

(2025) 12 CAL CK 0072

Calcutta HC

Case No: CRR 2538 Of 2023

Soma Saha

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision: Dec. 8, 2025**Acts Referred:**

- Code of Criminal Procedure, 1973- Section 154(3), 156(3), 192, 200, 202, 203, 482
- Protection of Women from Domestic Violence Act, 2005- Section 23, 31
- Right to Information Act, 2005- Section 6(1)

Hon'ble Judges: Chaitali Chatterjee Das, J**Bench:** Single Bench**Advocate:** Mit Guha Roy, S.N. Banerjee, Nahid Ahmed, Pradip Sancheti**Final Decision:** Allowed

Judgement

Chaitali Chatterjee Das, J

1. This is an application under Section 482 of the Code of Criminal Procedure filed by the petitioner against an order passed by the learned Judicial Magistrate 2nd Court at Alipore vide his order dated May 3, 2023 in connection with AC case no. 2709 of 2021 the application under Section 203 CRPC was dismissed.

2. Fact leading to filing of this case is that the petitioner resides with her husband and son in the adjacent room on the same floor and same premises where the opposite party no. 2 & 3 resides who are the in-laws of the present petitioner. The opposite party No 2 is the brother-in-law of the petitioner and the Opposite Party no. 3 is the wife of Opposite Party no. 2. The petitioner initiated proceedings under Section 23 of Protection of Women from Domestic Violence Act 2005 against the opposite party no. 2 & 3 after facing high magnitude of domestic violence from the opposite parties and the same is pending before the Court of second Judicial Magistrate at Alipore. During pendency of the said matter on the basis of an application preferred by the petitioner under Aection 23, read with 18 of the PWD

Act, the learned Court on November 28, 2018 passed an order, directing the opposite parties to refrain from persisting any active violence towards the aggrieved party/petitioner and also restraining them from disturbing the peaceful residence of the petitioner in any manner at the shared household.

3. Despite knowing such fact and the order, the opposite parties without giving any heed to the same is continuing with committing breach of protection order on several occasions and numerous numbers of complaint has been lodged before the officer in-charge Parnashree Police Station, vide letter of complaints dated April 20, 2021, June 24, 2020, July 15, 2020 and January 13, 2021. On September 27, 2021, a specific complaint along with the protection order passed by the learned Court was lodged before the said Police Station against the opposite party No 2 & 3 for registering and FIR.

4. In absence of any action taken on their parts, the petitioner lodged an application under Section 6(1) of the RTI act on October 5, 2021 before the Deputy Commissioner of police asking for an information regarding the action taken and in pursuance to the same in their reply dated November 16,, 2021 came to know that 2FIR has been lodged with this Police Station.

.5. The petitioner further came to learn that the police authorities did not receive any copy of order sheet from the competent court therefore there was no scope to start any criminal case against alleged persons under Section 31 of the PWDV act 2005. Accordingly, the petitioner lodged a complaint on December 4, 2021 before the Deputy Commissioner of police South - West division and Commissioner of police, Kolkata in compliance with the provisions under Section 154(3) of CRPC and all the necessary orders and the application made under RTI Act, were collectively submitted before the superior Police Authority, but it is regretted to state that no FIR has been registered till date. Since the Opposite Party no. 2 & 3 were persisting with their atrocities pertaining to the domestic violence and threatening the petitioner with dire consequences and also attempted to physically assault her it became necessary to take cognizance of the offence under Section 31 of the PWDV Act.

6. Subsequently, the petitioner preferred an application under Section 156(3) of the code of criminal procedure, 1973, before the Court of learned Additional Chief Judicial Magistrate at Alipore and the cognizance was taken under Section 200 and made over the same before the learned Judicial Magistrate. 2nd Court at Alipore for adjudication and disposal. The petitioner appeared before the concerned Court on March 14,, 2022, when the record was fixed for conducting S.A and she was examined under Section 200 and after conducting S.A and upon producing the same along with the documents and considering other materials on record the learned Magistrate held that there are serious issues of civil dispute under Domestic Violence Act and therefore the learned Court found this as a fit case for investigation under section 202 of the code of criminal procedure, 1973, for the purpose of

deciding as to whether there is sufficient ground for proceedings against the accused persons as well as to prevent possible multiplicity of the proceedings.

7. After that on May 3, 2023, when the matter was fixed for submission of the report by the Officer-in-Charge of the concerned Police Station, a report was submitted and on perusal of the same, the learned Magistrate was of the view that the matter of serious land dispute and civil in nature and did not find sufficient ground to proceed with the case. Hence, dismissed the criminal proceeding under Section 203 of the Code of Criminal Procedure.

8. The learned Advocate appearing on behalf of the petitioner submits that in the police report dated February 15, 2023, the opposite party No 2 & 3, submitted a letter dated February 14, 2023, along with the document disclosing the fact that a Title suit no. 678 of 2022 is pending against the petitioner and her husband and the matter is sub-judice. Therefore, during investigation, it revealed that a long standing dispute is going on between the parties and the relation between them are bitter but that cannot be the ground for rejecting the complaint without ascertaining whether there was any breach or not.

