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03.04.2023  
SB  
Ct. No. 2

**Calcutta High Court  
In the Circuit Bench at Jalpaiguri  
Appellate Jurisdiction**

**W.P.A. 360 of 2023**

Bhagabati Sharma  
-versus-  
The State of West Bengal & Ors.

Mr. Jagriti Mishra  
Mr. Debayan Goswami  
Mr. Subham Gupta  
Mr. Reshab Kumar  
Mr. Raj Kumar Mitra  
...For the Petitioner

Mr. Subir Kumar Saha  
Mr. Momenur Rahman  
...For the State

Affidavit-of-service filed in Court today is taken on record. Despite notice the respondent no.7 chose not to be represented. Mr. Mishra, learned counsel appearing for the petitioner had confirmed this Court that notice was duly served and delivered upon the respondent no.7.

The petitioner claimed to be a senior citizen that she had lodged a complaint **(Annexure P-2 at page 15 of the writ petition)** before the learned Court of learned Sub-Divisional Magistrate, Jalpaiguri the jurisdictional authority under **Section 5 The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, the said 2007 Act)** claiming that the respondent no.7 the daughter-in-law of the petitioner **(Annexure P-2 at page 15 of the writ**

**petition)** failed and neglected to maintain the petitioner.

On this complaint, an order was passed by the jurisdictional authority on **January 25, 2022 (Annexure P-3 page 19 of the writ petition)** under the statute, the order impugned herein.

Mr. Jagriti Mishra, learned counsel on behalf of the petitioner referring to the said impugned order dated January 25, 2022 submitted that, the said order is cryptic and without assigning the reason the jurisdictional authority had dropped the complaint lodged by the petitioner. The said impugned order cannot sustain in law and is liable to be set aside.

Mr. Rahman, learned counsel appearing for the State Respondents submitted that, the opposite party being the daughter-in-law has no obligation under the statute to look after and maintain her mother-in-law, the writ petitioner. He further submitted that, the petitioner had also lodged criminal complaint before the jurisdictional police station alleging the charges against the respondent no.7. A case had already been registered being Police Case No. 120/23 dated, February 22, 2023 under Sections 323/307 of the Indian Penal Code before the Kotwali Police Station.

After considering the rival contentions of the parties and upon perusal the materials on record, on a scrutiny of the said impugned order dated January 25,

2022, this court is of the view that the same is really a cryptic one and practically no reason had been discussed as to why the contention of the petitioner did not match with the relevant provisions of the statute.

In view of the above, the said impugned order cannot sustain in law and the said impugned order dated **January 25, 2022 (Annexure P-3 at page 19 to the writ petition)** stands set aside and quashed.

The jurisdictional authority under Section 5 of the said 2007 Act is further directed to revisit the issue on the basis of the existing records before him and then after granting opportunity of hearing to both the parties to the relevant complaint pending before it shall come to a reasonable conclusion with a reasoned order strictly in accordance with law. The jurisdictional authority under Section 5 being the respondent no.3 in this writ petition shall give at least seven days prior hearing notice to both the petitioner and the respondent no.7 and then shall proceed with the hearing in accordance with law as directed above.

The entire exercise as directed above shall be carried out and completed by respondent no. 3 positively within a period of six weeks from the date of communication of this order.

It is made clear that this court had not gone into the merits of the allegations and counter allegations as evident from the record before this court. The

petitioner and the respondent no.7 shall be at liberty to argue whatever points they wish to urge before the respondent no. 3 but not beyond the existing record before it and not beyond the scope of the complaint existing before the respondent no. 3 filed by the petitioner on which the impugned order was passed.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

In the view of this court since the said impugned order suffers from basic infirmity being without any reason and the supportive finding thereto, this court has entertained the writ petition and passed this order as the said infirmity touches the root of the jurisdiction in passing the said impugned order.

On above terms, this writ petition being **WPA 360 of 2023** stands disposed of without any order as to costs.

**(ANIRUDDHA ROY, J.)**