

(2016) 06 CAL CK 0058

CALCUTTA HIGH COURT

Case No: CRR No. 649 of 2015 with CRAN No. 1585 of 2015 with CRAN No. 3642 of 2015
with CRAN No. 756 of 2016 with CRAN No. 619 of 2016.

Sudipta Saha Roy @ Tubai -
Petitioner @HASH Dola Roy -
Opposite Party

APPELLANT

Vs

RESPONDENT

Date of Decision: June 14, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397, Section 401
- Protection of Women From Domestic Violence Act, 2005 - Section 12, Section 2(a)

Citation: (2016) 3 HLR 241

Hon'ble Judges: Ranjit Kumar Bag, J.

Bench: Single Bench

Advocate: Mr. Shyamal Chakraborty and Ms. Debarati Banerjee, Advocates, for the
Petitioner; Mr. Asit Kr. Banerjee and Mr. S.N. Chatterjee, Advocates, for the Opposite Party

Final Decision: Disposed Off

Judgement

R.K. Bag, J. - The petitioner husband has preferred the revision under Section 401 read with Section 482 of the Code of Criminal Procedure challenging the order dated February 18, 2015 passed by learned Metropolitan Magistrate, 6th Court, Calcutta, in Misc. Case No.1 of 2014 and prayed for quashing of the entire proceeding under the provisions of the Protection of Women from Domestic Violence Act, 2005 pending before the said court of learned Magistrate.

2. The backdrop of the present revisional application is as follows:

The opposite party was married to the petitioner on February 8, 2012 and a certificate of marriage in this regard was issued by the Marriage Officer on February 8, 2012. The opposite party wife filed Matrimonial Suit No.212 of 2012 before learned Principal Judge, Family Court, Calcutta praying for decree of annulment of

marriage between the petitioner and the opposite party under Section 24 of the Special Marriage Act, 1954. On March 24, 2014 learned Principal Judge, Family Court, Calcutta decreed the said matrimonial suit ex parte and declared the marriage between the petitioner and the opposite party as null and void. The petitioner husband challenged the decree of annulment of the marriage before the High Court at Calcutta by preferring F.A.T. 280 of 2014 which was subsequently converted to F.A. 277 of 2014 after admission of the appeal. On September 24, 2014 the Hon"ble Division Bench of the High Court restrained the opposite party wife from contracting any marriage during the pendency of the said appeal. On February 17, 2015 the Hon"ble Division Bench of the High Court passed a conditional interim order by reducing the amount of permanent alimony of the opposite party wife from Rs.3,500/- per month to Rs.2,500/- per month.

3. The opposite party wife started one proceeding under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Domestic Violence Act") against the petitioner husband praying for maintenance and other reliefs. On December 7, 2013 learned Metropolitan Magistrate directed the petitioner husband to pay maintenance @ Rs.6,000/- per month to the opposite party wife w.e.f. the date of filing of the proceeding under the Domestic Violence Act. The petitioner husband was also directed to pay Rs.3,000/- per month to the opposite party wife as rent of alternative accommodation of the opposite party wife w.e.f. the date of the order i.e. December 7, 2013. The petitioner husband challenged the said judgment and order passed by learned Metropolitan Magistrate by preferring Criminal Appeal No.17 of 2014. On July 16, 2014 learned Additional Sessions Judge, 2nd Fast Tract Court, Bichar Bhawan, Calcutta disposed of the said criminal appeal by clarifying the order of maintenance to the extent that the petitioner husband would pay Rs. 2,500/- per month to the opposite party wife w.e.f. the month of April, 2014 and the arrears of maintenance to be paid @ Rs.6,000/- per month till the month of April, 2014. The Appellate Court affirmed the remaining part of the order passed by learned Metropolitan Magistrate including the order of payment of rent for alternative accommodation @ Rs.3,000/- per month as passed by the trial court. By suppressing the fact of preferring Criminal Appeal No.17 of 2014 before the court of sessions, the petitioner husband has preferred the instant revision praying for quashing of the entire proceeding under the Domestic Violence Act and challenging the order of issuance of warrant of arrest against the petitioner husband by learned Metropolitan Magistrate for realisation of the amount of arrears of maintenance.

