

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. 3487 of 2014**

**In the matter of :**  
**Smt. Vinita Sethia**  
**Vs.**  
**Vinay Kumar Sethia & Anr.**

For the petitioner : Mr. Manas Kumar Barman; adv.  
Ms. Bina Baidya; adv.  
Mrs. P. Upadhya; adv.

For the opposite party no. 1 : Mr. Kalyan Banerjee; adv.

Heard on : 03.07.2015, 17.07.2015, 22.07.2015,  
31.07.2015, 05.08.2015, 13.08.2015,  
04.09.2015, 10.09.2015, 11.09.2015,  
14.09.2015, 24.09.2015, 28.09.2015,  
29.09.2015, 08.10.2015

Judgment on : 14.01.2016

**SANKAR ACHARYYA, J.**

This criminal revisional application under Sections 482/397/401 of the Code of Criminal Procedure, 1973 has been filed by petitioner Vinita Sethia against her husband Vinay Sethia and The State of West Bengal as opposite parties/respondents challenging legality, propriety and correctness of the impugned judgment and dismissal order dated 12<sup>th</sup> August, 2014 passed by learned Additional

Sessions Judge, 1<sup>st</sup> Court, Howrah in Criminal Appeal No. 20 of 2014 under Section 29 of the Protection of Women from Domestic Violence Act (in short P.W.D.V. Act), 2005. In that appeal present petitioner as appellant challenged order dated 19<sup>th</sup> February, 2014 passed by the learned Judicial Magistrate, 1<sup>st</sup> Court, Howrah in Misc. Case No. 438 of 2010 dismissing petitioner's application dated 17<sup>th</sup> December, 2012 for interim residence order etc. under Section 19 of the Protection of Women from Domestic Violence Act, 2005.

Before the learned Judicial Magistrate petitioner's prayer was for interim relief of residential order or alternative accommodation or direction to pay rent alongwith return of Stridhan articles. Said prayer was rejected on the ground that such prayer cannot be granted without appreciation of evidence which would be forthcoming in the trial. Appeal was preferred by the present petitioner against that rejection order and the appeal has been dismissed on similar grounds. Said judgment has been challenged here.

This revisional application has been filed on the grounds that impugned judgment is bad in law, perverse and based on surmise and conjecture. Contending inter alia, petitioner contends that learned Court below misinterpreted the meaning of 'shared household' in the impugned judgment. Wisdom and spirit of the legislation of P.W.D.V. Act, 2005 has not been considered in the impugned judgment. Petitioner prays for setting aside the impugned judgment and to allow petitioner's application dated 17<sup>th</sup> December, 2012 for interim relief.

Respondent No. 1 is contesting this case filing affidavit in opposition. In that affidavit it has been contended that this revisional application is bad for non-joinder of necessary parties on the ground that in the trial Court before learned magistrate six other persons were also made parties and they contested the application but said persons were neither impleaded in the appeal nor have been made parties to this case. He has further contended that petitioner prayed for return of Stridhan articles in G.R. Case No. 1726 of 2010 and in Matrimonial Suit No. 3 of 2010 also and there were seven times of search including one time of seizure by police in connection with G.R. Case No. 1726 of 2010 for recovery of Stridhan articles, claimed by petitioner. Respondent no. 1 has denied his ownership in any premises or flat and he has been residing in the premises of his mother, brother and brother's wife but that premises is not their joint property at P- 70, Vivekananda Nagar, 4<sup>th</sup> Floor, Satyarani Apartment, P.S. Belur, Liluah, Howrah – 711204 which is not a shared household. He does not reside in any rented house. However, it is admitted by respondent no. 1 that in a proceeding against him under Section 125 of the Code of Criminal Procedure, 1973 an interim order was passed by learned Magistrate for his giving maintenance allowance to the petitioner and an another order was passed by learned Magistrate under Section 12 of the P.W.D.V. Act in Misc. Case No. 438 of 2010 an amount of Rs.10,000/- per month was awarded as monetary relief. Respondent no. 1 has been paying that amount regularly adjusting with maintenance allowance under Section 125 of the Code of Criminal Procedure, 1973 (in short

Cr.P.C.). Material allegations of revisional application have been denied by respondent no. 1. Dismissal of the revisional application has been prayed for.

