

Misc case 618 of 2023
C.N.R. No.WBHW04-003951-2023

ORDER DATE: 14/11/2024

Record is fixed today for order and filing of bank statement and DIR.

Both parties file hazira but no documents have been filed by them.

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 Champa Das nee Maity against her husband Bappa Das.

Both sides have filed their respective haziras.

Domestic Incident Report has been received by this court and perused.

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 27.02.2013 with respondent no.1 namely Bappa Das according to Hindu Rites and Customs and subsequently registered. At the time of marriage, as per the demand of the respondents, her parents gave series of golden ornaments and Rs. 2,00,000/- cash. After her marriage, the petitioner went to her matrimonial home along with the respondent no.1 and started their married life. After few days, the petitioner stated that the respondent no. 1 is a habitual drunker and took wine in a routine basis when the petitioner advised him for stopping drinking, the respondent no. 1 abused her with filthy languages and assaulted her. The petitioner further stated that the respondents are very greedy persons and also tortured her physically and mentally. The respondent no. 1 also pressurized to bring more dowry from her paternal house, on being protest, the respondent no. 1 used filthy and slang languages. The petitioner further stated that the respondent no. 1 and in-laws driven out the petitioner from her matrimonial home and thereafter, the petitioner had been residing at her paternal home. Subsequently, the petitioner came to know that the respondent no. 1 has filed a Divorce suit being MAT Suit No. 987 of 2022 before the Ld. District Judge at Howrah.

The aggrieved person further stated in her petition that the respondent no.1 earns Rs. 50,000/- per month whereas the petitioner has no source of income. As the aggrieved person is victim of domestic violence, hence, the aggrieved person prays for protection order, interim monetary relief of Rs.20,000/- per month for herself.

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

The respondent nos. 1 & 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. The respondent no. 1 admitted the marriage with petitioner and stated that on date time, respondent no. 1 found that the petitioner is a very arrogant in nature and demanding various things when her demand was not fulfilled, the petitioner started insulting the respondent no. 1 as well as his parents in front of relatives. All of a sudden, the petitioner started shouting upon the mother of the respondent no. 1 without any issue. The petitioner left her matrimonial home on 16.02.2019 by taking all her belongings

Misc case 618 of 2023
C.N.R. No.WBHW04-003951-2023

including ornaments, cloths, utensils and other things in spite of several calls through phone, sms and physical meeting, the petitioner never back to her matrimonial home. Finally, the respondent no. 1 lodged a G.D.E vide no. 778 of 2020 dated 17.02.2020. The respondents also stated in their written objection that the respondent no. 1 works as a daily labour of Rs. 300/- to Rs. 500/- in cash and also other earning from running Toto in the locality in total earns Rs.5000/- per month. 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 in Section 3 of the 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. 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

Misc case 618 of 2023
C.N.R. No.WBHW04-003951-2023

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 conjugal life in a shared household. It means that there is a domestic relationship between them. The DIR submitted before the Court, it appears prima facie that the aggrieved person was subjected to domestic violence by the respondents. 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 averred that the respondent no.1 earns Rs. 50,000/- per month 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. 5,000/- per month as labour job and running of toto.

Monetary Relief

The aggrieved person has prayed for monetary relief of Rs. 20,000/- per month for herself in her petition whereas in her affidavit of assets and liabilities, she has claimed Rs. 15,000/- per month as maintenance from the respondent no. 1. This Court is of the opinion that it is the duty of the husband to maintain his wife. Therefore, the prayer for monetary relief for the petitioner herself 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. 2,500/- 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. 2,500/- per month (Rupees Two thousand five hundred only) 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.

Residence Order.

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

Misc case 618 of 2023
C.N.R. No.WBHW04-003951-2023

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.

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 respondents not to oust the aggrieved person from her own house.

The respondent no.1 is directed to make payment of Rs. 2,500/- per month (Rupees Two thousand five hundred only) to the aggrieved person for herself till 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. 24.08.2023. The respondents are also directed not to do any kind of domestic violence towards the aggrieved person. The officer-in-charge of Chatterjeehat Police Station as well as Officer-in-charge of Uluberia Police Station, Howrah are hereby directed to provide all necessary legal assistance to the aggrieved person so that the order passed herein be implemented by the respondents. Let a free copy of the order be given to the aggrieved person, respondents 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 10.01.2025 for Evidence of PW-1.

D/C by me.

Sarmistha Bose, (JO Code WB01187)

J.M. 3rd Court, Howrah

J. M. 3rd Court, Howrah