

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**CRR 3590 of 2022
[Mithun Ghosh & Ors. –Vs.- State of West Bengal & Anr.]
with
CRR 755 of 2023
[Somasree Saha –Vs.- The State of West Bengal]**

**For the petitioner : Mr. Anand Keshari,
Mr. J. S. Mukherjee,
Mr. Gaurav Kumar,
Ms. Sutapa Ghosh.**

Judgement on : 23.03.2023.

Bibek Chaudhuri, J.

The instant revision is taken up for admission along with CRR/755/2023.

In a proceeding under Section 12 along with other cognate provisions of the Domestic Violence Act an application under Section 23 of the Domestic Violence Act for interim monetary allowance filed by the wife/petitioner was pending. Since the opposite parties failed to take step earlier the said application was fixed for *ex parte* hearing, however, on the prayer of the opposite parties/petitioners herein vide

order dated 30th July, 2022 the order of *ex parte* hearing was vacated subject to payment of cost of Rs.500/-. The opposite parties were directed to take part in the hearing for interim monetary allowance.

At this stage, the learned Advocate for the opposite parties submits that the opposite parties have filed an application under Section 340 of the Code of Criminal Procedure stating, *inter alia*, that the petitioner/wife has filed a false affidavit of assets stating, *inter alia*, that she has been residing with her father in her paternal home and she is getting Rs.5000/- towards rent from her tenant as landlord. In spite of such statement she falsely claimed Rs.5,000/- as accommodation charge in a separate accommodation.

Learned Magistrate insisted upon hearing of the application under Section 23 of the Protection of Women from Domestic Violence Act. On the other hand, the learned Advocate for the petitioners herein insisted to hear out an application under Section 340 of the Code of Criminal Procedure filed by them first before considering the application for interim maintenance. In course of argument, some altercation might took place with the learned Magistrate and the learned Advocate for the petitioner. However, the learned Magistrate in the order impugned has passed certain caustic remark against the learned Advocate for the opposite parties.

In the instant revision it is to be considered as to whether any statement on affidavit which has not been taken into consideration as yet by the learned Magistrate, if contains certain statement which according to the opposite parties are false, an application under Section 340 of the Code of Criminal Procedure is maintainable or not. In ***Rajneesh -Vs.- Neha*** the Hon'ble Supreme Court directed the parties to file affidavits of assets and liabilities in a proceeding under

Section 12 read with Section 23 of the Protection of Women from Domestic Violence Act in order to enable the Court to pass appropriate order with regard to monetary allowance. The affidavit of assets filed by the wife/opposite party has not been taken into consideration by the learned Magistrate as yet. If the learned Magistrate finds that the affidavit of assets contains false statement and such false statement was made by either of the parties by swearing affidavit such observation by the Court may be a ground for filing an application under Section 340 of the Code of Criminal Procedure. In the instant case, the application under Section 340 of the Code of Criminal Procedure is premature. Accordingly, I am in agreement with the learned Magistrate that the application for monetary allowance ought to be heard first.

However, at the same time this Court is not in agreement with the learned Magistrate where he made certain caustic remark against the learned Advocate for the accused. The Court is under obligation to restrain even in case of provocation. It is the duty of the Court to adjudicate a lis between the parties and not to criticize an Advocate whose submission may be disliked by the learned Magistrate. Therefore, while affirming the impugned order, it is directed that all remarks against the learned Advocate for the present petitioners appearing before the learned Magistrate in the above-mentioned proceeding are expunged. Both the revisions are accordingly disposed of.

In view of above discussion, I do not find any reason to transfer the proceedings from the Court of the learned Judicial Magistrate, 4th Court at Barrackpore.

I sincerely hope and trust that the learned Judicial Magistrate exercising and discharging solemn judicial functions will not keep his grudge in mind against the learned Advocate for the opposite parties in future.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 47.