

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.R 853 of 2020

Shreya Beria

-Vs-

Vedant Bhagat

For the Petitioner:

Mr. Sabyasachi Banerjee, Adv.,
Mr. Ayan Bhattacharjee, Adv.,
Mr. Soumen Mohanty, Adv.,
Mr. Hera Nafis, Adv.

For the Opposite Party:

Mr. Sandipan Ganguly, Adv.,
Mr. S.D Mazumder, Adv.,
Mr. Depanjan Dutta, Adv.

Heard on: 14th January, 2021.

Judgment on: 20th January, 2021.

BIBEK CHAUDHURI, J. :-

1. The wife/petitioner has filed the instant criminal revision challenging legality, validity and propriety of the order dated 24th February, 2020 passed in Criminal Appeal No.33 of 2020 by the learned Sessions Judge, South 24 Parganas at Alipore staying operation of the order passed by the learned Judicial Magistrate, 9th Court at Alipore in Misc Case No.AC 4538 of 2019 under **Sections 12/23 of the Protection of**

Women from Domestic Violence Act, 2005 (hereafter described as the said Act) directing the opposite party to provide a suitable accommodation to the petitioner (aggrieved person) in the shared household, if the aggrieved person is willing to stay.

2. For proper adjudication of the instant criminal revision, the following facts are required to be recorded:

3. The petitioner being the wife of the opposite party filed an application under Section 12 of the said Act on 28th August, 2019 for different reliefs available to her in the said Act including residence order under Section 19 of the said Act. In the said proceeding, the petitioner filed an application under Section 23 of the said Act praying for interim relief. The opposite party entered appearance in the said case and filed written objection against the petitioner's application under Section 23 of the said Act. Vide order dated 13th February, 2020, the learned Magistrate passed an order disposing of the application under Section 23 of the said Act providing various interim reliefs to the wife/aggrieved person. The opposite party was directed to provide a suitable accommodation to the petitioner in the shared household if the petitioner is willing to stay.

4. The said order was challenged in appeal by the opposite party before the learned Sessions Judge, South 24 Parganas at Alipore which was registered as Criminal Appeal No.33 of 2020. The learned Sessions Judge passed a limited order of stay of the order passed in Misc Case no. AC 4538 of 2019 so far as it relates to the direction upon the present

opposite party to provide a suitable accommodation to the petitioner in the shared household.

5. The petitioner being aggrieved by the order of stay passed by the learned Sessions Judge, South 24 Parganas, Alipore has filed the instant criminal revision.

6. It is submitted by Mr. Sabyasachi Banerjee, learned Advocate for the petitioner that marriage of the petitioner with the opposite party was solemnized on 22nd February, 2019. The petitioner has been staying at her paternal home since 10th April, 2019 following a matrimonial discord and being victim of domestic violence by the opposite party and other matrimonial relations.

7. The learned Advocate for the petitioner next draws my attention to the prayer made by the petitioner in her application under Section 12 read with Section 23 of the said Act. In prayer II, the petitioner has prayed for **“Residence order under Section 19 of the Act...”**. The said prayer is subdivided by the following prayers:

(A) Restraining the respondents from alienating/ dispossessing/encumbering the shared house hold.

(B) An order entitling the aggrieved person for continuing access to her personal assets.

(C) An order directing the respondents to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

(D) An order directing the respondents to secure same level of alternate accommodation or to pay rent for the same in favour the aggrieved person.

Mr. Banerjee next draws my attention to Section 19 of the said Act.

