

Misc Case No.01/2023**Order dated 25.07.2024**

Today is fixed for hearing.

Both parties have filed hazira.

Now the record is taken up for hearing.

Heard the Ld. Lawyer for the aggrieved party.

That the aggrieved party is the legally married wife of the respondent No.1 and their marriage was solemnized on 30th April 2021 according to Hindu rights and customs. Before marriage there was a love affairs between them and then it was negotiated by both the families. That the said marriage was being registered under the provision of Sub Section 8 of the Hindu Marriage Act, 1955 before the Marriage Register Officer and after the marriage the aggrieved party started to live at the residence of her husband at 17/2/1, L Road, Belgachia, P.O: Netajigarh, P.S: Liluah, District-Howrah-711108. That at the time of marriage, as per the demand of the respondents, the aggrieved party 's father gave cash of Rs. 4,00,000/- (Rs. Four Lakhs) only and after the marriage she went to her matrimonial home 17/2/1, L Road, Belgachia, P.O - Netajigarh, P.S - Liluah, District - Howrah, 711108 along with above mentioned cash but she had no control or access to the above mentioned cash. After marriage the aggrieved party was subjected to physical, verbal & emotional and economic abuses on demand of more dowry. Thereafter the respondents creating pressure upon the aggrieved party to hand over the all belongings which was given by her father at the time of marriage to the Respondent No. 3 i.e., the mother-in-law and since then all belonging are in the custody of the respondent No. 3. The respondent No.2 (Father-in-law) since marriage disliked the aggrieved party as she is belongs to a background of Non-Bengali Family. Moreover, the respondent No.1 was addicted to liquor and everyday he returned home in intoxicated condition and abused her with filthy language and assaulted her physically. The respondents always created pressure upon the aggrieved party for bring the more money from her father but on refusal they became more furious and assaulted her mercilessly. And the other family members of the Respondent No. 1 i.e. Respondent No. 2, 3, 4 and 5 always taunt her by saying "Non Bengali mero bacha" and they all don't allow her to go in her paternal house even not allow her to communicate with there parents. The respondent No. 2 assaulted the aggrieved party mercilessly for want of more dowry even does not allow the aggrieved party to enter into the kitchen and also does not allow her to talk with

Cont'd...

anybody. But the aggrieved party did not say anything with fear. In the month of August 2021, the Respondent No. 2 and 3 with the respondent No. 4 (uncle-in-law) assaulted the aggrieved party with fist and blows to bring of Rs.2,00,000 (Two lakh rupees only) and at that time the aggrieved party was rescued by the respondent No. 1 and went to the police station for lodging GD. That on 21.06.2022 at about 6.00 pm the aggrieved party and her father went to the house of the respondents for settlement but the respondents were so arrogant and they claim 25,00,000/-(Twenty Five lakhs) rupees from the father of the aggrieved party and said that only after receiving the said amount the aggrieved party will be allowed to stay with them otherwise she will not have any place in her matrimonial house but when the aggrieved party refused their demand, suddenly in front of the aggrieved party 's father the respondents pushed the aggrieved party on the floor and the respondent No.1 choked the throat of the aggrieved party and tried to murder her but somehow the aggrieved party 's father saved her and they both were driven out without taken aggrieved party stridhan cash money which is lying in the custody of the Respondents. Presently, the aggrieved party has no source of income of her own and she is completely dependent on her family members whereas the financial condition of her family member is very unstable. That the aggrieved party has no permanent residence as well. She hardly manages to stay at the house of the father with lots of difficulty. There is shortage of accommodation. She needs residence urgently and She took rent from the month of January, 2023, and the rent of that flat is Rs.6000 (six thousand) only per month.

The respondents raised strong objection and stated in their written objection but they admitted the marriage but denied all the allegation by the aggrieved person/wife and submitted that it was a love marriage, and her parents was totally against their marriage and their case was also different, as such the parents of the aggrieved party did not accept the marriage of the aggrieved party with a Bengali boy, so no question arise to give cash Rs. 4 Lakh to the respondents, it is totally false an baseless allegation. The respondent belongs to a lower middle class family, their marriage was love marriage, the aggrieved party got married with the respondent No-1 after satisfied of his income and the stander of living of the respondents. Respondent No-1 is working in a office near AC market at Golabari and the respondent only earn Salary of Rs.8,000/ - per month, whereas the aggrieved party is an earning lady and she earns more than the respondent No-1 since long, during their love affairs the aggrieved party and the respondent No-1 planed that they will lead a happy conjugal life by both their

