

Misc. Case 435 of 2023**Riya Mondal vs Sumit Ghosal and three others****Present: Amrita Banerjee (WB01337)****Judicial Magistrate 2nd Court, Asansol****Order dated 04.06.2024**

Today is fixed for clarification.

Both parties file hajira.

Heard the Ld. Advocates for both the sides.

Now the record is taken up for passing order in respect of petition dated 21.08.2023 filed under Section 23 of the PWDV Act.

Petitioner's case in brief:

It is the case of the petitioner that she is the wife of the respondent no.1 Sumit Ghosal and their marriage was solemnized on 20.09.2022 as per Hindu rites and customs at Ghagarburi Mandir, Asansol. There was love affair between the petitioner and the respondent no. 1 for six years before their marriage and they had physical relationship during this period and the respondent no. 1 assured to marry the petitioner whenever they had physical intercourse. On 19.08.2022, the respondent no. 1 refused to marry the petitioner and for that reason, the petitioner lodged a complaint before Jamuria PS being Jamuria PS case no. 422/2022 dt. 26.08.2022. After lodging of the complaint, the respondents approached the petitioner's father and requested for the marriage of the petitioner under respondent no. 1. As per the respondents', the petitioner got married to the respondent no. 1 on 20.09.2022 at Ghagarburi Mandir, Asansol. Before the marriage, the family members of respondent no. 1 obtained anticipatory bail and after marriage, the respondent no. 1 obtained anticipatory bail on 26.10.2023 by stating in an affidavit that he had married the petitioner and attached marriage certificate issued by the temple authority. After obtaining bail, the respondent no. 1 started to reside with the petitioner at Babupara, Hijalgora under Jamuria PS at the shared/matrimonial house of the petitioner. After passing of few days, the respondents started physical and mental torture upon the petitioner demanding dowry. When the petitioner's father visited the petitioner's matrimonial house, the respondents demanded cash of Rs. 5,00,000/-. The petitioner's father gave Rs. 2,00,000/- to the respondents but the respondents remained unsatisfied as the entire claim was not satisfied. The respondents used to tease and taunt the petitioner for non-payment of entire dowry amount and raised aspersion regarding the character of the petitioner. On 28.01.2023, the respondents assaulted the petitioner with fists, blows and kicks and drove her out from the matrimonial house in single clothing. On 20.09.2022, i.e. on the day of marriage, the petitioner's father gave gold ornaments of 7 bhoori. The respondents had retained those gold ornaments along with the cash amount of Rs. 2,00,000/- and other stridhan articles of the petitioner and refused to return the same to the petitioner. Since, 28.01.2023, the petitioner has staying at her paternal house and she has no income to maintain herself. The petitioner says that the respondent no. 1 is working as a freelance

photographer and has his own studio at Puratan Hattola under PS Jamuria under the name and style 'Lakshmi Video' and earns Rs. 18,000/- per month. It is further stated that the respondent no. 1 also runs a variety store under the name and style 'Lakshmi Variety' and also earns Rs. 25,000/- per month from the variety store and thus, the respondent no. 1 has monthly income of Rs. 43,000/-. The respondent no. 1's elder brother is an adult person and has his own earning and the respondent no. 1's father is a retired school teacher and the respondent no. 1 has no liability to maintain any of his family members. It is also stated that the respondents have their own two storied house at Puratan Hattola under PS Jamuria and also at Babutola Hijalgora under Jamuria PS. It is further claimed that the petitioner's father have incurred an expenditure of Rs. 5,00,000/- as per the demand of the respondents to complete the studio and variety store of the respondent no. 1 and the house situated at Puratan Hattola under PS Jamuria. By filing the instant petition, the petitioner has sought protection order along with interim monetary relief of Rs. 15,000/-, permission to reside at the shared household and a direction upon the respondents for not disposing the stridhan articles and return of stridhan articles.

Case of the Respondent:

The respondent no. 1 has filed their written objection and admitted his marriage with the petitioner. The respondent no. 1 has denied the material allegations brought by the petitioner against him in his application. The respondent no. 1 has stated that his father had retired as a primary school teacher. The respondent no. 1 stated that a love affair was their between him and the petitioner for two years and since July 2022, the petitioner created pressure upon the respondent no. 1 to marry her and as the respondent no. 1 was unemployed, he did not agree to marry her. It is alleged that the petitioner's father along with some anti-social persons forced the respondent no. 1 to marry the petitioner and when the respondent no. 1 did not agree, they filed a false case against the respondents for which the respondents obtained bail. On 20.09.2022, the petitioner's father with some anti-social persons took the respondent no. 1 to Ghagarburi Mandir at Asansol and compelled him to marry the petitioner. On 15.02.2023, the petitioner filed an application before Ld. District and Sessions Judge, Paschim Bardhaman for cancellation of his bail stating that the respondent no. 1 forcefully took the petitioner to Ghagarburi Temple and took some photographs and drop the petitioner at her paternal house on that day. It is further alleged that subsequently the petitioner filed a false case u/s 156(3), Cr.P.C. against the respondents u/s 498A/406/325/34 of IPC. He alleged that the petitioner always misbehaved with the respondents. He says that he has no income and the respondent no. 2 i.e. the father of the respondent no. 1 has the responsibility to maintain all the family members out of his small income. It is further stated that the respondent no. 2 has ownership over 1/7th portion of plot no. 3914 and 4088, Khatian no. 7031, J.L no. 14 under Jamuria PS. He further stated that he is a daily labour and earns Rs. 3,000/- per month and works on no work no pay basis. It is further stated that he is suffering from health problems. He alleged that the

