

C.R.R. 4258 of 2024

In Re: - An application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973, corresponding to Sections 438/442/528 of the Bharatiya Nagarik Suraksha Sanhita, 2023

And

**Amitava Das
Vs.
Mrs. Jayanti Ghosh**

Mr. Ayan Bhattacharjee, Sr. Adv.
Ms. Ritu Das,

....For the petitioner

Ms. Malabika Roy Dey

....For the Opposite Party

Affidavit-of-service filed on behalf of the petitioner be kept with the record.

It is the grievance of the petitioner that the order dated 03.07.2023 passed by the Learned Judicial Magistrate, 9th Court, Alipore in C. Case no. 964 of 2023 whereby the learned Trial Court allowed the application of the respondent no. 1 wife for an ad interim ex parte order of monetary relief under Section 23(2) of the Prevention of Women from Domestic Violence Act, 2005 and allowed the appellants to pay a sum of Rs. 45,000/- (Rupees Forty Five Thousand) per month as monetary relief to the respondent no.1 and to her two minor daughters.

The impugned order passed by the learned Magistrate was challenged by the petitioner/husband by filing a criminal appeal in the Sessions Court which was subsequently transferred to the

Court of the Additional Sessions Judge, 11th Court, Alipore South 24 Parganas. The Appellate Court upheld the order of the Trial Court. Primary observation of the Appellate Court was that a Magistrate can pass ex parte interim order under Sections 20 and 23(2) of the Prevention of Women from Domestic Violence Act, if the Magistrate is satisfied that the application, prima facie, discloses that the respondent is committing or has committed an Act of domestic violence or that there is likelihood of such commission. It is further observed that this scheme of the Act does not contemplate hearing of the respondent before passing any interim order. A submission was considered that the ex parte order of maintenance was passed before receiving the report of domestic violence and without considering the same. Even though the Appellate Court observed that a trial Court should consider whether a prima facie case of domestic violence was made out in the petition, the Appellate Court overlooked that the interim maintenance order was passed without the aid of the Report.

However, this Court is not inclined to interfere of this order at this stage, although hefty sum of money is awarded an ad interim compensation without hearing the other side. The Trial Court is expected to hear the petitioner/husband and thereafter may modify the order, if needed, giving opportunity of hearing to both the parties. The application shall be disposed of preferably within two months.

Accordingly in such terms of the instant application is disposed of.

A copy of this order may be immediately communicated to the Trail Court.

The liberty is given to the present petitioner to file an appropriate application for modification of interim award which was passed behind his back.

The execution of this order should not be resorted for one month from today.

Urgent certified photocopy of this order, if applied for, shall be supplied to the parties upon compliance of all necessary formalities.

(Sugato Majumdar, J.)