

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction**

Present:

The Hon'ble Justice Md. Mumtaz Khan

CRR No. 979 of 2017

Shabnam Parveen

Vs.

The State of West Bengal & Ors.

For the petitioner

: Mr. Sambhunath De

For the opposite parties

: Mr. Ayan Bhattacharya
Mr. Antarikhya Basu
Mr. Anirban Dutta

Heard on : 01.11.2017

Judgment on : 24.11.2017

Md. Mumtaz Khan, J. :

The instant revision has been preferred by the petitioner/widow daughter-in-law of Opposite Party Nos. 2 and 5 and sister-in-law of Opposite Party Nos. 3 and 4 assailing the order dated January 24, 2017 passed by the learned Additional District and Session Judge, First Court, Sealdah, South 24 Parganas in Criminal Appeal No. 31 of 2016 setting aside the order granting monetary relief to the petitioner under section 20(d) of the Protection of Women from Domestic Violence Act.

The facts leading to the instant revision is that the petitioner/widow daughter-in-law filed an application under Section 12

of the Protection of Women from Domestic Violence Act (hereinafter referred to as 'PWDV' Act) against her in-laws namely the Opposite Parties before the learned Additional Chief Judicial Magistrate at Sealdah seeking relief under section 18, 19, 20, 22 and 23 of the Act which registered as Complaint case no.63 of 2015. She also prayed for interim relief and the learned Magistrate, 2nd court, Sealdah by an order dated June 22, 2016 allowed the monetary relief directing Opposite Party No.2/father-in-law to pay Rs. 2,500/- per month to the petitioner/widow daughter-in-law under Section 20(d) of the PWDV Act. Being aggrieved by and dissatisfied with the same Opposite Party No.2/father-in-law preferred appeal being Criminal Appeal No. 31 of 2016 and the learned Additional Session Judge, First Court, Sealdah, South 24 Parganas allowed the appeal and set aside the order directing payment by Opposite Party No.2/father-in-law to this petitioner/widow daughter-in-law by the impugned order. Being aggrieved by the same petitioner has preferred the instant revision.

It was submitted by the learned advocate for the petitioner that this petitioner after marriage started her conjugal life with her husband in the joint mess of the opposite parties but during her stay there she was subjected to cruelty by the opposite parties and was finally driven away by them from the matrimonial home. It was also submitted by him that there was a joint family business and after death of the husband of the petitioner father-in-law is looking after that business and their family income is more than Rs.50,000/- per month whereas this petitioner has no independent source of her income and accordingly learned Magistrate taking into account the same directed Opposite Party No.2/father-in-law to pay Rs. 2,500/- per month till the disposal of the proceeding under Section 12 of the protection of PWDV Act but the learned Additional District & Sessions Judge set aside that order by the order. According to him learned Additional District & Sessions Judge was not justified in not taking into account that petitioner has no independent source of her

income whereas father-in-law is looking the joint family business and earning more than Rs.50,000/- per month while rejecting the order passed by the learned Magistrate.

Learned Advocate for the opposite parties submitted that opposite party no.2 is a retired person having no independent source of income and denied having joint family business with the deceased husband of the petitioner. He further submitted that petitioner is the widow daughter of Opposite Party No.2 and they are governed under the Mohammedan law and as per the Mohammedan law widow daughter-in-law is not entitled to any maintenance from her father-in-law. According to him learned Additional District & Sessions Judge was quite justified in setting aside the order passed by the learned Magistrate.

He relied on the decisions in the matter of *Mahomed Abdul Aziz Hidayat Vs. Khairunnissa Abdul Gani* reported in *AIR (37) Bombay 245* and *Mrs. Nanadita Sarkar Nee Sen Vs. Sri Tilak Sarkar and Ors.* reported in *(2015) 1 C Cr LR (Cal) 892* in support of his submissions.

I have considered the submissions of both sides and gone through the impugned order and the documents annexed with the instant revision.

The procedure for obtaining orders of reliefs has been provided under Chapter IV of the PWDV Act, 2005. Section 12 of the PWDV Act has given right to the aggrieved person to present an application before the Magistrate seeking one or more reliefs under the Act. "Aggrieved person" as defined in Sub-Section(a) of Section 2 of the PWDV Act, 2005, means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. "Domestic relationship", as defined in Sub-Section(f) of Section 2 of Act, means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through

a relationship in the nature of marriage, adoption or are family members living together as a joint family.

Petitioner's domestic relationship with the opposite parties is not an issue before this court in the instant revision. The only question involved in the instant revision is whether the father-in-law has any obligation to maintain the widow of his son.

It has been held by the Hon'ble Division Bench of Bombay High Court in the matter of *Mahomed Abdul Aziz Hidayat (Supra)* that under the Muhamadan Law there is no obligation on the father-in-law to maintain the widow of his son. The relevant portion of the above decision is quoted below:-

“ 2. The principles with regard to maintenance under the Muhamadan Law are fairly well settled, and the main principle is, as is to be found in Mulla's Muhamadan Law, p. 286 and Mulla relies upon the statement of law in Baillie's Digest of Muhamadan Law at p. 467, that a person is liable to maintain another when that person could be the heir of the person whom he is called upon to maintain. In this case the father-in-law could never be the heir of his daughter-in-law, and therefore on that principle there is no obligation to maintain the widow of his son.”

Section 36 of the PWDV Act, 2005 provides that the provisions of that Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force. In the decision of *Mrs. Nanadita Sarkar Nee Sen (Supra)*, the concept of Hindu Adoption and Maintenance Act, 1956 was taken into consideration vis a vis the provisions of PWDV Act, 2005. In the case in hand both parties are Mohammedan and as such under the Muhamadan Law, opposite party no.2, being father-in-law, is under no obligation to provide maintain allowance to the widow of his son namely the petitioner.

Therefore, taking into account the entire circumstances, there appears no illegality or irregularity in the impugned order passed by the

learned Additional Sessions Judge, 1st Court Sealdah setting aside the order of the Magistrate directing opposite party no.2, father-in-law, to pay interim monetary allowances to the petitioner, daughter-in-law. In the result revision fails.

Trial court is directed to hear out the main application of the petitioner under section 12 of the PWDV Act, 2005 seeking several reliefs under the Act and conclude the same as expeditiously as possible preferably within a period of three months from the date of communication of this order. I make it clear that all issues are kept open and shall be decided on the basis of the evidence adduced by the respective parties without being influenced by the observations made in the body of the judgment.

The instant revisional application is, thus, disposed of. No order as to costs.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties expeditiously upon compliance with the necessary formalities in this regard.

(Md. Mumtaz Khan, J.)