

Misc Case No. 527 of 2023

Order dated 11.04.2025

Today is fixed for hearing.

Both parties filed hazira.

Heard both the parties.

Now the record is taken up for passing necessary order.

On perusal it appears that the aggrieved person stated in her petition that the aggrieved party is the legally married wife of the respondent and their marriage was solemnized in the year of 2008 according to Hindu rites and customs. After few days of marriage the respondent/husband, her father-in-law and her mother-in-law started physical and mental torture upon the aggrieved party on demand of further dowry, though as per their demand the aggrieved party's parents gave cots and bedding, three bhoories of gold ornaments, Rs.30,000 in cash and other utensils at the time of marriage. Thereafter the parents of aggrieved party/wife anyhow arranged Rs. 20,000/- cash and gave the said amount to the respondent/husband but thereafter they became more greedy and started to assault the aggrieved party/wife to arrange some more fund to buy a motor cycle for the respondent/husband. Thereafter when the aggrieved party/wife as well as her parents tried to raise objection against their ill motive and greedy demands, the respondent/husband threatened to drive out from her matrimonial home without providing food, cloth and necessary needs for her survival. the respondent/husband with conspiracy and connivance with her father-in-law and mother-in-law tried to kill the aggrieved party by giving poison into her food. The aggrieved party/wife somehow skipped the said food and thereafter she has filed a written complaint in Panchla Police Station in last year of 2012. The respondent/husband along with his family members drove out the aggrieved party/wife on 13.02.2021 and her minor children from her matrimonial home and since then the aggrieved party used to live with her minor children at her near relative's house. But the respondent/husband with the intension get divorce from aggrieved party and then to marry another woman created immense pressure on the aggrieved party and also started to threaten her near relatives to not to give shelter to her and thus the aggrieved party/wife loosed her hope and filed a written complaint before the concerned Panchla police Station where the police authority took the complaint as F.I.R and lodged a F.I.R being Panchla P.S case no. 103/2023 dated 14.04.2023.

Whereas, the respondents denied all the allegations made by the aggrieved person and stated in his written objection and submitted that after one year of marriage the aggrieved party/ wife causing various mental torture upon respondent/husband and his family members for the demand to highly cosmetics goods and various types of golden ornament as regular ways for the demand of such articles the aggrieved party/ wife become furious and used various slang languages upon the respondent/husband for which

he had to spend his life within a great mental agony. The aggrieved party/ wife is a ill motive lady and without permission of the respondent/husband the said aggrieved party/wife on and off left her matrimonial house due to lead her illegal life with various neighboring boy and also walked brothel and collected money from such illegal business and enjoying them as a wrong full manner for which to know such incident. The respondent/husband again and again inform and forbidden such illegal dealing for which the said aggrieved party/wife became so more furious and was causing various torture upon the respondent/husband as a high jeaneth manner. That due to all the ill behavior of the aggrieved party/wife several meeting were held in between parties. But the aggrieved party/wife was not changed her behavior due to advise of neighboring people and without permission of the respondent/husband the aggrieved party/ wife further married with Mittyun purkait on dt 13.03 2019, of village Banibon, Nurullapra, p.o. Banibon, P.S Rajapur District- howrah pin 711316 and presently staying of that address with one son and one daughter with residential house of second husband.

On perusal it appears that the marriage was solemnized in the year 2008. The aggrieved party submitted that presently staying at her relative's place even though in the affidavit and lethalties she has mentioned that she is residing in a house with 120 Sqft area and her husband is the owner of that house I.e, her matrimonial home. In the affidavit of assets and liabilities, the aggrieved party has also mentioned that the question "if not staying at matrimonial home, relationship and income of the person with whom she you are staying?" is 'Not Applicable' on her though in the main application she has stated that she is presently residing at the relative's place. She has claimed monthly expenses of Rs. 15,000/- per month for herself and her two minor child. As per the aggrieved party's submission, the respondent is a labour contractor and earns Rs. 50,000/- p.m. Whereas the respondent submitted that he has Rs. 4,000/- per month income. Both the parties have submitted that each of them have married subsequently with some other person. None of the parties filed any document in support of their claim.

The definition of domestic violence as jotted in section 3 of 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.

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 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. The aggrieved person submitted that she was subjected to physical and mental cruelty and her father-in-law and mother-in-law tried to kill the aggrieved party by giving poison into her food though the same fact is not appearing on a prima facie basis but it is certain that there was enough family drama. It is also pertinent to mention here that the respondent has submitted that aggrieved party/ wife further married with Mittyun purkait on dt 13.03 2019, of village Banibon, Nurullapra, p.o. Banibon, P.S Rajapur District- howrah pin 711316 and presently staying of that address with one son and one daughter with residential house of second husband.

In this situation, 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 respondent on oath. 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 any documentary proof on behalf of the aggrieved person, 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. No prima facie urgency has been made out by the aggrieved party and nor it can be seen on the face of it that the aggrieved party is in complete distress and cannot survive without the interim maintenance.

In addition to this, there is two minor children born out of this wedlock but the respondent has not bare any expenditure for that child since their birth. Being the father of the child, the respondent has all the responsibility and liability towards his children and it is a shame that he has not been fulfilling his fatherhood duties.

The other allegations if any are subject to final hearing and can not be determined at this stage without taking evidence and thus this court is not going comment on anything with that regard but the respondent must pay the adequate share of the expenditure of his minor children.

Accordingly, the prayer under section 23 is considered and allowed in part in respect of monetary relief but only for the minor children and the other reliefs prayed by the aggrieved person are to be decided after consideration of the evidence. The respondent is directed to make payment of Rs. 1500 /- [One Thousand Five Hundred only] per month for the expenditure of his each minor child till disposal of this case as monetary relief by the 10th day of every succeeding month from the date of filing of the case [26.07.2023] under section 23 of the Act. Be it mentioned here that the amount received by the aggrieved party in this case shall be adjustable with any other monetary relief accepted by the aggrieved person under any provision of law and by order of any Ld. Court.

The petition under section 23 of the Act is disposed of accordingly.

Fix 11.11.2025 for evidence and personal appearance of both the parties and payment.

Dictated and correct by me
Sd/-
Judicial Magistrate,
1st Court, Howrah

Sd/-
Disha Barai
(JO Code WB01420)
Judicial Magistrate,
1st Court, Howrah