

Form No.J(1)

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

Present:

The Hon'ble Justice Madhumati Mitra

C.R.R. 3907 of 2016

Smt. Haimanti Mal

-Versus-

The State of West Bengal

Advocate for the Petitioner : Ms. Aiswarjya Gupta
Ms. Priyanka Saha

Advocate for the Opposite Party No.2 : Mr. Sabir Ahmed
Mr. Md. Kutubuddin

Judgment on : 09.07.2019

Madhumati Mitra, J. :

This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 filed by the wife/petitioner challenging the judgment and order dated 22.09.2016, passed by the Learned Additional District and Sessions Judge, Fast Track Court at Suri, Birbhum in Criminal Appeal No.31 of 2015.

By the impugned order Learned Judge modified the judgment and order dated 19.05.2015, passed by the Learned Judicial Magistrate, 1st Court, Suri, Birbhum in Misc. Case No.1 of 2011 under Sections 18,19,20,22 of the Protection of Women from Domestic Violence Act, 2005.

Facts which are necessary for disposal of the present application may be summarized as under:

Petitioner filed an application under Sections 18,19,20 and 22 of the Protection of Women from Domestic Violence Act, 2005 before the Court of the Learned Chief Judicial Magistrate, Birbhum, Suri, against the opposite party no.2 and that application was registered as Misc. Case No.01 of 2011. Opposite Party contested that application. On 19.05.2015, Learned Magistrate allowed the said application on contest in part directing the opposite party no.2 to pay Rs.4,000/- per month to the two minor children each as monetary relief and rejected the prayer of monetary relief of the wife. Opposite party no.2 was directed to pay Rs.4,000/- per month to the petitioner as a rent for accommodation of the petitioner and her children. Opposite party was directed to return all stridhan articles and to pay Rs.3,00,000/- to the petitioner as compensation.

Opposite party no.2 preferred an appeal challenging the order passed by the Learned Magistrate. That appeal was allowed in part by the Learned Additional District and Sessions Judge, Fast Track Court, Suri,

Birbhum, on 22.09.2016 and the order passed by the Learned Magistrate was modified. The order of payment of compensation of Rs.3 Lakhs to the wife by the opposite party no.2 was set aside by the Learned Judge in Criminal Appeal no. 31 of 2015.

The order of setting aside the award of compensation of Rs.3 Lakhs to the petitioner in appeal is under challenge.

Impugned order has been assailed by the Learned Advocate for the petitioner on the ground that the Learned Appellate Court has committed an error in setting aside the award of compensation granted by the Learned Magistrate to the petitioner. Learned Advocate appearing for the petitioner has drawn the attention of the Court to the impugned judgment and submitted that there are contradictions in the observations made in the judgment and conclusion arrived at by the Learned Judge regarding refusal of compensation. She has further contended that the Learned Magistrate rightly awarded compensation of three lakhs to the petitioner but the Learned Judge who heard the appeal came to an erroneous conclusion that the petitioner was not entitled to get compensation.

On the other hand, the Learned Counsel appearing for the opposite party has submitted that the petitioner did not pray for compensation before the Learned Magistrate and grant of compensation to the petitioner by the Learned Magistrate was not justified. In support of his contention,

he has drawn the attention of Court to Section 22 of the Protection of Women from Domestic Violence Act, 2005.

Section 22 of the said Act runs as under:-

“Compensation orders.- In addition to other reliefs as may be granted under this Act, the Magistrate may on an applications being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.”

According to the contention of the Learned Advocate for the opposite party in absence of any separate application under Section 22 of the Act, the Magistrate cannot direct the opposite party/husband to pay compensation. In order to get a relief of compensation under the Act of 2005, the aggrieved person has to make a separate application under Section 22 of the Act.

Now the question arises as to whether the aggrieved party is required to file separate application under Section 22 of the Act to get relief for compensation.

Admittedly, the petitioner/wife did not file any separate application under Section 22 of the Protection of Women from Domestic Violence Act, 2005.

