IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present: The Hon'ble Mr. Justice Ranjit Kumar Bag

C.R.R. No.1143 of 2015

Angshuman Chakraborty.
Versus
Arpita Banerjee.

For the petitioner: Mr. Sandipan Ganguly,

For the O.P. : Mr. Sourav Chatterjee.

Heard on: 18th September, 2015

Judgment on: 18th September, 2015

R.K. Bag, J.:-

The petitioner has preferred this revisional application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 challeging the judgment and order dated February 27, 2015 passed by learned Additional Sessions Judge, 2nd Court, Durgapur, in Criminal Appeal No.41 of 2014 affirming the order dated September 25, 2014 passed by learned Additional Chief Judicial Magistrate, Durgapur, in Misc. Case No.69 of 2013, by which learned Judges of the court below directed the petitioner husband to make payment of interim maintenance @ Rs.5,000/- per month in favour of the opposite party wife.

2. It appears from the materials on record that the opposite party wife filed an application under Section 23(1) of the Protection of Women from Domestic

Violence Act, 2005 (hereinafter referred to as the Domestic Violence Act) against the petitioner husband before the court of learned Magistrate praying for interim maintenance @ Rs.15,000/- per month on the ground that the opposite party wife was compelled to live in the house of her parents and that she has no income for maintenance of her livelihood, whereas the petitioner husband earns about Rs.80,000/- per month as an Engineer who passed out from IIT. The petitioner husband filed written objection against the application filed by the opposite party wife. Ultimately, on September 25, 2014, learned Judicial Magistrate directed the petitioner husband to make payment of interim maintenance w.e.f. the date of the order. The said order passed by learned Magistrate was challenged by the petitioner husband before the court of sessions by preferring Criminal Appeal No.41 of 2014. On February 27, 2015, learned Additional Sessions Judge, 2nd Court, Durgapur, disposed of the said criminal appeal by affirming decision passed by learned Magistrate. The judgment and order passed by learned Additional Sessions Judge in the said criminal appeal is under challenge in this revision.

3. Mr. Sandipan Ganguly, learned counsel for the petitioner submits that the petitioner husband has started proceeding under Section 25 of the Special Marriage Act against the opposite party wife praying for annulment of the marriage. The said matrimonial proceeding being MAT Suit No.2797 of 2011 is pending for hearing before the court of learned District Judge at Alipore. Mr. Ganguly further submits that the opposite party wife filed an application under Section 24 o the Code of Civil Procedure before this High Court for transfer of the

matrimonial proceeding from the court of learned District Judge at Alipore to the court of learned Additional District Judge, Assansol. The copy of the application filed by the opposite party wife in the said proceeding being C.O. No.514 of 2012 is annexed to the revisional application and marked as Annexure P-5. By referring to paragraph 4 of the said application filed by the opposite party wife before this Court, Mr. Ganguly contends that the opposite party wife has specifically stated that after registration of the marriage between the opposite party wife and the petitioner on November 2, 2011 they left for their respective parental houses. He has also pointed out from the application filed by the petitioner before the trial court challenging the maintainability of the proceeding that the petitioner husband has disclosed in the said application that the husband and wife left for their respective parental houses after registration of the marriage on November 2, 2011 under the Special Marriage Act, 1954. According to Mr. Ganguly, this fact was not considered by learned Magistrate and learned Additional Sessions Judge in proper perspective and as such, the petitioner is highly prejudiced. By referring to the definition of "domestic relationship" appearing in Section 2(f) of the Domestic Violence Act, Mr. Ganguly has urged this Court to consider that the petitioner and the opposite party never lived together in the shared household and as such there is no domestic relationship between the petitioner and the opposite party. Again, by relying on the definition of "aggrieved person" appearing in Section 2(a) of the Domestic Violence Act, Mr. Ganguly also submits that the opposite party wife cannot be aggrieved person for starting a proceeding either under Section 12 or under Section 23 of the

Domestic Violence Act. By referring to the statement of objects and reasons behind enacting the Domestic Violence Act, Mr. Ganguly has urged this court to give literal interpretation of the definition of Section 2(f) of the said Act, as there is no ambiguity in the definition to fulfil the object of the legislation. The specific submission made by Mr. Ganguly is that the opposite party wife is not in domestic relationship with the petitioner husband and as such she cannot be considered to be an aggrieved person under Section 2(a) of the Domestic Violence Act and as such the order passed by learned Judges of the court below are liable to be set aside.

