

CNR No.WBHG09-001741-2024

W.B. Form No 3886.
H.C. Criminal Form No. (M) 17.

HEADING OF JUDGEMENT OF APPELLATE COURT
Court of Sessions/-Magistrate,
APPELLATE JURISDICTION.

Present : Sri Jagojyoti Bhattacharyya
(J.O. Code - WB00971)
Additional Sessions Judge,
Fast Track Court,
Chandannagar.

CRIMINAL APPEAL NO.16 OF 2024
(Arising out of Misc. Case No.359/2024)

DATE OF JUDGEMENT : 07TH MARCH 2026

Smt. Laxmi Santra

-- Appellant/wife.

-Vs-

1) Sri Manik Santra

2) STATE OF WEST BENGAL

-- Respondents

**Appeal under Sec. 29 of the Protection of Women from
Domestic Violence Act**

Ld. Advocates for :

The Revisionist-Petitioner: Sri Rajdip Sur

The Respondents: 1) Smt. Priti Shaw
2) Ld. P.P Sri Gopal Patra

J U D G E M E N T

1. The criminal appeal has been filed under
sec.29 of the **Protection of Women from**

Domestic Violence Act (in short PWDV Act) against the order dt.07.10.24 passed by the Ld. Judicial Magistrate, 3rd Court, Chandannagar, Hooghly in connection with Misc. Case No.359/24.

2. Precisely, it is the case of the appellant that she was married to respondent No.1 Manik Santra and their marriage was solemnized on 02.02.1999 as per Hindu Rites and Customs. After marriage she went to her matrimonial house and stayed with the respondent No.1 as husband and wife. Their marriage was consummated and she gave birth of her two children who have already attended their majority. Dispute cropped up since birth of her daughter i.e. on and from 17.06.2000. However, she had endured the same with an expectation of her better future, but day by day the situation had turned to be worst and her husband had physically assaulted her in presence of her children and drove her out from her matrimonial house. Lastly, on 15.09.23 she came to her matrimonial house getting the news of ill health of her husband, but she was again driven out from there. Since then she has been residing along with her mother. It is the further case of the appellant-wife that she has no means to maintain

herself, whereas the respondent No.1-husband has sufficient means and earns Rs.20,000/- per month. She has prayed for residential order under Sec.19 of the PWDV Act as an interim relief.

3. Ld. Court after considering the prayer of the appellant-wife was pleased to turn down the prayer, ex parte.
4. Feeling aggrieved by and dissatisfied with the impugned order appellant-wife has preferred this appeal.
5. During hearing of the appeal Ld. Advocate for the appellant has submitted that Ld. Trial court has failed to appreciate the case of the appellant-wife and without considering the case of the appellant-wife, learned Court has rejected her prayer. The appellant-wife who was in domestic relationship with the respondent No.1 and shared household, was compelled to withdraw herself. For which, she has prayed for her shelter, which too reasonable to consider, inspite of that the impugned court has not considered the same. The impugned court has failed to exercise her jurisdiction as envisaged under the provision of PWDV Act. The law has developed and now filing of DIR is not a condition precedent to entertain the prayer under Sec.19 of the

PWDV Act. The appellant-wife is in urgent need of shelter and her right is required to be protected by setting aside the order passed by the Ld. J.M, 3rd Court, Chandernagore.

6. In reply, learned counsel for the respondent has contended that in absence of DIR the Court is not in a position to prima facie held that the appellant-wife is the victim of domestic violence. Trial court has correctly passed the order as the matter is to be considered after trial. He has further claimed that the appellant-wife has married a Muslim and leading an unsocial life and the present appeal is not tenable in the eye of law.
7. Learned counsel for the State has left the case at the discretion of this court.