9. The present petition has been filed being highly agreed and dissatisfied with the impugned order dated May 3, 2023. It is specifically contended that the Learned Magistrate did not pass a reasoned order while dismissing the proceeding under Section 203 of Code of Criminal Procedure, 1973. The learned Court have not considered the order passed by the Learned Magistrate on earlier occasion, while granting interim protection order in favour of the petitioner and thereby failed to consider the violation and the breach committed by the opposite party No 2 & 3 while committing an offence under Section 31 of the PWD Act. Accordingly prays for remanding back the matter for a fresh consideration.

10. The learned Advocate representing the opposite party no. 2, on the other hand submits that the present petitioner is a veteran litigant and several cases are pending filed by her, which includes both civil and criminal cases. The matter pertains to PWDV Act, but the petitioner has intentionally filed the complaint under Section 156(3) Cr.Pc. in order to cover up the long delay in filing such application as the order of interim protection as alleged was passed in the year 2018. The learned court rightly passed the order since nothing was found in the report and civil disputes are pending and accordingly prayed for dismissal of this application.

11. Heard the submissions. Before entering into the merit of the case, the provision under which the complaint was dismissed to be looking into.

Section 203 of CRPC deals with dismissal of complaint; If after considering the statements on oath, if any of the complainant and of the witnesses and the result of the inquiry or investigation, if any under section 202, the magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case, he shall briefly record his reasons for doing so. Therefore the

complainant is entitled to know the reason as to why the complaint has been dismissed under the legal framework. In terms of Section 202(1) of the code of criminal procedure, 1973 any magistrate, on receipt of a complaint of offence of breach, he is authorised to take cognizance, which has been made over to him under Section 192, may if he thinks fit postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not, there is sufficient ground for proceeding. The proviso clause depicts that no such direction for investigation shall be made where it appears to the magistrate that the offence complained of is triable exclusively by the court of session; Where the complaint has not been made by a court, unless the complainant and the witnesses present was examined on oath under section 200.

12. In this case, vide an order dated December 15, 2021 when prayer was made in resonance to Section 156(3) CrPC, the learned Magistrate considering the law laid down by the Honble Supreme Court about the application of its judicial mind before issuing any direction under the said provision rejected such prayer. However, cognizance was taken for commission of offence under Section 31 of protection of women from Domestic violence Act 2005 and the case was sent to the learned Judicial Magistrate, 2nd Court for disposal under Section 192 of the Criminal Procedure code wherefrom the order of protection was passed .

13. It is pertinent to mention that on November 28, 2018 in connection with an application for interim relief under Section 23 of PWD Act 2005, considering the protection officer report, the prayer was allowed in part directing the respondent to refrain from any acts of balance towards the aggrieved party and also restrained from disturbing the peaceful residence of the great person in any manner at the shared household.

14. It was further directed that in default to comply with the same, the complainant is at liberty to apply before that court to execute the order or pursue any other legal courts available under PWD act or any other law in force. Long thereafter in the year 2021, the complaint was lodged before the Police Station by the present Opposite Party, no. 2 regarding breach of such order before the learned Court of Judicial Magistrate 2nd Court Alipore. The report was filed by the police and the learned Court considering the same passed the order with the observation that the case involves allegation of serious issues of civil dispute under domestic violence act and accordingly held that it is a fit case for investigation under Section 202 Cr.Pc for the purpose of deciding as to whether there is sufficient ground for proceeding against the accused person as well as to prevent possible multiplicity of proceeding.

15. On May 3, 2023, the learned court refused the prayer, considering that the case is a matter of land dispute and civil in nature. The case originated from the order passed under Section 23 of PWD Act and the allegation was of

breach of such order and therefore question of having land dispute cannot be the criteria to ascertain whether there is any breach of such protection order or not.

16. In the decision of Maqsood Sayed versus state of Gujarat (2008) 5 SCC 668. It was held that where jurisdiction is exercised on a complaint filed in terms of Section 156 (3) Cr.Pc and Section 200 Cr.Pc the Magistrate is required to apply his judicial mind and the application of mind should be reflected in the order. The mere statement that he has gone through the complaint documents and heard the complainant as such reflected in the order will not be sufficient. The magistrate must be satisfied about the veracity of the allegation of the commission of a criminal offence. Here, when the specific nature of offence was under Section 31 of PWD Act and the petitioner had chosen to file the application under Section 156(3) of Cr.Pc instead of filing a complaint under Section 31 of PWDV Act before the said magistrate who passed the protection order, the learned Magistrate had to reflect his application of mind by passing a proper reasoned order as required under the law which has not been followed.

17. Hence this Court finds merit in this application and the order passed by the learned magistrate is liable to be set aside.

18. Therefore this criminal revisional application stands allowed.

19. The order passed by the learned Magistrate is hereby set aside with a direction to the learned magistrate to consider the case afresh and to pass a reasoned order.

20. It is thus made clear that the Learned Magistrate while passing the order will not be influenced by any observation touching merit of the case if any observed by this Court.

21. No other cost.

22. Urgent certified copy of applied be given at an earliest subject to fulfilment of all other requirements.