4. Mr. Sourav Chatterjee, learned counsel for the opposite party wife has relied on "M. Palani v. Meenakshi" reported in AIR 2008 Madras 162 and "Vandhana v. T. Srikanth and Krishnamachari" (decided on July 3, 2007 in O.A. No.764 of 2007 in C.S. No.548 of 2007) reported in 2007(51) Civil CC (Madras), in support of the contention that even if the wife did not live with the husband physically, the wife has a right to live in the shared household and as such, the wife will have domestic relationship with the husband under Section 2(f) of the Domestic Violence Act. He further contends that since the opposite party wife has domestic relationship with the petitioner husband, the opposite party is an aggrieved person within the meaning of Section 2(a) of the Domestic Violence Act for filing an application both under Section 12 of the Domestic Violence Act and under Section 23 of the Domestic Violence Act. He has also urged this Court to consider that the opposite party wife has the right to take different stand in different proceeding and as such, the statement given by the opposite party wife

before the High Court in a proceeding under Section 24 of the Code of Civil Procedure may not be taken into consideration for deciding the fate of an application filed by the opposite party wife under Section 23 of the Domestic Violence Act.

5. Admittedly, the opposite party was married to the petitioner on November 2, 2011 under the provisions of the Special Marriage Act, 1954. The social marriage scheduled to be held on December 4, 2011 did not materialize due to dispute between the parties. The further admitted position is that the petitioner husband has instituted Mat Suit No.2797 of 2011 against the opposite party wife before the court of learned District Judge at Alipore for annulment of the marriage under Section 25 of the Special Marriage Act, 1954. It is also not disputed that the opposite party wife moved the High Court for transfer of the said matrimonial proceeding from the court of learned District Judge, Alipore to the court of learned Additional District Judge, Assansol, by filing an application under Section 24 of the Code of Civil Procedure. In the said application for transfer of the matrimonial proceeding, the opposite party wife specifically stated in paragraph 4 that the petitioner and the opposite party went back to their respective parental houses after registration of the marriage before the Marriage Registrar on November 2, 2011. This statement of the opposite party wife is a statement on oath. The fact that the opposite party did not live with the petitioner as husband and wife is given a go-by when the opposite party wife started proceeding against the petitioner husband under Section 12 of the Domestic Violence Act and under Section 23 of the Domestic Violence Act before

the court of learned Magistrate. The opposite party wife has specifically stated in her application before the court of learned Magistrate that she was subjected to torture by the petitioner and as such she was compelled to live in the house of her parents and she has no income for maintenance of her livelihood, whereas the petitioner husband has refused to provide maintenance in spite of having income of Rs.80,000/- per month.

6. With the above factual matrix, I have to consider whether there is domestic relationship between the opposite party wife and the petitioner husband for invoking the jurisdiction of the Domestic Violence Act. The "domestic relationship" is defined in Section 2(f) of the Domestic Violence Act as follows: "domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family".

On a perusal of the definition of "domestic relationship", it appears that two persons will have domestic relationship if they live in the shared household by virtue of their relationship through consanguinity or marriage or through a relationship in the nature of marriage or adoption or they being members of the family are living together as a joint family.

7. In the instant case, the opposite party wife did not live with the petitioner husband in shared household. By literal interpretation of the definition of "domestic relationship" as appearing in Section 2(f) of the Domestic Violence Act, the opposite party wife may not be in domestic relationship with the petitioner

husband, as both the petitioner and the opposite party lived in their respective parental houses after registration of the marriage on November 2, 2011. One of the main objects of enacting the Domestic Violence Act is to provide for the right of the women to reside in the matrimonial home or shared household, irrespective of whether she has any title in such home or household. The legally married wife who is deprived of the opportunity to live with her husband after the marriage for cruel and abusive treatment of the husband, will not be able to invoke the jurisdiction of the court under the Domestic Violence Act for protection of her right to reside in the matrimonial home, if I give literal interpretation to the definition of "domestic relationship" appearing in Section 2(f) of the said Act. The literal interpretation of the definition of the word "domestic relationship" in Section 2(f) of the Domestic Violence Act will deprive the woman from invoking the benefit of this welfare legislation when she is subjected to domentic violence by her husband if the husband can manage to keep her away from the matrimonial home in spite of her right to live there. So, the literal interpretation of the definition of "domestic relationship" can not further and fulfil the object of the legislation. The liberal interpretation of the definition of "domestic relationship" is needed, so that the benefit of this beneficial legislation reaches the distressed women who are unable to reside in the matrimonial home or shared household for the abusive treatment meted out by the husband. The benefit of the beneficial legislation is given to the wife by the Madras High Court in "Vandhana v. T. Srikanth and Krishnamachari" (supra) wherein learned single Judge has held in paragraph 20 as follows:

