IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 153 of 2020

Md. Safique Mallick
-vs-
The State of West Bengal & Anr.

For the Petitioner	: Mr. Amit Ranjan Pati Ms. Afreen Begum Mr. Ashok Halder
For the Opposite party	: Mr. Niladri Sekhar Ghosh Ms. Srimoyee Mukherjee Mr. Sourav Mondal
Heard on	: 15.6.2022
Judgment on	: 23.06.2022

Ajoy Kumar Mukherjee, J.

1. This revisional application for quashing the criminal proceeding being C. case no. 865 of 2016 dated 20.4.2016 has been initiated under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short, DV Act, 2005) now pending in the court of learned Judicial Magistrate, 2nd Court, at Barasat, North 24 parganas.

2. The petitioner's case is that the petitioner and the opposite party no. 2 were married according to the Muslim Shriat Law on November 20, 2011 and

after marriage they were residing at Rajarhat, New Town. Few days after marriage, the opposite party No.2 started to misbehave with the petitioner without any reason and the petitioner was subjected to insult by the opposite party no.2 every now and then. Subsequently, on February 15, the opposite party with her minor child voluntarily left her matrimonial home and since then she is residing at Baguiati.

3. Ultimately finding no other alternative, on 19.1.2016, the petitioner gave divorce to his wife through Talaknama as per provision of Muslim Personal Law and the same was accepted by opposite party no. 2. Moreover, the due amount towards Iddat has also been sent to opposite party no. 2 after dissolution of marriage. Unfortunately after receiving a copy of the Talaknama, the opposite party no. 2 initiated criminal case by making false and frivolous allegations. Opposite party no. 2 also filed civil suit before the learned 6th Civil Judge, Junior Division, Alipore being Title suit no. 173 of 2016 praying for a declaration that the dissolution of marriage by Talaq dated 19.1.2016 is a nullity and non-est in the eye of law and has not been made in accordance with Muslim Law along with further prayer for permanent injunction restraining defendant from giving effect to such dissolution of marriage through Talaknama dated 19.1.2016.

4. Learned counsel for the petitioner Mr. Amit Ranjan Pati submits that the prayer made by opposite party no. 2 for interim stay was not granted by the court in aforesaid Title Suit no. 173 of 2016 and as such the divorce dated 19.10.2016 is still operative between the petitioner and the opposite party no. 2

and furthermore, the opposite party no. 2 voluntarily left her matrimonial home and being a working lady, she cannot claim any amount of monetary relief from the petitioner.

5. Learned counsel for the petitioner Mr. Pati strenuously argued that since the divorce dated 19.10.2016 is still operative, the opposite party no. 2 cannot claim herself as an "aggrieved person" to file an application under Section 12 of DV Act, 2005 praying for any relief and not even interim monetary relief under Section 23 of the DV Act, 2005. Learned Magistrate would not have entertain the said application , as the petitioner being a divorcee lady cannot be categorized as "aggrieved person" and Magistrate should not have passed any interim order on the basis of said application.

6. Accordingly, Mr. Pati submits that continuation of the aforesaid case no. 865 of 2016 filed by opposite party no. 2 claiming herself as aggrieved person, is an abuse of process of law and unfortunately learned Magistrate, is proceeding with such case without deciding the maintainability issue raised by the petitioner. Accordingly, the petitioner has prayed for quashing the aforesaid C. case no. 865 of 2016 dated 20.4.2016.

7. Learned counsel for the opposite party no. 2 Mr. Ghosh argued that being aggrieved by the alleged divorce through Talaknama, she has filed title suit no. 173 of 2016 and until and unless the said proceeding is concluded against the opposite party no 2, it cannot be said that no domestic relationship exists in between the parties or that their matrimonial tie has been dissolved and for which she cannot be categorized as aggrieved person.