Cont'd...

earned money as a middle class family, but after marriage, the aggrieved party denied to accept the respondents status and his income and his living standard, she created pressure upon the respondent No-1 to stay separated apart from his parents and she got one rented room near by her parents' house soon after her marriage, and she used to reside there and the respondent No-1 used to stay with her in the said rental room. That the aggrieved party cause domestic violence and mental torture upon the respondent No-1 and others respondents No 2 to 3, and very soon after the marriage, She started notorious activities and adamant activities. Gradually the matrimonial relationship between the aggrieved party and the respondent No-1 became sour. The aggrieved party most of the days had her dinner alone and went to sleep without giving food to the respondents. The aggrieved party always demanded money from the respondent No-1 without showing proper reason of expenses, while the respondent No-1 asking about the reason, she became rude. The respondent used to purchase all the groceries and other materials, needed in the household. Yet there was tremendous pressure for money from the respondent No-1. The respondent No-1 could not satisfy aggrieved party's demand as he had to manage with his budget and low income. The respondent No- 2 & 3 also depend upon the respondent No-1 and his salary. This application made by the aggrieved party is only to squeeze money from respondent No-1. The aggrieved party is well educated and she earned handsome income in a month. The aggrieved party also done beautician course from Calcutta and she is makeup artist and she done bridal makeup and she also completed course of fashion designing. Hence it is very clear that she can maintain herself very well by her own income. The aggrieved party is having huge bank balance and post office saving, from which she earned huge income in a month and her average monthly income approx. Rs 25,000/- to 28,000/- per month but instead the aggrieved party wants free money without any hassle. The aggrieved party also demanded for litigation expenses, where the irony is respondent should demand litigation expenses where the respondent had to borrow Loan to meet with the high expenses towards the false cases filed by the aggrieved party u/s 498A IPC and other cases. Her false case U/s 498A FIR and other cases committed troubles and depression and mental agony for respondent's aged parents and his other family members. That aggrieved party claim monetary relief of 20,000/- per month demanded from respondent No-1 is also a mental torture upon the respondents. That the respondent No-1 is the sole earner of his family. The respondent No-1 has to bear maintenance of his aged father & mother/respondent No-2 & 3, she is

Cont'd...

a patient and now under treatment, The respondent No-2/father of the respondent No-1 is a heart patient and related disease like thyroid, eye problem, nerve and bone problem. For this reason the respondents have a huge monthly expense towards medical bills. The wife/aggrieved party always humiliated the respondent No-1 for his low income. Her all words, behavior caused severe mental stress upon him and his family. She/ aggrieved party demanded costly cosmetics and other objects from the respondent. The respondent No-1 showed his incapability and explained that the respondent No-1 would fetch those things some days later. But she wanted them instantly. She started quarreling. She abused the respondent with filthy languages and insulting words. She always tried to go in her parental home off and on. The respondent has fulfilled all the demands of his wife in his meagre income but she is ever unsatisfied woman and being fond of luxurious life, she forced him to meet all the demands by taking cash loans from his friends and relatives. Even then she remained dissatisfied. Few days from their marriage, his wife started quarreling and she abused him. That the wife/aggrieved party has willfully deserted from her matrimonial life and withdraws herself from the company of her husband and the society of the respondent no.1 /husband. The Op No-1 tried to reconcile with her but all his efforts went in vain. Her father Uma Shankar Pandey is the accused of several criminal cases, like Arms Act and dacoity case, but all those things were discovered after the marriage of the respondent No-1, the aggrieved party always putting fear to the respondent No-1 and other respondents that her father having several criminal record and he has good connection with all the criminals in Howrah District, any time he can finish them, if he wants.

On perusal it appears that the marriage is admitted by the respondents though they have specifically denied all the other allegations given by the aggrieved party. Both the parties have also agreed on the date of separation i.e. 21.06.2022. The aggrieved person has submitted that the respondent no. 1 has an income of Rs. 30,000/- per month whereas the respondent no. 1 has submitted that he earns Rs. 8,000/- per month (a certificate has also been submitted by the respondent no. 1 issued from his office). The aggrieved party has submitted that her residential address is 1/161 Mirpara Road, Liluah Howrah which is her parents house whereas she has shown Rs. 6000/- as rent in her monthly expenditure. It is pertinent to mention here that in the main application she has also mentioned that she will be staying on rent from January, 2023 but her present address is still her father's house. Even though she

