

Calcutta High Court (Appellete Side)

Biswajit Murmu & Anr vs The State Of West Bengal & Anr on 29 July, 2015

Author: Sankar Acharyya

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present :

THE HON'BLE JUSTICE SANKAR ACHARYYA

C.R.R. No. 1700 of 2014

In the matter of :

Biswajit Murmu & Anr.

Vs.

The State of West Bengal & Anr.

For the petitioners : Mr. Kallol Kumar Basu; adv.
Mr. Biswajit Hazra; adv.
Mr. Debapriya Samanta; adv.

For the Opposite : Mr. Chittapriya Ghosh; adv
Party No. 2 Mr. Pritam Chowdhury; adv.

Heard on : 23.06.2015, 01.07.2015

Judgment on : 29.07.2015

SANKAR ACHARYYA, J.

This revisional application under Section 401 of the Code of Criminal Procedure, 1973 read with Section 482 of that Code has been filed by two petitioners Biswajit Murmu and Ava Murmu, the son and mother respectively as petitioners against the State of West Bengal and Smt. Moumita Murmu as opposite parties challenging the judgment and order dated 11.04.2014 passed by learned District and Sessions Judge, Suri, District Birbhum in Criminal Appeal No. 16 of 2013. Contending inter alia, the petitioners have contended that the impugned judgment has caused abuse of process of Court due to non-application of judicial mind for passing the impugned judgment and is bad in law, without jurisdiction and liable to be set aside.

By the said judgment learned District and Sessions Judge, Suri has partly affirmed by modification of a judgment dated 28th March, 2013 passed by learned Chief Judicial Magistrate, at Suri District Birbhum in C. Case No. 438 of 2009 under Sections 9 (b) and 37 (2) (C) of the Protection of Women from Domestic Violence Act, 2005. Said case was filed in the Court of learned Chief Judicial Magistrate, Birbhum at Suri.

In the judgment passed by learned Chief Judicial Magistrate, Birbhum at Suri the present petitioner No. 1 as Opposite Party in that case was directed to pay maintenance allowance of Rs.6000/- per month to his wife petitioner Moumita Murmu (Mondal) (Opposite Party No. 2 herein) and to pay compensation of Rs.4,00,000/- to ;her in two equal instalments and to return Stridhan articles of the Opposite Party No. 2 of this case as per list or to pay Rs.3,00,000/- to her and also to arrange

rented accommodation for her within Bolpur city and to pay house rent, electricity charges thereof as per tenancy agreement. Protection order was also passed in favour of the wife Opposite Party No. 2 against the present petitioner exercising power of learned Magistrate under the provisions of The Protection of Women from Domestic Violence Act, 2005.

Said judgment was challenged by the present petitioner before the learned Sessions Judge filing Criminal Appeal No. 16 of 2013. In the impugned judgment learned Sessions Judge has modified the judgment passed by learned Chief Judicial Magistrate, Birbhum at Suri. Residence order and order for return of Stridhan articles or to pay Rs.3,00,000/- have been set aside, order of monetary relief for payment of maintenance allowance has been modified reducing the amount from Rs.6000/- per month to Rs.4000/-per month and the order for payment of compensation amount of Rs.4,00,000/- in two equal monthly instalments has been affirmed.

Petitioners have filed this case under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 challenging the judgment passed by learned Sessions Judge, Birbhum at Suri.

Said judgment has not been challenged by the wife Opposite Party No. 2.

Contending inter alia in the revisional application the petitioners contended that the impugned judgment is bad in law and tantamount to abuse of the process of Court and it is liable to be set aside. Filing supplementary affidavit the petitioners have stated about some new facts regarding service of the Opposite Party No. 2 as a part-time teacher in Nabagram Amar Chand Kundu College between 27.8.2009 to 31.10.2013. they have also stated about working of the Opposite Party No. 2 as an Assistant teacher in Jay Krishnapur Junior High School for girls and have alleged her monthly gross salary is Rs.22,358/- which facts were suppressed in the Courts below.

Scope of determination in this case is ordinarily confined within legality, propriety and correctness of the impugned judgment. It is not proper for this Court to entertain new facts which were not under consideration in the impugned judgment.

Since the matter of setting aside of residence order and return of Stridhan articles is not under challenge, I do not like to enter into discussion on such matters.

In the judgement passed by learned Chief Judicial Magistrate, Birbhum at Suri has passed order for payment of compensation of Rs.4,00,000/- by petitioner No. 1 herein to Opposite Party No. 2 of this case. Said order has been fortified by assigning reasons and it is permissible under Section 22 of the Protection of Women from Domestic Violence Act, 2005. Said portion of the judgment has been affirmed by learned Sessions Judge, Birbhum at Suri. I do not find anything against legality, propriety and correctness in the said concurrent observations of learned Chief Judicial Magistrate and learned Sessions Judge in the judgments of the learned Trial Court and Appellate Court.

Relating to monetary relief in the form of monthly maintenance allowance I find necessity of interference by this Court in order to prevent abuse of process of Court. It appears from the impugned judgment that at the time of passing the judgment on 11.04.2014 it was well within the

knowledge of learned Sessions Judge that in December, 2013 the Opposite Party No. 2 (wife of petitioner No. 1) has joined as Assistant teacher in a school through School Service Commissioner's examination. It is also undisputed fact that the petitioner No. 1 is also Assistant teacher of a school and his mother being a woman is his dependant. As such, in my view, burdening the petitioner No. 1 to pay maintenance allowance for any amount month by month to Opposite Party No. 2 since after November, 2013 is neither legal nor just. Rather, it is an abuse of process of Court. Thus, for the ends of justice, I do not uphold the finding of payment of monthly maintenance allowance by petitioner No. 1 to Opposite Party No. 2 with effect from December, 2013. Accordingly, the impugned judgment requires modification.

Finally, this revisional application is allowed in part. The petitioner No. 1 is exempted from any liability to pay maintenance allowance as monetary relief to Opposite Party No. 2 with effect from December, 2013. The amount already paid for any period since December, 2013 by him, if any, be adjusted with the amount of entitlement of Opposite Party No. 2 on account of compensation and arrear maintenance allowance before December, 2013 under the provisions of The Protection of Women from Domestic Violence Act, 2005. In respect of other findings, excepting the above aspect of liability for payment of monthly maintenance allowance, made in the impugned judgment passed by learned Sessions Judge, Birbhum at Suri in Criminal Appeal No. 16 of 2013 are left without interference. Consequently, the impugned judgment is modified.

A copy of this judgment under signature of Assistant Registrar be sent to learned Sessions Judge, Birbhum at Suri and to learned Chief Judicial Magistrate, Birbhum at Suri for information and necessary action.

Urgent certified copy, if applied for, be supplied promptly to the parties, following all legal formalities.

(SANKAR ACHARYYA, J.)