

COURT OF THE ADDL.SESIONS JUDGE, BHUBANESWAR

Present:

Miss.Anita Sahoo,
Addl.Sessions Judge,
Bhubaneswar.

*Dated this the 28th day of August, 2017.***CRIMINAL APPEAL NO.11 OF 2017**

(Arising out of the Order dtd.11.09.2017 passed by Sri C.Oram,
Learned J.M.F.C., Bhubaneswar in C.M.C NO. 356 of 2016)

Lopamudra mishra, aged about 36 years,

W/o- Sabyasachi Mishra,

D/o-Late Janaki Ram Mishra.At./P.O.- Gasipura, Dist- Keonjhar.

At. Present C/o- Abhiram Mishra, Tankapani Road, Ratnakar Bag, 1st
lane, Richi Villa, A-102,P.S.-Badagada, Dist- Khordha

..... Appellant

-Versus-

1. Sabyasachi Mishra, aged about 40 years,

S/o- Trailokya Mishra,

2. Trailokya Mishra, aged about 69 years,

S/o- Late Jayakrushna Mishra.

3. Asha Manjari Mishra, aged about 37 years,

W/o- Trailokya Mishra.

All are residents of Plot No. 191, Unit-III,

Back Side of Exhibition Ground, P.S.- Kharavelnagr,

Dist- Khurda

..... Respondents

Counsels for the Appellant: Sri Laxmidhara Mahapatre, Adv.
& associates.

Counsels for the Respondents: Sri Satyanaraya Panda, Adv.
& associates.

Date of conclusion of argument : 08.08.2017

Date of Judgment : 28.08.2017

J U D G M E N T

Order dtd. 11.09.2017 passed in CMC 356 of 2017 refusing

maintenance in favour of the appellant has been challenged in this appeal.

02. Appellant's case is that seeking interim maintenance, she has filed the petition U/s. 23 of PWDV Act. In the order dtd. 09.01.2017 it has been held by the learned Court below that case has been posted for evidence and when the petition filed by the appellant U/s. 12 of the Act, is to be disposed of within 60 days, refused to grant interim maintenance in her favour. Appellant is the legally married wife of respondent No.1 while respondent Nos. 2 and 3 and her parents-in-law. The husband of the appellant is a qualified person having MBA degree and working as the director of Nayagarh Sugar Mill. Respondent No.2 is the Managing Director of this company. He is also the director of the Mishra Financial services. Respondent No.3 is the director of different organization like The Asian Ago, The Bhubaneswar share and securities Ltd, Mishra financial Services and Dharitri Associates Private Limited. Appellant is a house wife having no source of income but is facing hardship in maintaining her own self and the minor son - Suryatej Mishra aged six years, reading in standard- I at Sai International School, Bhubaneswar. Having no source of income, appellant is unable to maintain self and the child also unable to bear his educational expenses. Being a victim domestic violence, appellant is staying in a rented house away from the respondents. She is paying the house rent of Rs. 12,000/- and paying electricity consumption charges of Rs. 1,500/- per month. Towards educational fees of the minor son and towards the hire charges in attending school, she needs Rs. 10,000/- per month. For food and clothing, appellant needs Rs. 20,000/- per month. For miscellaneous expenses Rs. 5,000/- also is required in every month. Total expenditure of the appellant as such is Rs. 50,000/- per month. Due to rejection of the petition for interim maintenance, appellant not only is facing

hardship in maintaining self but also unable to maintain the minor School going child. Being aggrieved with the rejection of the petition for interim maintenance, appellant has filed this appeal challenging the said order of rejection on the ground that the order of refusal of the petition for interim maintenance amounts to abuse of the process of law. The monthly income of the respondents is more than Rs.6lakhs. Therefore, they are the persons of affluence whereas petitioner with the minor School going child is leading the life of destitute and undergoing starvation. Being a victim of domestic violence at the hands of respondents when appellant was compelled to leave their house, she herself and the minor son are required to be maintained by the respondents. On this prospect claiming interim maintenance for Rs. 50,000/- appellant has filed the appeal, with the prayer that the order of rejection dtd. 09.01.2017 passed in CMC 356 of 2016 is liable to be set side.

Objection has only been filed by the respondent No. 1, on the ground that as per the mandate of the provision U/s. 12 of PWDV Act, petition is to be disposed of within 60 days. Grant of maintenance before evidence is not proper when it is to be assessed as to which party is at fault and whether party claiming maintenance is entitled to get the award. Though admittedly respondent No.1 is the Director of Nayagarh Sugar Mill limited but the company is under lock since 4th March 2015. as such he is not getting salary since then. The matter is sub judice in SARFAESI ACT. The assets of the company is now in the custody of the Banker - U.Co. Bank. Respondent relied on the notice dtd. 04.08.2016 issued under PDDB ACT, and notice dated 07.09.2015 issued under SARFAESI ACT. To the respondent No.1, Appellant is highly qualified having MBA and LLB degree to her credit. She was working as Aviation Officer in Jindal Steel and Power Limited. She was