Petitioner has filed counter objection cum rejoinder and four supplementary affidavits against the affidavit in opposition of respondent no. 1 and in support of the original revisional application.

Undisputed position as appears to me is that the petitioner is married wife of respondent no. 1 and they previously lived together with their relations in the household at P- 70, Vivekananda Nagar, 4<sup>th</sup> Floor, Satyarani Apartment, P.S. Belur, Liluah, Howrah – 711204 but now the petitioner does not live there while the respondent no. 1 still resides there with his relations. It is also undisputed that monetary relief of Rs.10,000/- per month was awarded against the respondent no. 1 and in favour of the petitioner under Section 12 of the P.W.D.V. Act which was not challenged by either party wherefrom impliedly it is prima facie established that domestic violence has taken place. Prima facie it is established that for recovery of petitioner's stridhan property search in the residential premises of respondent no. 1 was held by police on several occasions and some articles were seized by police and the same were given to petitioner.

In my view, when search and seizure was held by police for recovery of Stridhan property on prayer of petitioner in a separate proceeding, further interim order under Section 19 read with Section 23 of the P.W.D.V. Act, 2005 is redundant before recording evidence relating to the claim of stridhan property. As such, I find no illegality in refusal to grant interim relief relating to return of stridhan property

under Sub-Section 8 of Section 19 of the P.W.D.V. Act as observed by the trial Court and appellate Court.

Regarding prayer of the petitioner for residence order under Section 19 of the P.W.D.V. Act I am of the opinion that said prayer requires consideration in view of definitions of 'shared household' under Section 2 (s) and 'domestic relationship' under Section 2 (f) of the P.W.D.V. Act, 2005 and the provisions of Sections 19, 23 and 26 of that Act.

Section 2 (f) speaks, **“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. In the instant case it is needless to say that there is domestic relationship between petitioner and her husband respondent no. 1.

Section 2 (s) speaks, **“shared household”** means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved persons has any right, title or interest in the shared household. In the instant case, petitioner wife

is the aggrieved person. Right or title of respondent no. 1 to the house property situated at P- 70, Vivekananda Nagar, 4<sup>th</sup> Floor, Satyarani Apartment, P.S. Belur, Liluah, Howrah – 711204 is not established though it is prima facie established that he along with the petitioner lived in a domestic relationship and still the respondent no. 1 singly has been living in a joint mess with his mother, brother and sister in law in the same household. Although it is prima facie established that said household is neither owned nor tenanted household of respondent no. 1 and petitioner or either of them but it is prima facie well established that said household is petitioner's matrimonial home. According to morality and good conscience it is duty of respondent no. 1 to allow accommodation to his married wife petitioner in the residence where she was given accommodation once upon a time. As such, it may be said in view of the wisdom and spirit of P.W.D.V. Act that petitioner has interest of living in her matrimonial home and on equitable principle respondent no. 1 is duty bound to accommodate her in that household in exclusion of interference of any third party. According to the spirit of the benevolent legislation the definition of 'shared household' is not confined within the meaning of present ownership and/or tenancy right in the household. It is mere illustrative and not exhaustive. It should not be overlooked that the legislation has also used the words 'interest' and 'equity' to define 'shared household'. In my view, unless it is impossible to give implementation, a household where respondent no. 1 lived with petitioner for a considerable period together at any point of time and still the respondent no. 1 has been

living there is a shared household within the definition of Section 2 (s) of the P.W.D.V. Act, 2005. In the impugned judgment learned Additional Sessions Judge has fallen in error and learned Magistrate also committed same error in not considering the present residence of respondent no. 1 as 'shared household'. In my opinion, to arrive at such finding recording of evidence is not essential in view of the undisputed facts brought on record. I am also of the opinion that for passing such interim order without affecting any important final right of respondent no. 1 or his relations waiting for recording evidence is a miscarriage of justice in this case of peculiar facts and circumstances. But such interim order is not considered as interlocutory order for the purpose of considering bar under Section 397 (2) of the Cr.P.C. against this revisional application in view of the case law in ***Haryana land Reclamation and Development Corporation Ltd. Vs. State of Haryana and Anr.*** reported in **1990 Supreme Court Cases (Cri) 515** upon which learned Advocate for the petitioner relies. Learned counsel for the petitioner has also cited the decision of the Hon'ble Supreme Court of India in the case of ***Madhu Limaye Vs. State of Maharashtra*** reported in **1978 Supreme Court 47** in this matter. Relying upon the discussions made in paragraph 8 of that case law I am satisfied to hold and I hold that this revisional application regarding refusal by the appellate court to entertain petitioner's prayer for residence order is quite maintainable to prevent abuse of process of Court. Similarly, another case of ***Amar Nath and Others Vs. State of Haryana and Others*** reported in **AIR 1977 Supreme Court 2185** and a case of this High