8. ANALYSIS: -

- a. Indisputably, the trial Court has passed the order in the interim stage only after considering the applications and the documents submitted by the appellant-wife. Therefore, there is mere scope to testify the veracity of the information supplied by appellant-wife. However, it is expected that the wife has disclosed the true fact and she has not suppressed anything, which in turn will help the Court to dispose of the application. Basing on the said information

in appeal this Court has to adjudicate the following facts:

- i. Whether the impugned Court has truly considered the case of the petitioner and respondent as per law.
 - ii. What order?
- b. Indisputably, the petitioner and respondent are in marital relationship, since 1999 and they have two children, who have already attended their majority and at present appellant-wife and respondent No.1-husband have been residing separately.
- c. It is the case of the appellant-wife that she was driven out from her matrimonial house in the year 2012 and subsequently on 15.09.2023 when she had gone to take information of her husband and she took shelter at her mother's house. The fact itself is disgusting for a wife and for a mother. However, the fact is subject of proof and at this stage there is mere scope of dissection. Without discerning the actual fact, it can be said that a wife has every right of residence in the shared household. In the case in hand after analysing the case of the prosecution it is understood that her very right of residence was affected which amount to 'domestic violence' as per Sec. 3

of the PWDV Act. Whereas the relief under Sec.23 of the Act may be entertained on the mere apprehension of commission of domestic violence and it is the primary object of the Act that the provision of the Act be interpreted to ameliorate the hardships that may be caused to hapless wives at the matrimonial homes and the Court should come to the aid of these helpless victims who may be destined to suffer silently.

- d. During the hearing of the present appeal learned counsel for the respondent-husband has emphasised on the point that no such prayer can be entertained in absence of DIR, but such a notion has already given a go by the Hon'ble Apex Court in its observation, *Prabha Tyagi v. Kamlesh Devi* (Criminal Appeal No. 511 of 2022, D/d. 12.05.2022, before Hon'ble justice M.R. Shah and B.V Nagarathna). It has been categorically held, that Sec.12 does not make it mandatory for a Magistrate to consider a DIR before passing any order under the PWDV Act.
- e. Further, the law has developed to such an extent that for a healthy and correct interpretation to Sec.2(f) and 2(s) of the Act, the question as to whether the women ever

lived in the shared household at any point of time after their marriage is of little significance; as held in *Vandhana v. T. Srikanth and Krishnamachari* (2007 SCC Online Mad 553).

- f. An aggrieved person has every right to reside in the shared household and she can accordingly enforce her right Under section 17(1) of the PWDV Act. If a woman becomes an aggrieved person or victim of domestic violence, seeking relief under the provision of the PWDV Act including her right to live or reside in the shared household under section 17 read with Section 19 of the PWDV Act. Hence the appellant-wife has every right to live in the shared household; that is, her matrimonial home and being a victim of domestic violence could enforce her right to live or reside in the shared household under the provision of the PWDV Act. This is irrespective of whether she actually lived in the shared household.
- g. Returning to the present case it is found that the appellant – wife was refused her right and she knocked the door of the Court, but the learned trial Court has failed to ameliorate her agony and turned down her prayer, which is totally uncalled for.

h. In the light of the observation made above,
it is;

ORDERED

that instant appeal is allowed on contest without any order as to costs.

The order dated 07.10.2024 passed by the learned Magistrate, 3rd Court is hereby set aside and the respondent-husband is directed;

- i. to accommodate her (appellant) in the shared household; or
- ii. to arrange alternative set of accommodation for her residence; or
- iii. to provide her Rs.3000/- per month as rent.

till the matter is conclusively decided by the learned trial Court.

In case of non-compliance of the order the appellant-wife is at liberty to execute it as per law.

Send back the TCR along with a copy of this Judgment at once to the Id. Trial Court.

Stay order or interim order if any passed by this Court during hearing of this appeal be vacated at once.

CNR No.WBHG09-001741-2024

Given under my hand and seal of this court on
this 07th day of March, 2026.

Dictated & corrected by me

Additional Sessions Judge,
Fast Track Court,
Chandannagar, Hooghly

Additional Sessions Judge,
Fast Track Court,
Chandannagar, Hooghly