also working in Bajaj Alliance Insurance Company. At present she is dealing with Stock Broking business established by this Respondent No.1. From dealership of the Essential Commodities, appellant is also getting profit. This respondent husband is unemployed for last two years. Appellant is having her own Bank accounts at IIC Bank at Shriya Talkies Square and at Indian Bank at Janapatah in which she is having locker facilities. She is having huge ornaments, jewelries, share certificates, fixed deposits and other important documents in her possession. Since it is not possible for the respondent - husband to avail financial help, having no employment and having no source of income is suffering mentally and physically, whereas his parents are suffering due to family disturbance. All along respondent No.1 wants reunion and restitution of conjugal life with his wife. Further, to safeguard the future of the minor child and for his safety, respondent No.1 preferred conciliation for restitution of conjugal life with appellant. Since with proper application of judicial mind the Learned Court below passed the order intending to disposed of the petition within the span of time so stipulated by the Act, the order needs no interference.

03. On perusal of the case record it is found that Appellant as the petitioner filed the petition U/s. 12 of PWDV Act, against the respondents. Having no source of income for maintenance for self and for the minor School going child of six years old, during the pendency of the above petition, seeking monthly maintenance of Rs. 50,000/-, appellant has filed the petition U/s. 23 of the Act. Vide order dtd. 09.01.2017 the learned Court below hearing counsels of the parties directing the petitioner to adduce evidence on 12.01.2017 rejected the petition for maintenance as the case was at this stage of evidence and the case as to be disposed of within a period of 60 days from the date of Ist hearing.

04. It has been submitted on behalf of the appellant that Sec. 23 of Act, authorizes the Magistrate to grant interim and ex parte order as deem just and proper pending disposal of the main application filed U/s.12 of the Act. In this prospect reliance has been placed on the decision of our Hon'ble Court reported in (2016) 65 OCR 681 : A.K. Sahu Vrs. Tapaswani Biswal and another.

Objecting the points raised on behalf of the petitioner it has been argued by the Learned counsel of the respondents that the order passed by the learned Magistrate is with the judicial approach and no Court can be compelled to pass order as per the sweet will of the party. At the time of compelling a party to pay maintenance his financial stability is of prime concern. Poverty of the Respondent No.1 is the cause for the appellant to leave his Company. In view of the matter, before evidence it is not judicious to compel the respondents to provide maintenance to appellant since it should be considered on merit as to whether she is entitled for the same. For the betterment of the minor child and to secure his future when respondent No.1 all along willing to settle the dispute amicably, resistance by the Appellant proves her ulterior motive. On this prospect it has been concluded on behalf of the respondents that before evidence order of maintenance is not proper as such the order passed rejecting the petition needs no interference.

05. Hearing the counsels I am to note here that appellant is the wife of respondent No.1 and they have a son who is within the age group of six and has started going to school is not disputed. The minor son at present is reading in Sai International School. It is the case of the appellant that she is a victim of domestic violence and to stay away from respondents has occupied a rented house where she is staying with the minor child. Apart from her own maintenance the burden of minor School going child is on her. As per the mandate of law, petition filed by the appellant is to be disposed of within sixty days from the date of its first hearing. Being aggrieved with the orders passed by the learned court below either party have preferred Appeals. Mandatory

period of disposal therefore has already been lapsed in this process.

06. The custody of the minor child is with the appellant has not been disputed by the respondents. Though Respondent No.1 took the defence that he is unemployed at present since his business has been bankrupt but as the father of the minor School going son its obligatory on his part to maintain the son as staying away from him and now with the mother i.e with his estranged wife. When the appellant alleges that she was a victim of Domestic Violence, burden is on her to prove the same. Maintenance of the Minor School Going Child is now of prime concern.

07. In view of the matter respondent No.1 is directed to provide interim monthly maintenance of Rs. 10,000/- towards the educational expenses of the minor son - Suryatej Mishra and Rs. 5000/- towards his monthly maintenance. He is to pay total Rs.15,000/- towards interim maintenance of the minor son from date of the filling of the petition. Hence, it is ordered;

ORDER.

08. Appeal filed by the appellant challenging the order of rejection of maintenance dtd. 09.01.2017 is allowed in part. Respondent No.1 is to pay interim monthly maintenance of Rs. 10,000/- towards education of his minor son - Suryatej Mishra staying with the appellant. For his maintenance, Respondent No.1 is to further pay Rs. 5,000/- per month. Total interim maintenance of Rs.15,000/- is to be paid from the date of filing of the petition. The payment can be by any suitable mode to reach the appellant within the first week of each English Calander Month failing which appellant to realize the same through the process of the Court. This interim order is to remain in force subject to the final disposal of the case.

Pronounced the judgment in the open court today, this the 28th day of August - 2017 under my signature and the seal of the court.

Dictated & corrected by me

Addl.SessionsJudge,
Bhubaneswar

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Bhubaneswar

