

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present :

THE HON'BLE JUSTICE SANKAR ACHARYYA

C.R.R. No. 3104 of 2014

With

CRAN 559 of 2015

In the matter of :

Sri Abhijit Saha and Ors.

Vs.

Smt. Sangita Saha

For the petitioners : Mr. Mritunjoy Chatterjee; adv.

Heard on : 31.08.2015, 28.08.2015, 24.08.2015,
21.08.2015, 17.08.2015, 13.08.2015,
12.08.2015, 10.08.2015, 4.8.2015,
16.07.2015,

Judgment on : 17.09.2015

SANKAR ACHARYYA, J.

This revisional application C.R.R. No. 3104 of 2014 has been filed by four petitioners Abhijit Saha, Nikhil Chandra Saha, Smt. Manasa Mangali Saha and Smt. Manjuari Saha jointly challenging the legality, propriety and correctness of the judgment and order passed by learned Additional District and Sessions Judge, Jangipur, Murshidabad in Criminal Appeal No. 02/2013 arising out of judgment and order dated 18.05.2013 passed by the learned Judicial Magistrate, 2nd Court, Jangipur, Murshidabad in Misc. Case No. 14 of 2013 under Sections 12/18/19/20/22/23 of the Protection of Women from Domestic Violence Act, 2005.

During pendency of this case the petitioners have filed CRAN No. 559 of 2015 for stay of the operation of the impugned judgment and order dated 23.06.2014 till disposal of this case. No interim order has yet been passed.

Since despite service of notice of the revisional application and application of stay on the opposite party Smt. Sangita Saha no one appeared to contest, these two matters have been heard ex parte. On joint hearing on CRR No. 3104 of 2014 and CRAN No. 559 of 2015 this Court is of the considered opinion that when the subject matter of CRAN No. 559 of 2015 is relating to the disposal of CRR No. 3104 of 2014 and the CRR No. 3104 of 2014 is going to be disposed of by this judgment the CRAN No. 559 of 2015 has become infructuous. With such observation said CRAN No. 559 of 2015 is disposed of as infructuous.

At the time of hearing learned counsel for the petitioners has drawn my attention to the copies of impugned judgment passed by learned Additional District and Sessions Judge, Jangipur, Murshidabad and the other annexures to the revisional application. He has advanced his arguments that the said judgment is liable to be set aside as the judgment of learned Judicial Magistrate, 2nd Court, Jangipur, Murshidabad left no room to interfere with and based on sound reasoning and legal support.

In my view, scope of determination in this revisional application is limited to the legality, propriety and correctness of the impugned judgment passed by learned Additional District and Sessions Judge, Jangipur, Murshidabad in Criminal Appeal No. 02 of 2013 because this is not an appeal against that judgment. This Court may consider as to whether propriety has been maintained or gross illegality has been caused by the impugned judgment arriving at an incorrect decision.

With such view I have gone through both the copies of said judgments to which my attention has been drawn.

It comes to my notice that the opposite party is undisputedly, the wife of petitioner no. 1 and out of their wedlock one female child has born. Admittedly, petitioner nos. 2, 3 and 4 are father, mother and married sister respectively of petitioner no. 1. On going through the annexures of revisional application it comes to my notice that the petitioner no. 4 has her matrimonial home at Malda. She has one ten years old school-going daughter and one three years old son. Her husband deals in medicine. She is a house wife and looks after her children there. Since sometime past the petitioner No. 1 has been living in the matrimonial house of his said sister at Malda leaving his residential accommodation of village Beniagram (Singh Para), P.O. Jafargunj, P.S. Farakka, District Murshidabad where the petitioner nos. 2, 3 and opposite party with her daughter and one attendant 'Chhotoburi' @ Panchami have been residing. Opposite party is an agent of L.I.C.I. She earned Rs.73,000/- as her commission as agent of L.I.C.I. in 2012-2013 financial year. She pays Rs.31,000/- per year for education of her minor daughter. Petitioner no. 2 is aged ill person. At the time of hearing the case in the Court of learned Judicial Magistrate the opposite party of this case as petitioner examined herself and one Ganesh Ghosh as witnesses. She did not examine to her father although she claimed that the present four petitioners demanded money from her father and alleged that they also assaulted opposite party Sangita Saha and her father. She also did not examine aforesaid Chhotoburi @ Panchami as her witness. Although the opposite party alleged her husband's stationary shop at Farakka and medicine business but no positive convincing corroborative evidence to that effect was adduced by her. Her witness Ganesh Ghosh deposed about his knowledge derived from opposite party Sangita Saha but Sangita did not state any fact as she narrated to Ganesh Ghosh. As a result, most of the statements of Ganesh Ghosh have become 'hearsay'. There is no evidence in substance to establish that the petitioners of this case told the opposite party for going out of her residence. Learned Judicial Magistrate has elaborately discussed the relevant legal provisions of The Protection

of Women from Domestic Violence Act, 2005. He dismissed the case. He did not believe that domestic violence was committed upon the aggrieved person wife (opposite party herein) by the present petitioners. He observed that present petitioner no. 1 that is husband of the aggrieved person had no share in the house. This fact remains undisputed. With such observation learned Magistrate held the said house is not share household under Section 2(s) of the Act. He did not deny right of opposite party of residence in the house. He did not accept any domestic relationship between the present petitioner nos. 3 and 4 on one hand and the opposite party on the other.

