. Therefore, in M Execution Case No.470 of 2019, the trial court directed the petitioner to show cause on the next date which was fixed on 31st May, 2023. Subsequently, the learned Advocate for the petitioner

appeared before the said Court and filed a petitioner praying for recalling of the order of show cause as the mother of the petition was admitted to hospital. The learned Advocate on behalf of the petitioner reportedly submitted before the Court that the learned Magistrate should have waited for the petitioner so that the petitioner might have taken step in the execution case. It appears from the order dated 9th March, 2023, a copy of which has been filed by the Advocate for the petitioner at the time of hearing, that the learned Magistrate rejected the prayer of the learned Advocate for the petitioner making certain observations which really shook the confidence of the learned Advocate for the petitioner.

4. I am not inclined to hold that the learned Magistrate is partisan, but the petitioner will not get confidence of fair administration of justice if the case is directed to be heard in the 4th Court of the learned Judicial Magistrate at Alipore.

5. In view of the above discussion the instant criminal revision is allowed.

6. AC 3167 of 2016 along with M Execution Case No.469 of 2019 be transferred to the learned Chief Metropolitan Magistrate for trial and disposal.

7. Judicial Magistrate, 4th Court at Alipore shall transmit the record of the above mentioned case to the Court of the learned Chief Metropolitan Magistrate, Kolkata immediately on receipt of the copy of the order based by this Court.

8. The learned Chief Metropolitan Magistrate, Kolkata is directed to either dispose of the case himself or through any other Metropolitan Magistrate as he deems fit and proper.

(Bibek Chaudhuri, J.)