4. Mr. Shyamal Chakraborty, learned counsel for the petitioner/husband contends that there is no domestic relationship between the petitioner and the opposite party after passing of the decree for annulment of marriage by learned Principal Judge, Family Court, Calcutta. He further submits that the petitioner/husband has not challenged the relationship between the petitioner and the opposite party by preferring appeal against the decree passed by learned Principal Judge, Family

Court, Calcutta. He specifically submits that the petitioner/husband has preferred the appeal before the High Court by challenging the amount of permanent alimony to be given by the petitioner/husband to the opposite party/wife. Mr. Chakraborty urges this Court to consider that learned Magistrate cannot pass any order under Section 12 of the Domestic Violence Act in the absence of domestic relationship between the petitioner and the opposite party. He argues that the amount of maintenance of Rs.6,000/- per month granted by learned Magistrate has created confusion as the petitioner/husband was directed to pay permanent alimony to the opposite party/wife @ Rs.2,500/- per month by the Hon'ble Division Bench of the High Court during the pendency of the appeal preferred by the petitioner/husband against the decree passed by learned Principal Judge of the Family Court at Calcutta. According to Mr. Chakraborty, the opposite party/wife is not entitled to get any relief under the Domestic Violence Act and as such the proceeding initiated against the petitioner under the provisions of the Domestic Violence Act is liable to be quashed and the order of issuance of warrant of arrest for realisation of arrears amount of maintenance granted in connection with the proceeding under the provisions of the Domestic Violence Act is also liable to be set aside.

5. Mr. Asit Kumar Banerjee, learned counsel for the opposite party/wife submits that the petitioner/husband has suppressed the fact of preferring criminal appeal against the order passed by learned Magistrate and as such the petitioner is not entitled to get any relief in this revision. He further submits that the opposite party/wife was restrained from contracting second marriage by the Hon'ble Division Bench of the High Court on the basis of an application filed by the petitioner/husband in connection with the appeal and as such there is existence of domestic relationship between the petitioner/husband and the opposite party/wife and the opposite party/wife is entitled to claim maintenance from the husband under the provisions of the Domestic Violence Act. By referring to the provisions of Section 26(2) of the Domestic Violence Act, Mr. Banerjee has urged that the opposite party/wife can invoke the provisions of the Domestic Violence Act in addition to the remedy available under any other law of the land. By referring to the judgement passed by learned Additional Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Calcutta in Criminal Appeal No. 17 of 2014 Mr. Banerjee submits that the Appellate Court has already clarified that the petitioner/husband would pay only Rs.2,500/- per month as maintenance after setting off the amount of Rs.3,500/- to be paid per month as permanent alimony under the provisions of the Special Marriage Act. He has clarified that the warrant of arrest was issued by learned Magistrate for realisation of Rs.2,90,500/- as arrears amount of maintenance, out of which Rs.40,000/- has already been paid and the outstanding dues is Rs.2,38,500/-.

6. It appears from the averments made by the opposite party/wife in the application under Section 12 of the Domestic Violence Act that she lived with the petitioner/husband in the matrimonial home after the marriage, but the marriage was not consummated. The opposite party/wife prayed for decree of annulment of

the marriage on the ground that the petitioner/husband wilfully refused to consummate the marriage. The trial court not only passed the decree for annulment of the marriage between the petitioner and the opposite party, but also directed the petitioner/husband to give permanent alimony to the opposite party/wife @ Rs.3,500/- with effect from the month of March, 2014 till the date of re-marriage of the opposite party/wife. The petitioner/husband challenged the said decree of annulment of marriage and the order of permanent alimony by preferring appeal before the High Court. On September 24, 2014 the Hon"ble Division Bench of the High Court passed an interim order in connection with the said appeal by restraining the opposite party/wife from contracting second marriage during pendency of the appeal. On February 17, 2015 by another interim order the Hon"ble Division Bench of the High Court reduced the amount of permanent alimony from Rs.3,500/- to Rs.2,500/- per month during pendency of the said appeal. I am informed that the said appeal is still pending for adjudication before the High Court at Calcutta. With the above factual matrix I have to decide whether there is existence of domestic relationship between the petitioner/husband and the opposite party/wife.

"Domestic relationship" is defined in Section 2(f) of the Domestic Violence Act, which reads as follows:

"2 (f) ♦.. "domestic relationship" 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."