Cont'd...

is staying at her father's house, she has claimed that she has monthly household expenditure like food and grocery/food items for Rs. 7000/-, water Rs. 450/-, electricity Rs. 900/-, TV Cable 330 and Gas Rs. 1100/-. The respondent no.1 has filed a proper document showing that aggrieved party has a two wheeler in her name and the same is also admitted by her under her moveable assets though she has shown Rs. 3000/- in her monthly expenditure as transportation charge by auto/ *toto*. Rs. 1500-monthly is also shown as monthly medical expenditure by the aggrieved party without any medical documents. She has no child but she has shown Rs. 500/- as pocket money/ allowance. Both the aggrieved person and the respondent has submitted all these facts with proper affidavit.

Even though the aggrieved party has submitted that she has no sufficient income to support herself, the respondent no.1 has submitted a document issued by the Oppo, Wanshan Mobile Private Ltd. i.e. the employer of the aggrieved party in favour of the aggrieved party dated 04.04.2024 showing her total earning is Rs. 9769 and after deduction his net pay is Rs. 8828/-. The respondent no. 1 has also filed a written complaint in the name of the aggrieved party to the commissioner of police. In her application the aggrieved party has stated that “ the other family members of the Respondent No. 1 i.e. Respondent No. 2, 3, 4 and 5 always taunt her by saying "Non Bengali mero bacha" and they all don't allow her to go in her paternal house even not allow her to communicate with there parents” but the aggrieved party is a bengali, whereas, the respondent is non-bengali, so it is not possible that the aggrieved party was taunted by the same.

The definition of domestic violence as jotted in section 3 of the The Protection of Women from Domestic Violence Act, 2005 (PWDV Act) 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. Under Sec. 23, Magistrate may pass such interim order as he/she deems just and proper for any proceeding before him/her under this Act. 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/she may grant an 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.

Cont'd...

The plain reading of the provision goes to show that the magistrate has to satisfy himself/herself as regards the existence of a prima-facie case in the factual set-up projected by the aggrieved party /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 under section 3 of the Act, 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 have surfaced in the instant case from the pleadings of the contending parties would be dealt with according to the evidence led by the parties during trial. It is apparent that the aggrieved party only stayed a few months at her matrimonial home and there is no clear proof that the aggrieved party was subjected to physical violence, verbal and emotional abuse and the aggrieved party has also failed to establish a prima facie case in her favour. Both the parties have submitted their affidavit of assets and liabilities but they have submitted different facts in their affidavit of assets and liabilities. Presently, this case is standing on the submission of the aggrieved party on oath versus the submission of the OP on oath. Different documents have been submitted by the parties showing contradictory facts other than the fact submitted in the affidavit of assets and liabilities. The aggrieved party has stated many uncorroborated facts and mainly suppressed the fact that she has no income even though the respondent no. 1 has submitted a pay slip in her name. So, there is no doubt that one of them is either lying or misrepresenting the fact before this court. In this situation, if an order is passed there is a high chance that it would be prejudicial for the adversary party. Under such circumstances without considering the evidence and proper documentary proof it seems to be impossible for the trial court to return a specific finding that the the aggrieved party was subjected to physical violence, verbal and emotional abuse by the respondents, whereas it has been specifically submitted that the aggrieved party has willfully deserted the respondent no. 1.

Moreover, the respondents have appeared in this case and filed a written objection along with the affidavit of assets and liabilities, so this instant case absolutely ready for evidence.

Cont'd...

Here is to be noted that no D.I.R. has been submitted by the protection officer and there is no prima facie proof that shows that the applicant was subjected to physical violence, verbal and emotional abuse at the hands of the respondents except the family drama. The other allegations if any are subject to final hearing and can not be determined at this stage without considering proper evidence and thus this court is not going to comment on anything with that regard.

Accordingly, the prayer under section 23 is considered and refused at this stage. All the reliefs prayed by the aggrieved person are to be decided after consideration of the evidence.

Let a copy of this order be sent to the Protection Officer for his/her perusal.

Let a free copy of the order be given to the aggrieved party and O/C of concerned P.S. free of cost for compliance.

Fix 21.11.2024 for evidence.

Dictated and correct by me

Sd/-

Judicial Magistrate,

1st Court, Howrah

Sd/-

(Disha Barai)

(JO Code WB01420)

Judicial Magistrate,

1st Court, Howrah

Cont'd...