The said Section runs thus:-

19. Residence orders.—

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

8. It is submitted by Mr. Banerjee that so far as residence is concerned, the petitioner prayed for a direction upon the respondent to secure same level of alternate accommodation for her as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require. The learned Magistrate passed an order directing the opposite party to provide a suitable accommodation to the aggrieved person in the shared household if the aggrieved person is willing to stay. It is contended by Mr. Banerjee that Sub-Section (2) of Section 13 empowers the Magistrate to pass any direction other than the one which has been prayed by the petitioner which he may deem reasonably necessary for the protection and safety of the aggrieved person. However the opposite party failed to secure possession of the petitioner in her shared household. Therefore the opposite party is under obligation to secure same level of alternate accommodation or to pay rent for the same in favour of the aggrieved person. According to Mr. Banerjee, the learned Sessions Judge acted illegally and with material irregularity in staying the order passed by the learned Magistrate.

9. Next branch of argument of Mr. Banerjee is that the statute directs the opposite party/respondent to “secure same level or alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same”.

10. According to Mr. Banerjee the type of alternate accommodation which can be provided to the wife shall be more or less similar to her accommodation which she had at her shared household. The wife has every right not to accept alternative accommodation or rent in lieu of it if such alternative accommodation arranged by the husband is not up to the same level where she used to reside in the shared household. There cannot be any alternative view of the phrase "same level of alternate accommodation".

11. Coming to the instant case, Mr. Banerjee submits some photographs of the matrimonial home of the aggrieved person where she used to reside. It is needless to say that the said building is a palatial house having beautiful garden, sprawling lawns, portico, big size dwelling rooms with all modern and latest amenities. He next refers to the photographs which the opposite party wants to provide as alternate accommodation to the petitioner. It is further submitted by Mr. Banerjee that the matrimonial home of the petitioner is situated at Pretoria Street where as the opposite party wants to provide alternate accommodation to the petitioner at Rashbehari Avenue. The locality in Pretoria Street and Rashbehari Avenue should also be taken into consideration in order to decide as to whether the alternate accommodation suggested by the opposite party to the petitioner is of same level or not. Mr. Banerjee also submits alternative proposals for accommodation in and around the locality where the matrimonial home of the petitioner is situated. He finally submits that the learned court below may be directed to direct the

opposite party to secure alternate accommodation for the petitioner accepting any of the proposals made by him on behalf of petitioner.

12. Mr. Sandipan Ganguly, learned Senior Counsel for the petitioner, on the other hand, submits that the petitioner in her application under Section 12 of the said Act did not pray for her right of residence in the shared household. She wanted to pray for a mandatory direction upon the opposite party to arrange for an alternate accommodation for her. The learned Magistrate passed an order directing the opposite party to prove a suitable accommodation to the aggrieved person in the shared household if the aggrieved person is willing to stay.

13. The opposite party preferred Criminal Appeal No.33 of 2020 and the learned Sessions Judge granted an interim order of stay so far as it relates to the direction upon the opposite party to provide a suitable accommodation to the petitioner in the shared household.

14. According to Mr. Ganguly since there was no prayer made by the petitioner to secure her stay in the shared household and in the absence of such prayer the learned Magistrate granted such relief, an interim order of stay was passed by the learned Sessions Judge in appeal. There is no illegality in the said order as no relief can be granted without any prayer being made in consonance to such relief. He also submits that this Court while exercising revisional jurisdiction cannot decide the question as to whether the proposal for alternative accommodation given by the opposite party to the petitioner is acceptable or not.

15. It is further submitted by Mr. Ganguly that the matrimonial home of the petitioner is the ancestral house of the opposite party. He is not the absolute owner of the same. The opposite party has stated on affidavit that he earn Rs.1 lakh per month. If the proposal of Mr. Banerjee is to be accepted, then the opposite party will have to borrow money to provide alternative accommodation to his wife.

16. I have duly considered the submission made by the learned Counsels for the parties. It is not disputed that the learned Magistrate passed an interim order under Section 19 of the said Act in Case No.AC 4538 of 2019 on 13th February, 2020. The opposite party being aggrieved preferred an appeal before the learned Sessions Judge which was registered as Criminal Appeal No.33 of 2020. In the said appeal opposite party preferred an application for stay of the part of the order dated 13th February, 2020 passed by the learned Magistrate in Case No.AC 4538 of 2019 directing the opposite party to pay interim monetary relief from the date of filing of the application under Section 12 of the said Act and to provide suitable accommodation to the respondent No.2 in the shared household, if the respondent No.2 is willing to stay. The appeal was admitted and the second part of the order passed by the learned Magistrate was stayed. The appellant was directed to file requisites for issuance of notice upon the respondent.