Court in ***Smt. Saili Halder Vs. Debaprasad Halder*** reported in ***(2005) 1 C Cr. LR (Cal) 564*** also fortify the arguments of learned Advocate for the petitioner in favour of maintainability of this revisional application against the impugned judgment. Since the respondent no. 1 is the husband of the petitioner and only he is duty bound to provide residential accommodation to his wife according to Indian Law, Custom and Culture presence of any other person in this revisional proceeding as party is not essential. I find this case is maintainable without accepting the arguments of learned counsel for the respondent no. 1 that this revisional application is bad for non-joinder of necessary parties and not maintainable in law.

Section 23 of the P.W.D.V. Act gives power to the learned Magistrate for passing interim order. Residence order is required to be considered as urgent relief to protect a woman from her taking shelter on road and thus passing of interim order is not improper in the matter of granting residence orders. Neither the learned Magistrate nor the learned Additional Sessions Judge refused rightly to grant interim relief relating to residence order under Section 19 of the Act in the absence of recording evidence.

In the light of the wisdom of the legislature in view of the provisions under Sub-Section 3 of Section 26 of the P.W.D.V. Act I may safely hold and, therefore, I hold that after seizure of some Stridhan articles of petitioner and several subsequent searches for recovery of remaining articles sincerely in a legal proceeding it is not proper for the petitioner to insist for passing further interim order in this proceeding also for return of Stridhan articles.

In the instant case unchallenged order for monetary relief under Section 12 of the P.W.D.V. Act is sufficient for satisfaction of learned Magistrate or learned Additional Sessions Judge in the Courts below that domestic violence has taken place and thus it is a fit case for passing residence order under Section 19 of that Act. According to the facts and circumstances of this case, in my opinion, it will be proper to pass a residence order to prevent abuse of process of Court to give a direction upon respondent no. 1 to ensure residential accommodation to the petitioner with her Stridhan articles which she has already taken back including cot, T.V. etc. in the residence at P-70, Vivekananda Nagar, 4<sup>th</sup> Floor, Satyarani Apartment, P.S. Belur, Liluah, Howrah – 711204 where she lived previously without any sort of disturbance to her residing there even if the respondent no. 1 takes another shelter unless he secures similar alternative convenient accommodation to her elsewhere under Section 19 of the Act.

In summing up, this revisional application is allowed in part. The impugned judgment is modified giving interim order upon the respondent no. 1 to ensure residential accommodation to the petitioner with her Stridhan articles which she has already taken back including cot, T.V. etc. in the residence at P- 70, Vivekananda Nagar, 4<sup>th</sup> Floor, Satyarani Apartment, P.S. Belur, Liluah, Howrah – 711204 where she lived previously without any sort of disturbance to her residing there even if the respondent no. 1 takes another shelter unless he secures similar alternative convenient residential accommodation to her elsewhere under Section 19 of the P.W.D.V. Act till final disposal of the case pending before the learned Judicial

Magistrate under the P.W.D.V. Act. Petitioner's prayer for interim return of her Stridhan articles is not entertained as observed in this judgment. Learned Judicial Magistrate, 1<sup>st</sup> Court, Howrah do remain free to exercise the power under Sub-Section 2 of Section 19 of the P.W.D.V. Act if and when necessary without any reference to this Court. Petitioner is at liberty to avail the fruits of this judgment at once intimating to the Court of learned Judicial Magistrate 1<sup>st</sup> Court, Howrah and O.C. Golabari Police Station, Howrah. Respondent no. 1 is directed to extend full cooperation for implementation of this order.

This revisional application is disposed of accordingly.

Urgent certified Photostat copy of this judgment, if applied for, be given to the parties or their advocates, promptly observing all legal requisite formalities.

**(SANKAR ACHARYYA, J.,)**