7. I have already observed that the opposite party/wife has made averments in the application under Section 12 of the Domestic Violence Act that she lived with the petitioner as husband and wife in the matrimonial home after marriage, though the marriage was not consummated at the instance of the petitioner/husband. Accordingly, the opposite party lived with the petitioner as husband and wife in the matrimonial home, though the opposite party filed the Matrimonial Suit before the Family Court praying for annulment of the marriage on the ground that the petitioner/husband wilfully refused to consummate the marriage. Since the opposite party/wife lived with the petitioner/husband in the matrimonial home at one point of time, there is existence of domestic relationship between the opposite party and the petitioner within the ambit of definition of "domestic violence" under Section 2(f) of the Domestic Violence Act.

8. In **Surendran v. State of Kerala** reported in 2010 (3) Crimes 9 (ker.) : 2009 (4) AICLR (Ker.) 687, learned Single Judge of Kerala High Court has held that the wife cannot be an aggrieved person under Section 2(a) of the Domestic Violence Act for claiming relief under the said Act when the marriage was declared null and void on the basis of an application filed by the wife. In this report the decree of annulment of marriage was not challenged either by way of appeal or by way of revision before

the Higher Forum. In the instant case the decree of annulment of marriage between the parties has not only been challenged before the High Court by the petitioner/husband by preferring the appeal, but the Hon"ble Division Bench of the High Court has restrained the opposite party/wife from contracting second marriage with any one during pendency of the appeal. Accordingly, the decree of annulment of marriage between the petitioner/husband and the opposite party/wife has not attained finality, but the same is pending for final adjudication before the Hon"ble Division Bench of the High Court. The facts of the present case are clearly distinguishable from the facts of "Surendran v. State of Kerala" (supra) and as such the ratio of the said report cannot be made applicable in the facts of the present case.

9. It is relevant to point out that the proceeding under Section 12 of the Domestic Violence Act was instituted by the opposite party/wife before filing Matrimonial Suit praying for declaration of the marriage as null and void. Learned Judge of the Appellate Court has rightly pointed in the judgement that the order under Section 12 of the Domestic Violence Act was passed by learned Magistrate on December 7, 2013, whereas the decree for annulment of marriage was passed by learned Principal Judge of the Family Court, Calcutta on March 24, 2014. I have already observed that there is existence of domestic relationship between the petitioner/husband and the opposite party/wife and as such the opposite party can pray for any relief under the provisions of the Domestic Violence Act as an "aggrieved person" within the meaning of Section 2(a) of the Domestic Violence Act.

10. On close scrutiny of the revisional application of the petitioner/husband I find that the petitioner has totally suppressed the fact of preferring criminal appeal No. 17 of 2014 challenging the judgement and order passed by learned Magistrate under Section 12 of the Domestic Violence Act. Learned Judge of the Appellate Court has clarified that the amount of Rs.3,500/- to be paid to the opposite party/wife as permanent alimony every month would be set off from the amount of Rs.6,000/- to be paid as maintenance to the opposite party/wife by the petitioner under Section 12 of the Domestic Violence Act. Learned Magistrate has the jurisdiction to give relief to the aggrieved person in addition to any other relief in any suit or legal proceeding before a civil or criminal court as laid down under Section 26(2) of the Domestic Violence Act. Accordingly, the petitioner/husband was directed to pay Rs.2,500/- per month to the opposite party/wife under Section 12 of the Domestic Violence Act, apart from paying Rs.3,000/- towards the rent for alternative accommodation. I am unable to accept the contention made on behalf of the petitioner/husband that the petitioner/husband is confused with regard to the amount of maintenance to be given to the opposite party/wife every month. Since the opposite party/wife is an aggrieved person within the meaning of Section 2(a) of the Domestic Violence Act and since there is existence of domestic relationship between the petitioner/husband and the opposite party/wife, I am of the view that the proceeding under Section 12 of the Domestic Violence Act is maintainable under

the law.

11. In view of my above findings, I cannot persuade myself to interfere in the order passed by learned Magistrate for issuance of warrant of arrest against the petitioner for realisation of arrears amount of maintenance. There is no merit in the revision. So the criminal revision is dismissed. The four applications being CRAN 1585 of 2015, CRAN 3642 of 2015, CRAN 619 of 2016 and CRAN 756 of 2016 are also disposed of.

12. Let a copy of this judgement and order be sent down to learned court below for favour of information and necessary action.

13. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.