

Criminal Appeal No. 230 of 2023

Filing No.1223/2023

CNR No. WBCS01-001224-2023

Order No.05 dated 21.01.2025 :-

Today is fixed for hearing of the instant appeal.

Ld. Advocates for the appellant as well as the respondent are present.

The Ld. Advocate for the appellant has filed a petition praying for an order staying operation of the impugned order and judgment dated 18.10.2023 passed by the Ld. 3rd M. M., Calcutta.

Heard both the sides on the stay petition.

It appears that the instant appeal challenging the impugned order/judgment dated 18.10.2023 was admitted by the Ld. Chief Judge on 19.07.2024. Since the appeal is admitted, there should be a stay of operation of the impugned order otherwise the appellant shall be prejudiced.

However, it is pointed out that in the instant case u/s 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to PWDV Act) there is an order upon the appellant/husband to pay Rs.15,200/- per month to the respondent/aggrieved lady and her minor son and a further order to pay an amount of Rs.8,000/- per month in the event the appellant fails to secure alternative accommodation for the aggrieved lady and her minor son.

It is submitted by the respondent/aggrieved lady that the appellant neglected to pay the money directed by the Court towards maintenance or alternative accommodation for which an execution case is pending against him.

The Ld. Advocate for the appellant submitted that with a meagre income of Rs.26,382/- per month, it would be difficult on his part to pay the entire amount of maintenance and alternative accommodation as directed by the Ld. Court below.

I do not find any finding of actual income of the appellant in the impugned order apart from the amount of Rs.26,382/- per month as claimed by the appellant and reflected at page 7 paragraph 15 of the impugned order. Moreover, it is admitted by the aggrieved lady that she is working as an Assistant Teacher at Mahadevi Birla World Academy. It is also observed at paragraph 15 page 7 of the impugned judgment that the parents of appellant/husband were not dependent on him.

Considering the facts and circumstances of the present case, it find it would be appropriate to stay the operation of the impugned order subject to payment of Rs.15,000/- per month to the aggrieved lady for maintenance as well as alternative accommodation for herself and her minor son.

Accordingly, the instant petition is allowed.

The operation of the impugned order shall remain stayed until further order subject to payment of Rs.15,000/- per month by the appellant to the respondent on account of maintenance as well as alternative accommodation payable by the 10th day of each succeeding month.

By a separate petition, the appellant prays for adjournment of hearing of the instant appeal.

Prayer is considered and allowed.

To **18.02.2025** for hearing of the appeal.

Let a copy of this order be sent to the Ld. 3rd J.M., Calcutta for information and taking necessary action.

Dictated & corrected by me.

Judge, Bench - II,
City Sessions Court,
Calcutta.
(JO Code-WB-00868)

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