

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2554 of 2017

Amit Dutt

Versus

Smt. Sujata Dutt @ Guha

For the Petitioner : Ms. Puja Goswami, Adv.

Heard on : 16.01.2024

Judgment on : 28.02.2024

Ajay Kumar Gupta, J:

1. This Criminal Revisional application has been filed by the Petitioner being the husband of opposite party under Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated 30th June, 2017 passed by the learned Additional District and Sessions Judge, Durgapur in Criminal Appeal No. 14/2016 thereby

affirmed the order dated 28th June, 2016 passed by the learned Additional Chief Judicial Magistrate, Durgapur in Misc. Case No. 141/2011 whereby the learned Magistrate has allowed the petition filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 on contest and further directed the present Petitioner to pay a sum of Rs. 16,000/- per month as maintenance for the Opposite Party and Rs. 4,000/-per month for the cost of alternative accommodation of Opposite Party so long as the Petitioner could not provide a suitable alternative accommodation to the Opposite Party and further directed to pay a total sum of Rs. 20,000/- per month to the Opposite Party/wife from the date of the order by 7th of every succeeding month failing which the Opposite Party is at liberty to execute the order through the competent Court.

2. The brief facts are relevant for the purpose of disposal of this case as under:

The Opposite Party is a legally married wife of the Petitioner and their marriage was solemnized according to the Hindu Rights and Customs on 27.11.2009. After marriage, their conjugal life had been started at Majhitola, Adityapur, P.S. Adityapur, District – Seraikela Kharsawan, Jharkhand. But from the very beginning, the opposite party started to claim reside separately from other in laws in

a separate flat or residence. Her proposal was denied by the Petitioner as he has also duty towards his other family members. As such, disputes and differences started between the husband and wife and increased gradually. Ultimately on 04.10.2010, the parents of Opposite Party in the name of Durga Puja festival took her to parental house. She did not contact till 10.12.2010 and when the Petitioner went to bring her back, she did not come back to her matrimonial house. Having no other alternative, the Petitioner had to file an application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 before the learned Principal Judge, Family Court, Seraikela Kharsawan, Jharkhand being Matrimonial Suit No. 5 of 2011 and the same was decreed on contest in favour of the Petitioner/husband on 30.03.2016 thereby the learned principal Judge directed the Opposite Party to go to the society of the Petitioner/husband without any space of time. During pendency of the said application, the opposite party/wife also preferred an application for decree of divorce under Section 13 of the Hindu Marriage Act, 1955 before the Learned Additional District Judge, Durgapur on the several grounds and the same was registered as Matrimonial Suit No. 157 of 2014 but the same was finally withdrawn on 18.04.2015 by the Opposite Party/wife for the reasons best known to her. Soon after receiving the summons of restitution of conjugal

rights, the Opposite Party lodged an FIR under Sections 498A/34 of the Indian Penal Code, 1860 before the Durgapur Police Station on retaliation and the same was registered as Durgapur Police Station Case No. 201 of 2011 dated 01.06.2011. At the same time, she also filed an application under Section 12 of the Protection of Women from Domestic Violence Act being Misc. Case No. 141/2011 and the said case was finally decided on contest on 22nd March, 2012 thereby the learned Magistrate allowed the interim maintenance to the Opposite Party/wife at the rate of Rs. 15,000/- per month.

Being aggrieved by and dissatisfied with the said interim order dated 22nd March, 2012, the Petitioner herein preferred an appeal before the Special Court –cum- Learned Additional Sessions being Criminal Appeal No. 08 of 2012. After hearing the parties, the learned Judge modified the amount of interim maintenance to the tune of Rs. 11,000/- per month instead of Rs. 15,000/- per month at initial stage. In the meantime, the Misc. Case No. 141/2011 was finally decided on 28.06.2016 and directed to pay a monthly maintenance allowance to the tune of Rs. 16,000/- per month and Rs.4000/- per month as alternative accommodation costs to the opposite party/wife. Accordingly, the petitioner again preferred another appeal being aggrieved before the Learned Additional District

and Sessions Judge being Criminal Appeal No. 14 of 2016 thereby the learned Judge affirmed the order of learned Magistrate and dismissed the appeal and further directed the petitioner to pay a cost of Rs. 5,000/-.

3. As such, the instant Criminal Revisional Application has been filed before this Court contending that the learned Judge did not consider the facts that the petitioner has been holding a decree under Section 9 of the Hindu Marriage Act, 1955 in his favour showing desertion on the part of the wife/Opposite Party. Learned Court also not calculated the total income of the petitioner and further included the income taxes, necessary expenses of the petitioner and other liabilities of the joint family. Accordingly, the order passed by the learned Magistrate as well as the Learned Additional District and Sessions Judge is liable to be set aside.

