

HIGH COURT OF SIKKIM
Record of proceedings

W.P. (Crl.) No. 02/2018

Priyam Porwal Sharma

.... Petitioner

Versus

Joy Sharma & Ors.

.... Respondents

Date:26.04.2018

CORAM

HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, J.

For Petitioner : Mr. Sudesh Joshi, Mr. Sujan Sunwar, Ms. Manita Pradhan, Mr. Ganesh Man Chettri, Mr. Sonam P. Tamang and Mr. Palchen Dorjee Sherpa, Advocates.

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W.P. (Crl.) No. 02/2018

Notice is issued in the Writ Petition returnable within three weeks as prayed for by the Learned Counsel for the Petitioner. Dasti in addition is permitted. Requisites to be filed within three days.

I.A. No. 1/2018

Heard Mr. Sudesh Joshi, Learned Counsel for the Petitioner in the present Writ Petition and the application for stay. He sought to rely upon certain documents which was not filed along with the Writ Petition. Mr. Joshi sought for urgent hearing on his application for stay and as such sought permission to file relevant documents today itself and requested the Court to hear the matter. It was permitted. A photo

copy of the complaint as well as the photo copy of the written statement on behalf of the Respondent No. 1, 2 and 3 was filed in Court. Let it be taken on record.

During the course of the argument for hearing on stay it transpires that Rule 20 of the Sikkim High Court (Practice & Procedure) Rules, 2011 has not been complied with and the Respondents are not represented. The impugned order was passed on 09.04.2018 and present Writ Petition was moved on 23.04.2018 along with and application for stay on the ground that the Learned Chief Judicial Magistrate has fixed 26.04.2018 for evidence of the Petitioner and witnesses. It is pleaded that if the evidence of the Petitioner and witnesses are recorded on 26.04.2018 the Petitioner would be prejudiced because vide impugned Order dated 09.04.2018 the Petitioner has been debarred from filing a rejoinder to the written statement filed by the Respondents No. 1, 2 and 3.

It is submitted that since various factual allegations have been made in the written statement filed on behalf of the Respondents No. 1, 2 and 3 if these allegations are not allowed to be met by the Petitioner before the Petitioner's examination the Petitioner would be greatly prejudiced.

Compliance of the rules of procedure and proceedings is necessary to ensure fair play. The Respondents are not represented and to pass any adverse order against the Respondents in such situation does not agree with the conscience of this Court. In view of the same, notice is issued in the application for stay returnable within three weeks as prayed for by the Learned Counsel for the Petitioner.

It is seen that the criminal complaint has been filed by the Petitioner. As per the complaint she is aggrieved by the alleged acts of physical abuse, verbal abuse, emotional abuse and economic abuse by the Respondents. As per the pleadings in the stay application the

Petitioner's evidence is to be recorded today. Mr. Sudesh Joshi, Learned Counsel for the Petitioner draws the attention of this Court to Section 28 of the Protection of Women from Domestic Violence Act, 2005 and submits that the procedure to be followed in domestic violence cases is engrafted in the said section.

It is submitted that in the present case as the Respondents were permitted to file written statement although there is no specific provision for it, it is quite obvious that the procedure prescribed in section 28(2) of the Protection of Women from Domestic Violence Act, 2005 has been followed by the Learned Trial Court and if that be so there should have been no hesitation to permit the Petitioner from filing the rejoinder as sought for in their applications which was however dismissed.

It is seen that the written statement filed on behalf of the Respondents No. 1, 2 and 3 are exhaustive containing numerous statements of facts. In the circumstances it is directed that the Learned Chief Judicial Magistrate shall defer the recording of evidence of the Petitioner as the complainant today and shall take it up after the hearing of I.A. No. 1 of 2018 after service of notice upon the Respondents.

Dasti served upon the Respondents over and above the normal mode of service is permitted. List I.A. No. 1 of 2018 on 24.05.2018 for hearing.

Judge
26.04.2018

to/ Index: ~~yes~~/No
Internet: yes/~~No~~