petitioner is a private tutor and a makeup artist and earns Rs. 15,000/- per month. It is further stated the petitioner has filed this case to harass the respondents.

During hearing, Ld. Advocate for the respondent no. 1 has filed certain documents relating to the income, medical treatment and family tree of the respondent no. 1 along with some photographs of marriage and profession of the petitioner.

The petitioner and the respondent no.1 have filed their affidavit-of-assets.

In the affidavit-of-assets, the petitioner has stated that she has no income.

In his affidavit-of-assets, the respondent no.1 has stated that he is a daily labour and his monthly income is Rs.3,000/- per month.

Perused the materials on record.

Considering the case record, it is found that the pleadings of the petitioner prima facie discloses occurrence of domestic violence. The Domestic Incident Report is not yet received by this Court. Both the parties bring allegation and counter-allegations which is to be adjudicated after the adducing of evidence.

As it is an admitted position that the petitioner is the wife of the respondent no.1 and the pleadings of the petitioner prima facie disclose occurrence of domestic violence against the petitioner by the respondents and considering the fact that the respondent no.1 is not paying any amount to the petitioner for her maintenance and the petitioner is not residing at her matrimonial house, this Court is of the view that the petitioner is entitled to get protection order along with interim monetary relief as interim maintenance allowance.

In the instant case, the respondent no.1 has stated in his affidavit-of-assets that his monthly income is Rs.3,000/- per month . Considering the status of the parties as reflected from the materials on record, reasonable need of the petitioner, the financial capacity of the respondent no.1 as reflected in his affidavit-of-assets and the medical documents filed by the respondent no. 1 and the spiraling inflation rates and increasing cost of essential commodities, I am of the opinion that a sum of Rs.2,000/- per month would be a reasonable amount for meeting the needs of the petitioner such amount would not cause hardship upon the respondent no.1. So far the other relief are concerned, this court is of the view that the petitioner is entitled to protection order as the pleadings prima facie disclosed occurrence of domestic violence. The petitioner is also entitled to get relief in respect of residence and as the pleadings disclosed that she is already ousted from her matrimonial house and the matrimonial house is a shared household, the respondent no. 1 has a duty to arrange similar kind of residence for the petitioner in default of which he is liable to pay an amount for rent of accommodation of the petitioner. The reliefs regarding stridhan articles will be adjudicated at the time of final adjudication of this case and during the pendency of the trial for this case, the respondents are directed not to alienate any belonging or property of the petitioner.

Hence, it is

ORDERED

that the petition filed u/s 23 of the DV Act dated 21.08.2023 filed by the petitioner for interim relief is allowed in part without cost.

The respondents are prohibited from committing any act of domestic violence against the petitioner.

The respondent no.1 namely Sumit Ghosal is directed to make monthly payment of Rs. 2,000/- per month to the petitioner as interim monetary relief/maintenance allowance from the date of filing of the instant petition i.e. 21.08.2023 till this order is canceled or modified in future or till the disposal of the case.

The respondent no.1 is hereby directed to pay such maintenance allowance at the aforesaid rate to the petitioner in every month within 10th day of each succeeding month as per English calendar in which it falls due, failing which the petitioner is at liberty to put this order in execution.

The respondent no.1 is directed to pay the arrear maintenance allowance starting from August 2023 to May 2024 in two equal installments within two months from the date of passing of this order, payable on every month till payment of all the arrear amount is cleared as per English calendar month.

The respondent no. 1 is further directed to secure same level of alternate accommodation for the petitioner as enjoyed by her in the share household and to pay rent of the same and on failure to arrange the same, he is directed to pay a sum of Rs. 1000/- per month to the petitioner.

The respondents are hereby restrained to alienate any belonging or property of the petitioner until further order or final adjudication of this case.

Let a copy of this order be given to the petitioner free of cost.

Let another copy of this order be sent to the Protection Officer.

To 06.09.2024 for evidence.

Dictated and corrected by me,

Sd/-

Judicial Magistrate 2nd Court,
Asansol, Paschim Bardhaman

Sd/-

Judicial Magistrate 2nd Court,
Asansol, Paschim Bardhaman