Petitioner by way of supplementary affidavit filed the copy of Form-II under Rule 6 of the Protection of Women from Domestic Violence Rules made under the Act. From the contents of the copy of said Form, it appears that the petitioner sought for reliefs under Section 18,19,20 and 22 of the Protection of Women from Domestic Violence Act, 2005. Form-II under Rule 6 of the Rules made under the Act is the prescribed form to pray for relief/reliefs under the provisions of the Act.

Chapter IV of the Act deals with the procedure for obtaining orders on reliefs. Sub-Section 1 of Section 12 says that an aggrieved person or a protection officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act. That means the aggrieved person or a protection officer or any other person on behalf of the aggrieved person may seek for one or more reliefs under this Act. That means all the reliefs under the Act may be asked for in one application. On the other hand Sub-Section 3 of Section 12 of the Act provides that every application must be in prescribed form. In her application under Section 12 of the Act, the petitioner prayed for several reliefs including compensation. A conjoint reading of Sub-Section 1 of Section 12, Sub-Section 3 of Section 12 and Section 22 of the Act, it would be clear that prescribed Form-II, under Rule 6 of the Rules

made under the Act is an application seeking relief or reliefs under the Act before a Magistrate. As such it cannot be said that the petitioner did not file application for compensation. It is true that Section 22 speaks about application, but nowhere in Section 22 of the Act it has been stated that a separate application is required to be filed by the aggrieved person to get the relief of compensation.

I do not find any merit in the submission made by the Learned Advocate for the opposite party that the petitioner did not file any application for getting the relief of compensation under the Act.

Compensation is awarded for the loss or injury suffered by the person due to the act of the opposite party. Section 22 speaks about compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent.

Learned Magistrate directed the husband to pay compensation of Rs.3,00,000/- (Rupees Three Lakhs) to the wife. The basis of the calculation of the compensation of Rs.3,00,000/- was not reflected in the order of the Learned Magistrate.

In the instant case, the marriage of the parties solemnized in the year 2001 and two children were born out of their wedlock. From the materials placed on record, it appears that the parties resided together in

a rented house along with children till 11.11.2010. Petitioner filed Misc.Case No.01/2011 under the Protection of Women from Domestic Violence Act, 2005 in the year 2011 praying reliefs under Sections 18,19,20 and 22 of the Act.

The only question arises in this application for consideration as to whether the Learned Appellate Court was justified in setting aside the order of compensation granted to the petitioner by the Learned Magistrate.

The determination of compensation has to be rational, to be done by a judicious approach and it should not be an outcome of guesses on arbitrariness. At the same time, it should be remembered that in absence of any evidence or materials on record the grant of compensation cannot be justified. Compensation for mental or physical shock, pain, suffering, frustration, mental stress, etc. can be given if there is sufficient evidence on record in this regard.

In the instant case, wife stated that she was physically assaulted, but she could not produce any medical paper for her treatment for the injuries suffered by her.

Petitioner/wife has been residing separately from her husband and their children stay with the petitioner/wife. Order of maintenance to the children and rent for alternative accommodation, have been granted. Admittedly, the wife is a para-teacher and has source of income.

No doubt that the wife/petitioner has definitely suffered pain and mental agony due to the conduct of her husband.

Under the above facts and circumstances, I think that some reasonable amount can be awarded as just and proper compensation for the mental pain and agony of the wife. It is very difficult to assess the actual compensation for mental pain and agony. Considering all aspects, I think a lump sum of Rs.1,00,000/- (Rupees One Lakh) would be sufficient in this regard.

As such the opposite party husband is directed to pay compensation of Rs.1,00,000/-(Rupees One Lakh) to the petitioner for her mental pain and suffering.

The order passed by the Learned Additional District and Sessions Judge, Fast Track Court, Suri, Bhirkhum in Criminal Appeal no.31 of 2015 is modified accordingly.

Criminal revisional application being no.3907 of 2016 is thus disposed of.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance with all necessary formalities.

(Madhumati Mitra, J.)