

Sl. February
9. 27, 2020

C.R.R. 3520 of 2018

In the matter of: An application under Section 482 of the Code of Criminal Procedure;

And

In the matter of : Sumita Acharya
Versus
State of West Bengal & ors.

Mr. Prabir Mitra,
Mr. Gouranga Kumar Das,
...for the petitioner.

It would reveal from the affidavit of service and the order sheets that the opposite parties are avoiding services. Accordingly, the revisional application is taken up for consideration on its merit ex parte.

The challenge in this revisional application is to the judgment and order dated September 15, 2018 passed by the learned Additional Sessions Judge, Fast Track Court No. V at Alipore, South 24-Parganas, in Criminal Appeal No. 243 of 2017 thereby dismissing the appeal and affirming the order dated September 5, 2017 passed by the learned Judicial Magistrate, Third Court at Alipore, in Case No. C-9584 of 2013 under Section 12 of the Protection of Women from Domestic Violence Act.

According to the petitioner, she got married with the opposite party no. 2 as per Hindu rites and customs on November 7, 2012 at her parental home and after marriage went to her matrimonial home and started to perform her conjugal life. It is alleged by the petitioner that at the time of marriage, her father gave her several gold ornaments and cash amounting to Rs. 63,000/- as per the demand of the husband and his family members. For not fulfilling the increasing demand of the

husband and his family members, the petitioner was subjected to torture – physical and mental – and sexual assault instigating her to commit suicide. Ultimately, the petitioner was compelled to leave her matrimonial home and to lodge a criminal case under Sections 498A/34/406 of the Indian Penal Code against the opposite parties no. 2 to 5. The petitioner also filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

The proceeding under Section 12 of the Protection of Women from Domestic Violence Act was decided by the learned Judicial Magistrate, Third Court at Alipore, upon taking evidence of both the parties. The learned Judicial Magistrate by his judgment dated September 5, 2017 directed the husband to pay monetary relief to the tune of Rs. 6,000/- to the petitioner/wife and to pay a sum of Rs. 1,00,000/- to her as damages. The learned Magistrate further directed the husband/opposite party no. 2 not to cause violence of any kind upon the petitioner/wife and in this context directed the officer in-charge of the concerned police station to provide necessary police protection to the petitioner/wife in case of any domestic violence.

The order passed by the learned Judicial Magistrate, as above, was appealed against and the appellate court below dismissed the appeal thereby affirming the judgment and order passed by the learned Judicial Magistrate. Both the courts below have not considered the prayer of the petitioner/wife in so far as alternative accommodation is concerned only on the ground that the petitioner/wife has not been able to substantiate the provisions of Section 19 of the Protection of Women from Domestic Violence Act.

It is admitted on evidence by the opposite party no. 2/husband that he is a primary school teacher, but in his written objection to the application under Section 12 of the Act he has not disclosed his monthly income which he was supposed to disclose. However, it is submitted on behalf of the petitioner that the opposite party no. 2 is a primary school teacher belonging to the category of Graduate (IX-X) & Upper Primary and his net pay must be Rs. 30,751/- as per Revision of Pay and Allowances, 2009. In this regard, it is submitted that the monetary relief of Rs. 6,000/- per month, which has been awarded to the petitioner, is meagre and not having been considered in accordance with the social status of the parties.

It is submitted by the learned advocate appearing on behalf of the petitioner that the appellate court below has declined to enhance the monetary relief, as prayed on behalf of the petitioner, and has also not considered the provisions relating to alternative accommodation which the petitioner/wife had sought for in her application under Section 12 of the Act.

It would appear from the photocopy of the application under Section 12 of the Protection of Women from Domestic Violence Act submitted by the District Judge in-charge at Alipore, South 24-Parganas, through the learned Registrar Administration (L & OM) of this court that the petitioner had prayed for an order under Section 19 of the Act directing the opposite parties no. 2 to 5 to secure same level of alternative accommodation for the complainant as enjoyed by her and to pay rent for the same. Monetary relief was sought for by the petitioner under Section 22 of the Act directing the husband to pay a sum of Rs. 6,000/- per month to the wife which includes medical expenses. That apart, an order towards compensation was

also sought under Section 20 of the Act to the tune of Rs. 2,50,000/- for the damage caused to the petitioner on account of mental injuries and emotional distress due to the act of domestic violence. So also an interim relief under Section 23 of the Act was sought for a sum of Rs. 15,000/- which initially was awarded to the tune of Rs. 4,000/- per month and ultimately at the rate of Rs. 6,000/- per month towards monetary relief has been awarded to the petitioner, which she has prayed in her application.

However, in consideration of the fact, admittedly, the husband/opposite party no. 2 is a primary school teacher and he must have earned Rs. 30,000/- per month and, as such, the petitioner has prayed for enhancement of the monetary relief. It is submitted that while affirming the order of the learned Judicial Magistrate, the appellate court below has overlooked the fact that the learned trial judge has not assigned any specific reason for not granting any relief to the petitioner under Sections 17(1), 17(2) and 19 of the Protection of Women from Domestic Violence Act although the petitioner expressly claimed the same in her petition. thus, it is argued that the appellate court below has committed an error in not rendering justice to the petitioner by enhancing the monetary relief and in not granting alternative accommodation or the rent equivalent thereto.

The appellate court below has taken a cue from the decision of the Supreme Court in the case of S. R. Batra vs. Taruna Batra wherein the Hon'ble Supreme Court has categorically held that a wife is only entitled to a right to residence in terms of Section 17(1) of the Act in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by the husband,

or the house which belongs to the joint family of which the husband is a member. But the appellate court found that there was no evidence on record to suggest that the property was purchased from the joint family funds and the husband of the appellant had any share therein during the lifetime of the father of husband or he is the owner of the house.

In view of such observation of the appellate court, the aggrieved person, that is, the petitioner/wife is entitled to an alternative accommodation in accordance with the social status of the parties on rent since the opposite party no. 2 is admittedly a primary school teacher, he thus maintains a social status in the society. If his net pay is taken to be Rs. 30,000/- per month, the sum of Rs. 6,000/- as prayed by the petitioner in her petition under Section 12 of the Act comes to one-fifth of total earnings of the husband which is the minimum monetary requirement. However, considering the social status of the parties, the petitioner would be entitled to one-third of the earning of the husband at the rate of Rs. 30,000/- per month. So, she is entitled to a sum of Rs. 10,000/- per month. Therefore, this court wishes to enhance the monetary relief to the tune of Rs. 10,000/- per month payable to the petitioner/wife. That apart, she would be entitled to an alternative accommodation on rental to be provided by the husband and a sum of Rs. 5,000/- would be just and proper amount for an alternative accommodation on rent.

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In the facts and circumstances of the case and in the context of the discussion, as above, this court is pleased to enhance the monetary relief to the tune of Rs. 10,000/- per month and award Rs. 5,000/- per month towards rental charges for the alternative accommodation, being a total sum of Rs. 15,000/- per

month which the petitioner is entitled to from her husband. This enhanced monetary relief and the accommodation alternatively provided at the rate of Rs. 5,000/- per month would be payable by the husband/opposite party no. 2 to the petitioner/wife from the date of this order.

With the above modifications, the revisional application is disposed of.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

(Shivakant Prasad, J.)