

Misc case 366 of 2020
C.N.R. No.WBHW04-002820-2020

ORDER DATE: 23.07.2024

Record is fixed today for order in respect of an application under section 23 of the Protection of Women from Domestic Violence Act, 2005 filed by one Bandana Shaw (nee Shaw) against her husband/respondent namely Sanjeev Kumar Shaw.

Both sides have filed their respective haziras.

Now, the record is taken up for passing order in respect of petition under section 23 of the Protection of Women from Domestic Violence Act, 2005.

The aggrieved person submits that her marriage was registered on 22/01/2013 with respondent namely Sanjeev Kumar Shaw according to Special Marriage Act. After her marriage the aggrieved person went to her matrimonial home but the respondent and his family members demanded dowry of Rs.15,00,000/- from the aggrieved person for buying a house in their joint names. However, the family members of the aggrieved person managed to give Rs.5,00,000/- in the name of the respondent, his brother and his father. Being pressurized by the respondent and his family members, again the aggrieved person gave Rs. 3,90,000/- and also Rs.4,00,000/- was paid in cash for gold jewelry and furniture to the respondent. However, the aggrieved person came to know that the house was purchased by the respondent in the name of her brother in law namely Niraj Kumar Shaw and the respondent returned Rs.1,40,000/- to the father of the aggrieved person. At the time of marriage the petitioner was a working woman but due to pressure by the respondent, the aggrieved person left her job on 15/06/2016 and started her conjugal life with her husband. Thereafter, the respondent and his parents further demanded dowry of Rs. 2,00,000/- from her parents and as they refused to pay the same, she was driven out from her matrimonial home and she resides at her paternal home. Later due to lack of accommodation the petitioner started to reside in a rented flat. Unable to find any other option, the aggrieved person filed a Misc. Case being no. 325 of 2017 at ACJM, Barrackpore which was later on dismissed for default.

The aggrieved person further stated in her petition that she has no income of her own. On the other hand, the respondent is a Manager in SAIL and earns Rs.2,00,000/- per month. The aggrieved person prays for interim monetary relief of Rs.35,000/- per month for herself.

The aggrieved person has filed her Affidavit of Assets and Liabilities which is also perused by this court.

The respondent has filed their written objection and also filed the Affidavit of assets and liabilities. By filing the written objection, the respondent has rebuffed the whole case of the aggrieved person as a pack of lies. The respondent admitted the fact of marriage. The respondent submits that the respondent several times asked the aggrieved person to live with him but the aggrieved person did not pay any heed to such requests. The respondent further submits that during marriage, the aggrieved person got several jewelries and dresses from her in-laws of amounting to Rs.3,50,000/- and she always turned violent and began to misbehave with the respondent and other in-laws of her matrimonial home. On 26/02/2017 the aggrieved person stayed with the respondent/husband but his in-laws came on the next day morning on 27/02/2017 and lodged a GDE being no. 149 of 2017 at Golabari PS on false and frivolous ground against the respondent and his family members. On April, 2017 the parents of the respondent went to the house of the aggrieved person but she was not interested to lead her conjugal life with the respondent and finding no other alternative, the respondent filed a Mat Suit being no. 335 of 2019 against the respondent which is pending before the ADJ, 4th Court at Howrah for disposal. Hence, he prays for dismissal of the application under section 23 of PWDV Act filed by the aggrieved person.

Now, let me see what amounts to 'domestic violence' and whether the case put forward by the aggrieved person 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 so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

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(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 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 aggrieved person 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. (2) 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

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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 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. 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 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 respondents, 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 aggrieved person has alleged that she was tortured by respondents 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. The photocopies of the documents filed by parties cannot be relied on by this Court at this stage as they are required to be proved by relevant evidence.

In this case, the aggrieved person is the wife of the respondent and they lived their conjugal life in a shared household. It means that there is a domestic relationship between them. The aggrieved person had filed GDE being no. 149 of 2017 at Golabari PS as well as the DIR submitted before the Court, it appears *prima facie* that the aggrieved person was subjected to domestic violence. Hence, the aggrieved person in this instant case are *prima facie* aggrieved persons in terms of PWDV Act.

It further appears both sides have filed their affidavit of assets and liabilities and the aggrieved person has stated in her petition as well as the affidavit of assets and liabilities that she has no income. The aggrieved person has stated in her Affidavit of Assets and liabilities that the respondent earns Rs.2,50,000/- per month as a Manager in Steel Authority of India Limited and from other source a but no document has been filed to substantiate the same. Further, it appears from the affidavit of assets and liabilities submitted by the respondent wherein he has stated that his income is Rs.1,16,000/- per month. The respondent further stated in his affidavit of assets and liabilities that as the aggrieved person has income of more than Rs.3,00,000/- per month, so he is not willing to pay maintenance to her. However, in the written objection the respondent has stated that the aggrieved person/petitioner has resigned from her job on 15.06.2016 and not stated anything that whether presently she has been earning or not, though the respondent has filed certain documents

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showing the income of the aggrieved person/petitioner at the time of hearing of the instant application .

Monetary Relief

The aggrieved person has prayed for monetary relief of Rs.35,000/- per month for herself against the respondent as interim monetary relief. This Court is of the opinion that it is the duty of the husband to maintain his wife . Hence, the prayer for monetary relief for the aggrieved person is allowed. In view of the above discussion, considering the moral and legal liability of a person to maintain his wife, I am of the opinion that at least Rs.15,000/- (Rupees Fifteen Thousand) is required for sustenance of the aggrieved person according to the admitted income of the respondent and hence, I am inclined to direct the respondent to pay monthly maintenance to the aggrieved to the tune of Rs.15,000/- (Rupees Fifteen Thousand) per month for the aggrieved person herself which would be sufficient for maintenance in present economic scenario and also would not be unjustified for the respondent no.1.

Hence it is ,

Ordered

The petition u/s 23 of PWDV Act is disposed of on contest without cost with direction upon the respondent to make payment of Rs.15,000/- (Rupees Fifteen Thousand) to the aggrieved person as interim monetary relief for herself till disposal of this case by the 15th day of every succeeding month from the date of filing of this case i.e. 13.10.2020. The respondent is also directed not to do any kind of domestic violence towards the aggrieved person. The officer-in-charge of Golabari Police Station, Howrah is hereby directed to provide all necessary legal assistance to the aggrieved person so that the order passed herein be implemented by the respondent. Let a free copy of the order be given to the aggrieved person, respondent and O/C of concerned P.S. free of cost for compliance.

The petition under section 23 of the Act is disposed of in part on contest accordingly.

Fix 29/10/2024 for Evidence of PW-1.

D/C by me.

Sarmistha Bose, (JO Code WB01187)

J.M. 3rd Court, Howrah

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