…….A narrow interpretation of Section 2(f), 2(s) and 17 of the Act, would leave many a woman in distress without any remedy. Therefore, in my considered view a healthy and correct interpretation of Section 2(f) and 2(s) would be that the words "live" or "have at any point of time lived" would include within their purview the "right to live:. In other words, it is not necessary for a woman to establish her physical act of living in the shared household, either at the time of institution of the proceedings or as thing of the past. If there is a relationship which has legal sanction, a woman in that relationship gets a right to live in the shared household. Therefore, she would be entitled to protection under Section 17 of the Act, even if she did not live in the shared household at the time of institution of the proceedings or had never lived in the shared household at any point of time in the past. Her right to protection under Section 17 of the Act, co-exists with her right to live in the shared household and it does not depend upon whether she had marked her physical presence in the shared household or not. A marriage which is valid and subsisting on the relevant date, authomatically confers a right upon the wife to live in the shared household as an equal partner in the joint venture of running a family. If she has a right to live in the shared household, on account of a valid and subsisting marriage, she is definitely in "domestic relationship" within the meaning of Section 2(f) of the Act and her bodily presence or absence from the shared household cannot belittle her relationship as anything other than a domestic relationship……."

8. I would like to adopt the liberal interpretation of the definition of "domestic relationship" given by learned single Judge of the Madras High Court for the

benefit of the wife whose marital tie with the husband is subsisting but she is deprived of the opportunity to live with the husband in the matrimonial home or the shared household. The wife who has the right to live with the husband in matrimonial home or the shared household due to existence of her marital tie with the husband, will be deemed to have domestic relationship with the husband. Thus, the words "live or "have, at any point of time, lived" appearing in Section 2(f) of the Domestic Violence Act will include "right to live". As a result, the opposite party wife who has a right to live with the husband in the shared household or in the matrimonial home in view of the existence of her marital tie with the petitioner must be considered to have "domestic relationship" with the petitioner. Since the opposite party wife has the domestic relationship with the petitioner husband, she must be considered to be an aggrieved person within the meaning of Section 2(a) of the Domestic Violence Act. In view of my above findings, I am unable to accept the contention of Mr. Ganguly.

9. The decision of the Madras High Court in "M. Palani v. Meenakshi" (supra), cited by Mr. Chatterjee has no relevance in the instant case, because in the said report the domestic relationship was inferred by the court as the parties lived together and had sex with each other.

10. With regard to the quantum of interim maintenance granted by learned Magistrate and affirmed by learned Additional Sessions Judge, I am informed that the petitioner is at present unemployed and has no income. However, this fact is disputed by Mr. Chatterjee. Accordingly, I am inclined to reduce the amount of interim maintenance to some extent and as such, I would like to fix

the amount of interim maintenane @ Rs.4,000/- per month instead of Rs.5,000/- per month till the final amount of maintenance is decided by the trial court. Accordingly, the petitioner husband is directed to make payment of interim maintenance @ Rs.4,000/- per month in favour of the opposite party wife with effect from the date of the order passed by learned Magistrate. The petitioner is directed to make payment of current maintenance of each month within 10th day of next succeeding month. The petitioner is also directed to make payment of arrears of maintenance calculated at the above rate in favour of the opposite party wife within October 15, 2015. The judgment and order dated February 27, 2015 passed by learned Additional Sessions Judge, 2nd Court, Durgapur, in Criminal Appeal No.41 of 2014 affirming the order dated September 25, 2014 passed by learned Additional Chief Judicial Magistrate, Durgapur, is modified to the above extent. The criminal revision is, thus, disposed of.

(R. K. Bag, J.)