

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE,
1st COURT, SEALDAH, SOUTH 24-PARGANAS.**

Present: **ANIRBAN DAS**/(WB-0691)
Addl. Sessions Judge,
1st Court, Sealdah.

Crl Appeal No.32 of 2023
(CNR WBSP070034482023)

***(Arising out of Order dated 23.08.2023 passed by Ld. J.M 5th Court
Sealdah in Case No. DV Act 111 of 2022 1)***

Sourav Kar

..... Appellant.

~Vs~

1. The State of West Bengal

2. Smita Kar Respondents.

Judgement delivered on: 18.11.2023

J U D G E M E N T

This Criminal Appeal is directed against the order *dated 23.08.2023 passed by Ld. J.M 5th Court Sealdah in Case No. DV Act 111 of 2022* (hereinafter will be mentioned as Ld. J.M).

By passing the impugned order, the Ld. J.M. has been pleased to give interim relief to the respondent/wife under section 23 of PWDV Act.

The Ld. JM has been pleased to direct the appellant/husband to pay Rs.10,000/- per month as interim monetary relief to the respondent/wife and another Rs. 10,000/- per month as the cost of alternate accommodation.

The appellant being the husband of the respondent/wife became dissatisfied with the said order and preferred the instant Criminal Appeal on amongst the other grounds that the Ld. Court below failed to appreciate the financial status of respondent/wife properly and prayer was made for modification of the said order.

The respondent/wife turned up in the instant appeal and contested the same.

At the time of hearing of the appeal both parties have placed before me the documents they have relied upon at the time of hearing of petition

under Section 23 of PWDV Act before the Ld. J.M. Accordingly, the instant appeal was heard without calling for the L.C.R.

The only point of consideration is whether the order passed by the Ld. JM requires any interference of this Appellate Court.

DECISION WITH REASONS

Before delving into the merit of the instant appeal, it will not be out of place to mention in brief about the **factual matrix of the instant case.**

That the parties were married to each other as per the provision of Special Marriage Act, 1954 on 11.12.2009 and one daughter was born from the said wed-lock. It appears from the petition that the respondent/wife was not allowed by her husband and in laws to lead any personal life and she was subjected to severe torture by her husband and that she was forced to leave her matrimonial place with her daughter and started to stay in a separate accommodation.

It was the allegation that the appellant/husband would not provide any sum as maintenance to herself and her minor daughter.

Accordingly, she had filed the application under the provision of Domestic Violence Act praying for interim monetary relief and cost of alternate accommodation.

She had also preferred an application for interim relief before the Ld. Trial Court.

The present appellant being the husband of the respondent/wife appeared in that case before the Ld. J.M and by filing w/o denied all the allegations raised against him. It was also the specific point of the present revisionist/husband that his wife has sufficient income and the same was suppressed before the court when the hearing was done for the interim maintenance petition. It was also the submission that the respondent/wife did not place proper statements in the affidavit of assets and liabilities filed by her.

Before this Court, the appellant placed that the order passed by the Ld. J.M (impugned order) was *mala-fide* and without any basis.

I have carefully gone through the impugned order passed by Ld. J.M.

Now we have to consider what points should be kept in mind before taking decision on the prayers made by the respondent/wife before the Ld.

J.M.

The P.W.D.V. Act is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action, 1995 have acknowledged this Act. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her relations, the Civil Law does not however give redress in its entirety. To remove such difficulties the legislature enacted this specific act.

Now we have to consider what points should be kept in mind before taking decision on the prayers made by the appellant/wife before the Ld. J.M.

Points for consideration

- *Whether there was any prima-facie satisfaction of the court below to hold that this appellant/husband is bound to provide monetary relief to the present respondent/wife.*
- *Whether the appellant/husband had caused any incident of domestic violence?*
- *Whether the respondent/wife has any source of income?*
- *Whether the amount awarded as interim monetary relief and the cost of alternate accommodation is sufficient for the respondent / wife ?*

It is fact that at the time of hearing of the appeal, there is no scope to hit at the root of the case as the parties to the proceeding had not yet got the chance to place their evidences. I have to consider the *prima-facie* facts and circumstances to judge whether the impugned order suffered from any illegality or there is any need of enhancement of the relief as awarded by the Ld. JM.

I have carefully perused the documents furnished by both sides before the Ld. J.M. and it is fact that relying upon the same the Ld. J.M. has been pleased to pass the impugned order.

I have perused the affidavit of assets filed by both sides before the Ld. JM, 5th Court, Sealdah. I have considered the income tax return of the respondent/wife for the assessment years 2012-13 , 2013-14, 2015-16, 2016-17. 2017-18, 2018-19, 2019-20 and 2020-2021.

The said IT returns shows a constant flow of income of the present respondent/wife but I do not find any reflection of the same in the affidavit of assets filed by the said respondent/wife before the Ld. Trial Court.

I have also considered the income tax returns of the present appellant and his affidavit of assets.

The Ld. Advocate for the respondent/wife could not satisfy this court at the time of hearing as to why the income of the respondent/wife was not mentioned in the affidavit of assets of the said respondent.

The appellant/husband and the respondent/wife appeared before this court to get an equitable relief.

As per the principle of equity they must come before this court in clean hands.

It appears from the documents submitted by the appellant/husband that the respondent/wife has her separate income, which is sufficient to lead her life.

Standing on the same, at this prima facie stage, I think that there is no ground to allow any interim monetary relief to the respondent/wife and the impugned order should be modified accordingly.

At the same time, I am of the view that as it prima facie appears that the respondent/wife is living separately from her husband, she is entitled to get some relief in the form of cost of alternate accommodation from her husband.

Accordingly, I think that if at this very initial stage, the appellant/husband be directed to pay a sum of Rs. 10,000/- per month to the respondent/wife as the cost of alternate accommodation from the date of impugned order (23.08.2023), neither party will be prejudiced.

The instant criminal Appeal is therefore, disposed of in the light of the said observation of this court.

Hence, it is,

ORDERED,

That the instant Criminal Appeal vide No. 32 of 2023 arising out of DV Act case No. 111 of 2022, pending before the the Ld. J.M, 5th Court,

Sealdah, is hereby allowed on contest without cost in part.

The impugned order dated 23.08.2023 passed by Ld. J.M 5th Court Sealdah is hereby modified to the extent that the appellant/husband will go on paying Rs. 10,000/- per month as cost of alternate accommodation on interim basis to the respondent/wife with effect from the date of impugned order (23.08.2023).

Stay order, if any, be vacated.

The payment as made by the appellant/husband in terms of impugned order dated 23.08.2023, if any, will be adjusted with the future payment.

Let a copy of this Judgment be sent to the Ld. J.M, 5th Court, Sealdah at once.

Both the parties are directed to appear before the Ld. JM, 5th Court, Sealdah on **06.12.2023**.

The Ld. JM is requested to dispose of the matter at the earliest.

D/C by me,

ASJ-1

(Anirban Das)/WB-691,
Addl. Sessions Judge ,
1st Court, Sealdah
South 24-Parganas