8. On perusal of written complaint under Section 12 of DV Act, 2005, it appears that the petitioner has prayed for passing various orders under Sections 18, 19, 20, 21, 22 of the D.V. Act, 2005 and also prayed for passing interim order under section 23 for monetary relief for herself and their son. Denial of economic support to petitioner as well as their minor son, who has been brought up by the opposite party no. 2 may amount to "economic abuse" as per definition of "domestic violence" under the Act and for that purpose it is not material whether parties are still residing jointly in a shared household or not. In such case, even if opposite party No.2, might have been a working lady, even then whether her earning is adequate, fair and consistent with the living up bringing of their son to which the parties are accustomed is also to be looked into to decide the issue of economic abuse. A coordinate bench of this court in CRR 1301 of 2015 was pleased to observe as follows:

> *"I am also unable to accede to the submission of the learned lawyer for the petitioner that there can be no case of 'domestic violence' after the decree of divorce in 1988 as the parties had not lived together thereafter. Section 3 of the Act provides that any act or omission on the part of the respondent which harms, endangers or injures the health, safety life, limb or well being of an aggrieved person including economic abuse amounts to 'domestic violence'. Denial of economic support/sustenance to a divorced wife living penury would amount to 'economic abuse' constituting 'domestic violence' under the Act. Continuity of joint residence in a shared household or domestic relationship inter se is not a sine qua non for the perpetration of domestic violence to an aggrieved person in the form 'economic abuse' under the Act. Hence, the plea that there can be no case of 'domestic violence' after divorce of the opposite party no. 1 is clearly misconceived and untenable in law.*
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> *If economic abuse is evident in respect of an aggrieved person, who was in a domestic relationship and in the event, such economic abuse continues from day to day, the aggrieved person, in my considered opinion, would be entitled to institute a proceeding under Section 12 of the Act of 2005 for necessary relief."*

9. The case law referred on behalf of the petitioner reported in **(2011) 12 SCC 588** is not applicable in the present context as in the said case while challenging the decree of divorce my mutual consent granted by a higher forum was challenges by wife by filing a petition under Section 12 of the DV Act, 2005 before a Magistrate , which is not permissible under the law. Here dissolution of marriage has not taken place on mutual consent.

10. The case law referred on behalf of the petitioner reported in **(2016) 2 SCC 705** is also not applicable in the present context because that case was decided in connection with judicial separation where the Hon'ble Apex Court was pleased to hold that judicial separation does not change the status of wife as an aggrieved person and does not end the domestic relationship. Here it is not a case of Judicial Separation and the pronouncement of talak by husband is under challenge as per personal law.

11. The argument advanced on behalf of the learned counsel for the petitioner that the application is barred by limitation under Section 468 of the Code of Criminal Procedure has got no substance in view of the fact that an application under Section 12 of DV Act, 2005 is not a "complaint" and that is why compliance of Section 200 of the Code of Criminal Procedure is not applicable in case of an application under section 12. Moreover, domestic violence in the form of economic abuse continues even after alleged Talaq, on a day to day basis which is reflected from the prayer for interim relief made by opposite party no.2 for upbringing of their son. The limitation prescribed under Section 468 of the Code will apply if there be any offence committed in

terms of the provisions of D.V. Act, 2005 and not in respect of an application filed under Section 12 of the said Act. In this context, reliance has been placed in ***Kamatchi Vs. Lakshmi Narayanan*** **[2022 SCC OnLine SC 446].**

12. The case law referred by petitioner, reported in **2019 SCC OnLine Bombay 659** is not applicable in the present case because in the said case, it was held that there was no domestic relationship on the date of filing of application under the DV Act, 2005. But, in the present case the decision taken by husband for dissolution of marriage through talaq is still under challenge.

13. Having considered the facts and circumstances of the case and that prayer for the cancellation of Talak is still sub-judice and not yet finalised and also considering the fact that under Section 3 of DV Act, 2005, "domestic violence" includes emotional abuse as well as economic abuse, it can hardly be said at this stage that even though both the parties are residing separately the opposite party no. 2 cannot be categorised as "aggrieved person".

14. In view of aforesaid discussion, the revisional application being CRR 153 of 2020 is dismissed.

There will be no order as to costs .

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AJOY KUMAR MUKHERJEE,J.)