

**IN THE COURT OF JUDICIAL MAGISTRATE, 3RD COURT,
ASANSOL, PASCHIM BARDHAMAN**

Present: Sri Abhishek Manna (J.O code: WB01159)
Judicial Magistrate
3rd Court, Asansol

Misc Case No. 202/2022
CNR No. WBB16-010519-2022

Sikha Srivastava -vs- Om Prakash Srivastava & 5 others

Order Dated: 06.12.2022

The aggrieved petitioner, Sikha Srivastava moves the prayer for interim relief under section 23 of the Protection of Women from Domestic Violence Act, 2005 by virtue of an Affidavit sworn in by the petitioner u/s 23(2) of the Act.

The case in a nutshell is that the marriage between the petitioner and the respondent no.1, Om Prakash Srivastava was solemnized as per Hindu rites and customs. At the time of marriage various 'stridhon articles' including cash amounts, gold ornaments and other house hold articles were given to the respondents as per their demand. After marriage, the petitioner was taken to her matrimonial home where she started living with respondent no.1 as husband-wife. The respondents demanded more dowry. Their demand converted into physical and mental torture upon her. The intensity of torture increased day by day. Subsequently, after many incidents of indifference cruelty and infliction of mental and physical torture, ultimately the petitioner was driven out of her matrimonial home. Since then she is living separately. The respondent no.1 did not show any interest towards his relation with the petitioner. He neglected his wife/petitioner in various forms and abused her. The petitioner also asserted that the respondent no.1 is an employee of ALKEM LABORATORIES LIMITED and earns Rs. 55,000/- per month whereas she is unemployed lady having no source of her own income.

The Aggrieved Person/ Petitioner has therefore prayed for a direction prohibiting the respondents from committing any act of

Misc Case No. 202/ 2022

CNR No. WBB16-010519-2022

Contd... order dated 06.12.2022

domestic violence and direction towards the respondent no.1 to pay monetary compensation per month and others relieves as per the claim of her petition.

The respondents appear by filing vakalatnama and has also filed a Written Objection denying the allegations made by the Aggrieved Person/ Petitioner in her petition. The Opposite party contends that all the statements made by the complainant in the Petition are far away from the real facts and are devoid of truth.

Ld. Advocate for the petitioner while moving the instant application for interim relief has submitted inter alia that the petitioner was subjected to domestic violence and now living in separate house. She has no sufficient income of her own whereas the O.P earns huge profits from his employment. Hence he prays as per the claim of this petition at this interim stage.

Ld. Advocate for the O.P submits inter alia that the petitioner was never been subjected to any form of domestic violence. After marriage the petitioner stayed with her husband and thereafter she voluntarily left her matrimonial home. He submits that the O.P earns about Rs. 25,000/- per month. He prays for rejection of the instant petition.

Now, let me see what amounts to 'domestic violence' and whether the case put forward by the petitioner comes within ambit of the definition. Section 3 of the Act defines "domestic violence". It reads as follows;

"For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-
(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do

Misc Case No. 202/ 2022
CNR No. WBBD16-010519-2022

so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.- For the purposes of this section,-

(i) " physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) " sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) " verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) " economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes" domestic

Misc Case No. 202/ 2022

CNR No. WBBD16-010519-2022

Contd... order dated 06.12.2022

violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

The definition of domestic violence as jotted above is very wide in its scope. It takes within its fold different acts including physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. Now, the question that crops up is whether the allegations as outlined in the petition make out a case as presented by the petitioner before this court or not. What would be the standard of proof at this stage of interim hearing regarding the allegations stated in the application? Section 23 of the Act is relevant in this regard. It reads as follows:

“23. Power to grant interim and ex parte orders.-(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.”

The plain reading of the provision goes to show that the magistrate has to satisfy himself as regards the existence of a prima-facie case in the factual set-up projected by the petitioner/applicant on the basis of an affidavit. In its literal sense, 'prima facie' means on the face of it. The expression 'prima facie' is often used in common parlance to mean 'on first blush' or 'on first impression', without deriving a conclusive meaning. Therefore, if the allegations depicted in the application make out a case that falls among any of the category mentioned above, the court would then have to pass an order keeping in mind the object for which the Act was enacted. The tangled factual questions that may surface in the instant case would be dealt with according to the evidence led by the parties during trial. But, the legislative mandate as reflected under section 23 should be honoured by the court so far as the interim relief is concerned. The facts narrated in the application and supported by

Misc Case No. 202/ 2022

CNR No. WBBD16-010519-2022

Contd... 06.12.2022

the affidavit *prima facie* show that the applicant was subjected to physical abuse, verbal and emotional abuse and economic abuse at the hands of the respondent.

Thus, keeping in view the benevolent nature of the Act, the provisions under the act should be interpreted broadly. In **Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, (1985) II LLJ 539** the Hon'ble Supreme Court observed:- "The principles of statutory construction are well-settled. Words occurring in statutes of liberal import, such as social welfare legislations, and 'human rights' legislations, are not to be put in procrustean beds or shrunk to lilliputian dimensions. In construing these legislations, the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', 'content' and ' context' of such statutes".

Unless the contrary is shown by the respondent, the provision made in favour of the women will be interpreted in their favour. Since the burden upon the victim of domestic violence is to show by way of an affidavit that she was subjected to domestic violence, the court would pass the order at the interim stage which appears to be justified and necessary. In the instant case, the petitioner has alleged that the petitioner was tortured by respondent and she has filed an affidavit to that effect. She has thus met the terms of the requirement of law as contemplated under section 23 of the Act.

In view of the above facts and circumstances this court finds that it is reasonable for the interest of justice to allow this petition in part and allow the prayer in part in the manner stated in the prayer portion of the

Misc Case No. 202/ 2022

CNR No. WBBD16-010519-2022

Contd.....06.12.2022

petition. Accordingly, the prayer under section 23 is considered and allowed in part.

The respondents are hereby directed to refrain from causing any type of torture/domestic violence whatsoever on the petitioner.

Considering all other aspect this court feels that there is some requirement of monetary relief u/s 20 at this stage of proceeding.

The respondent no.1, Om Prakash Srivastava is directed to pay Rs. 8,000/- (Eight Thousand only) per month to the petitioner as interim monetary relief from this day of order. The respondent no.1 is further directed to pay the said sum of interim monetary relief to the petitioner by the 7th day of each month following the month for which it falls due, failing which the petitioner will be at liberty to realise the said amount as per law. This amount is adjustable with any other sum payable by the O.P, Om Prakash Srivastava to the petitioner as monthly maintenance by virtue of other statute. All the other prayers are rejected at this interim stage.

The officer-in-charge of the concerned local Police Station is hereby directed to provide all necessary legal assistance to the petitioner so that the order passed herein be implemented by the respondents. Let a free copy of the order be given to the petitioner, respondent and O/C concern PS free of cost for compliance.

Thus prayer under section 23 of the Act is allowed in part.

To for evidence.

D/C by me.

J.M. 3rd Court, Asansol