SUBMISSION ON BEHALF OF THE PETITIONER:

4. Learned Advocate appearing on behalf of the Petitioner submitted that the learned Magistrate did not consider the facts of the petitioner while allowing the petition under Section 12 of the PWDV Act and allowed maintenance to the tune of Rs. 16,000/- per month as maintenance for the Opposite Party/Wife and Rs. 4000/- per month for her alternative accommodation and further directed to

pay a total sum of Rs. 20,000/- per month to the Opposite Party/Wife from the date of order by every 7th day of every succeeding month. The said direction was passed without applying the judicious mind and only on the basis of surmises and conjectures. The learned Magistrate did not consider actual income of the petitioner and further ignored the decree passed on contest in an application filed by the petitioner under Section 9 of the restitution of conjugal rights and directed the opposite party/wife to go to the society of petitioner/husband in pursuant to the order of restitution of conjugal rights passed under Section 9 of the Hindu Marriage Act, 1955 without any space of time. She did not obey the order passed by the learned Principal Judge, Family Court. Accordingly, she is not entitled to get any amount from the petitioner towards her alternative accommodation and/or maintenance.

5. On the other hand, the opposite party did not turn up to contest the case on call.

DISCUSSIONS AND ANALYSIS BY THIS COURT:

6. Having heard the submission made on behalf of the petitioner and on perusal of the revisional application and annexure thereto, this court finds the learned Magistrate has allowed a sum of Rs. 16,000/- as maintenance and Rs. 4,000/- as an alternative

accommodation and further directed to pay a total sum of Rs. 20,000/- per month to the opposite party/wife from the date of order by every 7th day of every succeeding month. The said order was challenged before the learned Additional District and Sessions Judge in an appeal being Criminal Appeal No. 14/2016 and after hearing, the learned Judge dismissed the appeal on contest with a cost of Rs. 5,000/- to be paid by the appellant/husband/petitioner to the respondent/wife/opposite party observing therein that the learned Magistrate discussed entire facts and circumstances and income of the present petitioner and came to a final conclusion that the order should be passed in favour of the opposite party/wife for awarding maintenance as well as alternative accommodation.

Under such circumstances, the learned Judge affirmed the said order since no sufficient reasons or grounds placed before the learned Judge to set aside the impugned order dated 28.06.2016 as such dismissed the appeal filed by the petitioner with costs.

It is not disputed by the petitioner that the opposite party is not his legal wife and she is residing separately leaving the matrimonial home due to some matrimonial disputes. It is also not disputed that there was a criminal case pending between the husband and wife under Section 498A/34 of the Indian Penal Code,

1860. Under such circumstance, even if restitution of conjugal rights order passed in favour of the petitioner by the learned Principal Judge, she is unable to continue their conjugal life due to matrimonial disputes and differences between the parties.

Furthermore, it is obligation of the husband to maintain her if she has no her own income to maintain herself. It is also bounden duty to provide alternative accommodation under the provision of Protection of Women from Domestic Violence Act. It appears from the order passed by the learned Magistrate, that though the claim of the present petitioner is that he could not leave his parents as he has duty towards his other family members but from the evidence, it appears he is living separately from his family members and he suppressed the said facts before the learned Magistrate. It further reveals from the information report issued by the C.P.I.O. Cum I.T.O. Ward-1 (1), Jamshedpur that his income was more than Rs. 6 lakhs per year. Even if income tax or professional tax be deducted from his total income it would not be less than Rs. 5 lakhs.

7. Under such circumstances, I do not find any infirmity or illegality in passing such impugned order for maintenance and amount towards alternative accommodation. The observations of the learned Magistrate as well as the learned Additional District and

Sessions Judge on the basis of evidence available on the record are found correct and those concurrent findings are in accordance with law. This Court also agrees with the concurrent findings of both the learned Courts below.

8. Accordingly, **C.R.R. 2554 of 2017** has devoid of merit and required to be dismissed. Consequently, **C.R.R. 2554 of 2017** is, thus, dismissed without order as to costs. Consequently, connected applications, if any, are also, thus, disposed of.

9. CD is to be returned.

10. Interim order, if any, stands vacated.

11. Let a copy of this judgment and order be sent to the learned Court below for information.

12. Parties shall act on the server copies of this order uploaded on the website of this Court.

13. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)