17. Section 397 of the Code of Criminal Procedure empowers the High Court or any Sessions Judge to call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his

local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended...

Sub (2) of Section 397 states that the powers of revision shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

18. If Section 397(1) is carefully read and interpreted, one would find two distinct parts, viz, to examine and satisfy as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and secondly, the provision authorizes the revisional court to suspend execution of any sentence or order till examination of the finding, sentence and order under revision passed by the inferior court.

19. A question naturally arises as to whether second part of the revisional court's power regarding temporary suspension of any sentence or order is in the nature of final order or interlocutory order.

20. Order which is passed on a matter arising from and during the course of appeal, inquiry, trial or other proceeding before a criminal court by way of preliminary or procedural step and which does not terminate the said appeal, inquiry, trial or proceeding by deciding finally the dispute between the rights of the parties, is an interlocutory order. The decision of the Hon'ble Supreme Court in **Tarapore and Co. vs. Tractors Export** reported in **AIR 1970 SC 1168** may be relied on this regard.

21. It is important to note that the expression “interlocutory order” has not been defined in the Code. In **Amar Nath vs. State of Haryana** reported in **(1977) 4 SCC 137**, it is been laid down that interlocutory order merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights, or the liabilities of the parties. Any order which substantially affects the, right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision against that order.

22. In **Madhu Limaye vs. State of Maharashtra** reported in **AIR 1978 SC 47** it is held by the Supreme Court that “interlocutory order” cannot be equated as invariably being converse of final order : an order passed during the course of a proceeding may not be final but, yet it may not be an interlocutory order, pure and simple. Same kinds of order may fall in between two which must be taken to be an order of the type falling in the middle course. **The bar of Section 397(2) is not meant to be attracted to such kinds of orders.** An order rejecting the plea of the accused on a point, which, when accepted, will conclude the particular proceeding, is an order of this kind not being an interlocutory order within the meaning of Section 397(2) of the Code of Criminal Procedure.

23. Coming to the provisions of the Protection of Women from Domestic Violence Act, **if an order passed by the Appellate Court under Section 29 of the said Act staying monetary relief granted to the aggrieved person against the respondent at the time of admission of appeal, the said order**

cannot be said to be interlocutory order as it affects the right of the aggrieved person pending disposal of the appeal.

24. If protection order passed under Section 18 of the said Act passed by the Magistrate is altogether stayed at the time of admission of appeal without granting any interim protection to the aggrieved person, such order is not an interlocutory order.

25. However the aggrieved person prays for a direction against the opposite party to secure same level of alternate accommodation under Section 19(1)(f) of the said Act but learned Magistrate passes an order under Section 17 of the said Act providing right of residence to the petitioner in the shared household and the learned Sessions Judge in appeal stays operation of the order till the disposal of the appeal, the nature of the order is undoubtedly an interlocutory order because it does not affect the right of the petitioner as she did not pray for right of residence at shared household.

26. In view of the above discussion I come to an irresistible conclusion that the instant revision is not maintainable against the order impugned.

27. Last but not the least, when both the learned Counsels in course of their argument started bargaining as to whether the accommodation offered by the opposite party is of same level to the accommodation available in shared household or that the opposite party is under legal obligation to provide alternate accommodation of same level to the petitioner, I direct the learned Sessions Judge to dispose of the appeal taking into account such facts and circumstances. I refrain from making

any comment with regard to the question raised by the parties as this will be prejudging the appeal on merit.

28. The instant revision is accordingly dismissed on contest, however, without cost.

(Bibek Chaudhuri, J.)