

Misc case 394 of 2022
C.N.R. No.WBHW04-003527-2022

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ORDER DATE: 01/08/2024

Record is fixed today passing of order in respect of an application under section 23 of the Protection of Women from Domestic Violence Act, 2005 filed by one Pinki Majumdar (Bar) against her husband Biswanath Majumdar and her in-laws.

Both sides have filed their respective haziras.

The petitioner files the copies of bank statements by way of firisti. Let the same be kept with the record.

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 petitioner submits that her marriage was solemnized on 05/08/2019 with respondent no.1 namely Biswanath Majumdar according to Hindu Rites and Customs. At the time of marriage, her father gave gold ornaments and many other household articles, furniture and clothes to the respondents. After marriage she went to her matrimonial home and stayed there as husband and wife but there she was subjected to torture by the respondents both physically and mentally as they were not satisfied with the said dowry articles. However, by their wedlock one male child namely Aditya Majumdar was born on 27/04/2020. Thereafter, on 15/10/2020 at about 1.00 pm the petitioner found the respondent no.1 in compromising condition with one lady but due to fear of her new born child she could not raise any objection. Later the petitioner came to know that the respondent was having an extra marital affairs with one of his tenants and when she raised protest then the respondent no.1/husband threatened her and tortured her. . The torture upon the petitioner was increasing day by day by the respondent no.1/husband and even neither she was provided with proper food, garments and medicines during her stay at her matrimonial home nor the respondent no.1 take care of his child as a father. On 01/04/2022 the respondent nos. 1 and 2 with the instigation of respondent nos. 3 and 4 assaulted the petitioner with fists and blows and kicks and the respondent no.1 tried to kill her and then she along with her minor child was driven out of her matrimonial home. Unable to bear such torture, the petitioner lodged a GDE against the respondents at Liluah PS vide GDE no. 74 dated 01/04/2022 and thereafter, the petitioner went to her paternal home.

The aggrieved person further stated in her petition that she has no income of her own. On the other hand, the respondent no.1 is a wiring contractor and owns electrical equipment shops, owns 2 houses and 4 shops and earns Rs.40,000/- per month. The aggrieved person prays for protection order, interim monetary relief of Rs.15,000/- per month for herself and Rs.7,000/- per month for her minor child and residential order and compensation of Rs.10,00,000/-.

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

The respondent no.1 and 2 have filed their written objection and also filed the Affidavit of assets and liabilities. By filling the written objection, the respondents have rebuffed the whole case of the aggrieved person as a pack of lies. Respondent nos. 1 and 2 have stated that they are living at the address mentioned in the cause title but the respondent nos.3 and 4 are residing separately at Rajasthan. The aggrieved person was not able to do all the household articles and the actual motive of the aggrieved person that the respondent no1/husband resides at her paternal house as Ghar-Jamai. Respondent no.1 further submits that the aggrieved person was got divorced from her previous husband Abir Dutta in Mat Suit no. 1088 of 2018 and it was suppressed by her. Lastly the respondents submits that he earns Rs.8000/- as electrician and that the petitioner/aggrieved person left her matrimonial home on her own will. Hence, he prays for dismissal of the application under section 23 of PWDV Act filed by the aggrieved person.

The definition of domestic violence as jotted down in the said Act is very wide in its scope. It takes within its fold different acts including physical abuse, sexual abuse, verbal and

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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 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 petitioner 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 no.1 and they lived their

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conjugal life in a shared household with other respondents. It means that there is a domestic relationship between them.

The aggrieved person had filed a GDE at Liluah PS vide GDE no. 74 dated 01/04/2022 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 that 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 petitioner has averred that the respondent no.1 earns Rs.40,000/- per month as an electrical equipment and wiring contractor and owns a electrical shop, 2 houses and 4 shops and owns a two storied building but no document has been filed to substantiate the same. Further, it appears from the affidavit of assets and liabilities submitted by the respondent no.1 wherein he has stated that his income is Rs.8,000/- per month as self-employed.

Monetary Relief

The aggrieved person has prayed for monetary relief of Rs.15,000/- per month for herself and Rs. 7,000/- per month for her minor child i.e. in total Rs. 22,000/- per month from the respondent no.1. This Court is of the opinion that it is the duty of the husband to maintain his wife and child. In view of the above discussion, considering the moral and legal liability of a person to maintain his wife and child as well as the liability of the respondent no.1, I am of the opinion that at least Rs. 2,000/- per month for the petitioner herself and Rs. 2,000/- per month for the minor child till the attainment of the child's majority, is required for sustenance of the aggrieved person and hence, I am inclined to direct respondent no.1 to pay monthly maintenance to the aggrieved to the tune of Rs. 4,000/- per month in total for the aggrieved person and the minor child which would be sufficient for maintenance in present economic scenario and also would not be unjustified for the respondent no.1.

Residence Order.

After careful perusal of the record, it appears that the aggrieved person is staying at her paternal home under the shelter of her parents. So at this stage, I have not found any urgency and therefore, not inclined to pass any residence order.

Protection Order

It appears that the aggrieved person has prayed for protection order against the respondents restraining them from committing any act of domestic violence in future. On perusal of the record, it appears that she was subjected to domestic violence by the respondents at her matrimonial home. In this circumstances the Court is of the opinion that to protect the aggrieved person from any act of domestic violence in future, interim protection order is required to be passed in favour of the aggrieved.

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Hence it is ,

Ordered

The petition u/s 23 of PWDV Act is disposed of on contest without cost with direction to the respondents not to commit any act of Domestic violence or abet or aid to that act by personal, oral, telephonic contact as per section 18 of the PWDV Act and with direction upon the respondent not to oust the aggrieved person from her own house. The respondent is directed to make payment of Rs. 2,000/- per month for the petitioner and Rs. 2,000/- per month for the minor child i.e. in total Rs. 4,000/- per month to the aggrieved person till the disposal of this case as monetary relief by the 15th day of every succeeding month from the date of filing of this case i.e. 23/06/2022. The respondents are also directed not to do any kind of domestic violence towards the aggrieved person. The officer-in-charge of Liluah Police Station, District 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 no.1 and O/Cs of concerned Police Station free of cost for compliance.

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

Fix 12-09-2024 for Evidence of PW-1.

D/C by me.

Sarmistha Bose, (JO Code WB01187)

J.M. 3rd Court, Howrah

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