

West Bengal Form No. 3702.
HIGH COURT FORM NO. (J) 3.

HEADING OF JUDGEMENT OF APPEAL.
DISTRICT : HOWRAH.

IN THE COURT OF SESSIONS JUDGE, HOWRAH.

PRESENT : Sri Subhash Kumar Kar
Sessions Judge, Howrah.
J.O. Code – WB00592

Criminal Appeal No.04 of 2026
C.N.R No. WBHW0100 0300 2026

Date of Delivery of Judgement:
This Monday the 13th day of July, 2026.

challenging the order dated 09.12.2025 passed by learned
Judicial Magistrate, 7th Court, Howrah in Misc. Crl Case
No.932 of 2025.

1. Prabir Kumar Dey &
2. Subhajit Dey.....Appellants.

– VERSUS –

- 1 Dola Dey.....Respondent No.1.
2. State of West Bengal.....Respondent No.2.

This appeal coming on this day (or having been heard on) in
presence of

Sri Saurav Ghosh.....Ld. Advocate for the appellants.
Sri Subhrajit Chatterjee..Ld. Advocate for the respondent No.1
Sri Ashok Saha.....Ld. P.P. in charge for the State

and having stood for consideration to this day, the
Court delivered the following.

J U D G E M E N T

1. The instant appeal U/s. 29 of the P.W.D.V. Act has been preferred by the appellant namely, Sri Prabir Kumar Dey and Sri Subhajit Dey (appellants herein) against Smt. Dola Dey (respondent No.1) and the State of West Bengal (respondent No.2) challenging the order dated 09.12.2025 passed by Ld. Judicial Magistrate, 7th Court, Howrah in connection with Misc. CrI Case No.932 of 2025.

2. The facts giving rise to this appeal are as follows:

2.1. That the respondent No.1 has filed an application U/s.12 read with Section 18/19/20/22/23 of the P.W.D.V. Act along with affidavit of assets and liabilities for granting interim monetary relief and protection order under Section 23 of the said Act and the Ld. Trial Court after hearing the respondent No.1 passed the order impugned.

3. Being aggrieved by and dissatisfied with the said order the appellants have filed this appeal on the grounds presented in the memo of appeal

POINT FOR CONSIDERATION

4. Whether the impugned order passed by Ld. Judicial Magistrate, 7th Court, Howrah dated 09.12.2025 in Misc. CrI Case No.932 of 2023 suffers from infirmity or patent illegality ?

DECISION WITH REASONS

5. At the time of hearing Ld. Advocate appearing for the appellant submitted that the interim protection order passed by the Ld. trial court suffers from infirmity as both the appellants are not allowed

by the respondent No.1 to enter into the residence and the said order was passed without serving any summons upon the appellants.

6. It is further submitted that the shared house hold of the respondent No.1 was purchased jointly in the name of the appellant and respondent No.1 and there is no question to oust her from the shared house hold and she is residing there even after filing of the said Misc. Crl Case and no incident of domestic violence took place in the said shared house hold and it is prayed to set aside the said order and to issue necessary direction upon the Ld. trial court to hear the said petition afresh in presence of both sides.

7. On the other hand Ld. Advocate appearing for the respondent No.1 submitted that the said interim order was passed on extreme urgency in absence of the appellants and the Ld. trial court has passed reasonable order providing protection to the respondent No.1 to save her from the domestic violence as inflicted upon her by the appellants and if the present order is modified or varied or set aside she will suffer an irreparable loss and injury and it is prayed to dismiss the appeal.

8. Under Section 23(2) of the P.W.D.V. Act 2005 the Magistrate is empowered to pass an ex parte order for interim relief if it prima facie appears 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 an affidavit in such form as may be prescribed of the aggrieved person U/s.18/19/21 or as the case may be under Section 22 against the respondent.

9. On perusal of the order impugned it appears that the said order was passed ex parte as it was submitted on behalf of the respondent No.1 that she is in need of an order, on immediate basis, so that she may be protected from any kind of domestic violence any further.

10. On perusal of the record it appears that respondent No.1 filed an application U/s.23 of P.W.DV. Act praying for interim relief supported by an affidavit and the Ld. trial court heard the same in absence of the appellant relying upon the affidavit filed by the respondent No.1.

11. There is no doubt to hold that the pleadings raised in the petition are pertaining to question of facts and cannot be decided on affidavit unless evidence is taken on such pleas.

12. It appears from the documents submitted by the appellant that the respondent No.1 is the joint owner of the shared house hold and she has every right to reside there under the law and therefore, I am not interfering with the residence order passed by the Ld. Magistrate at this stage.

13. So far the protection orders are concerned, I am of the view that all are of interim in nature and there is a chance of vary, modification or setting aside of the order when the application will be heard in contested form.

14. In the result the instant appeal fails.

C.F. paid is correct.

Hence, it is,

ORDERED

that the instant Criminal Appeal being No. 04 of 2026 be and the same is dismissed on contest but without any order as to the cost.

Accordingly, the impugned order dated 09.12.2025 passed by learned Judicial Magistrate, 7th Court, Howrah in Misc. Crl Case No.932 of 2025 stands affirmed with a direction upon him to dispose of the petition U/s.23 of the P.W.D.V. Act pending in Misc. Crl Case No.932 of 2025 within two months from the date of the communication of the order after giving an opportunity of being heard to both sides.

Thus, this Criminal Appeal stands disposed of.

Let a copy of the judgment along with T.C.R be sent to the Ld. Magistrate, 7th Court, Howrah for information and necessary action.

Dictated & corrected by me

Sessions Judge,
Howrah

Sessions Judge,
Howrah