All of them are female persons. As such, under Section 2 (q) the petitioner nos. 3 and 4 of this case do not come within the definition – ‘respondent’ in the Court of learned Judicial Magistrate. According to the facts regarding marriage of opposite party before 2012 and transfer of the house in 2012 by petitioner no. 2 in favour of petitioner no. 3 by dint of exhibit- A and living of opposite party in that house since after her marriage this Court is of the view that the opposite party Sangita Saha is in domestic relationship under Section 2(f) of the Act with present petitioner nos. 1, 2 and 3. I like to mention that since long before marriage between the petitioner no. 1 and the opposite party the petitioner no. 4 has been living in her matrimonial home at Malda. As such, she is excluded from domestic relationship with the opposite party. In the instant case, while the petitioner no. 2 was owner of the household the opposite party Sangita Saha was living in that household as daughter in law of petitioner no. 2 (father of husband of opposite party) and still she has been living in the same house, the said household comes within the definition of ‘shared household’ under Section 2(s) of the Act. In this connection, I agree with the finding of learned Additional District and Sessions Judge that it being ‘shared household’ the wife aggrieved person would be entitled to claim the right of residence in such house as observed in page 9 of the impugned judgment dated 23.06.2014.

Regarding residence orders passed by learned Additional District and Sessions Judge in the impugned judgment this Court is of the view that before passing of such order satisfaction of the concerned Court is necessary that domestic violence has been caused. In the instant case the plea of domestic violence is under consideration only on the basis of sole, solitary uncorroborated oral testimony of the aggrieved wife (opposite party herein). In the eye of law plea is not proof. Allegations of domestic violence are grave in nature and have serious impact if really proved.

Unless it is satisfactorily established that domestic violence has taken place neither any protection order under Section 18 nor any residence order under Section 19 nor any order for monetary relief under Section 20 nor any compensation order under Section 22 of the Protection of Women from Domestic Violence Act, 2005 should be passed.

In my view, learned Additional District and Sessions Judge has failed to appreciate the facts that the aggrieved party wife failed to establish any incident of torture on her or any incident of demand of money and assault upon her and her father by present petitioners and said learned Judge has overlooked the factum of withholding the father and personal attendant of the opposite party from the witness box. Although the learned Additional District and Sessions Judge has discussed about giving birth by the opposite party to a still born baby at the first instance but has overlooked the fact that on that occasion she was admitted in nursing home at Berhampore from her father's house and not from her present residence. Significantly, learned Judge overlooked the fact that the husband and sister in law of opposite party arranged for her medical treatment for her giving birth to her daughter and she successfully gave birth to her only child.

Consequently, I cannot say the findings of learned Additional District and Sessions Judge, Jangipur, Murshidabad on the question as to domestic violence took place against the opposite party Sangita Saha as appropriate or suitable to the requirements

of domestic violence according to the facts, circumstances and evidence on record. Therefore, it cannot be said that propriety has been maintained or there is correctness of findings of facts in the impugned judgment.

As a result, in the light of my discussions made above, I do not concur with the decision of learned Additional District and Sessions Judge for setting aside the order of dismissal of Misc. Case No. 14 of 2013 passed by learned Judicial Magistrate, 2nd Court, Jangipur, Murshidabad. Rather, I find and hold that the decision of learned Additional District and Sessions Judge passed in favour of the opposite party of this case revisional application is liable to be set aside. The claim of opposite party for protection order, monetary relief, compensation or any interim order made before the Trial Court in Misc. Case No. 14 of 2013 is liable to be dismissed.

This revisional application, is therefore, allowed. Impugned judgment and order dated 23.06.2014 passed in Criminal Appeal No. 02 of 2014 stand set aside. Misc Case No. 14 of 2013 of the 2nd Court of learned Judicial Magistrate, Jangipur stands dismissed. This case is disposed of accordingly.

A copy of this judgment be sent to learned Additional District and Sessions Judge, Jangipur, Murshidabad and a separate copy of this judgment be sent to learned Judicial Magistrate, 2nd Court, Jangipur, Murshidabad also for information and necessary action.

Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities

(SANKAR ACHARYYA, J.,)