

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.258 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null
District- VAISHALI(HAJIPUR)

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- =====
1. Manish Kumar Soni Son Of Sunil Kumar Soni
 2. Sunil Kumar Soni Son Of Late Chunnu Prasad
 3. Babi Soni @ Babi Devi W/O Sunil Kumar Soni
 4. Dipak Kumar Son Of Sunil Kumar Soni All Resident Of Gudri, P.S-
Town Hajipur, District- Vaishali.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Pammi Soni Wife Of Manish Kumar Soni, D/O Gorakh Prasad R/O
Mohalla- Gudri, P.S- Town Hajipur, District- Vaishali, At Present R/O
Mohalla Patna City (Lodi Katra) P.S- Khajekala, Distt- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.D. Yadav, Advocate.
For the O.P. No. 2 : Mr. Akhileshwar Pd. Singh, Sr. Advocate
For the State : Mr. Uma Shankar Pd. Singh, APP.

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**

ORAL JUDGMENT

Date: 14-10-2015

Heard learned counsels for the petitioners and the
opposite parties.

The present Criminal Revision application is directed
against the judgment dated 04.03.2014, passed in Cr. Appeal No.



04 of 2014, by the learned District and Sessions Judge, Vaishali at Hajipur, affirming the ex-parte order dated 24.01.2014, passed by the learned S.D.J.M., Vaishali at Hajipur, in Complaint Case No. 3971/2013, Trial No. 3816/2014, whereby the petitioner no. 1 Manish Kumar Soni has been directed to provide a room in his house for residence purposes, to opposite party no. 2 and her minor daughter, having the facilities of electricity, water, bathroom, latrine and other facilities and to get the room repaired and cleaned at his own cost from time to time. The petitioner no. 1 has further been directed to make payment of Rs. 12,000/- per month to opposite party no. 2 by 15th day of every succeeding month for maintenance, education and other miscellaneous expenses of O.P. No. 2 and her daughter. The petitioners have also been directed not to torture O.P. No. 2 and her child physically or mentally nor will restrain the O.P. No. 2 and her minor child from meeting her relatives. Hence, the setting aside of the order dated 24.01.2014, passed in Complaint Case No. 1397 of 2013, by the learned S.D.J.M., Vaishali at Hajipur as well as the judgment dated 04.03.2014, passed by the learned District and Sessions Judge, Vaishali at Hajipur, has been prayed for.

The factual matrix of the case is that opposite party no.

2 filed Complaint No.3971/2013 on 25.11.2013 before the learned Chief Judicial Magistrate, Vaishali at Hajipur, stipulating therein that she was married to petitioner no. 1 on 14.07.2010 and at the time of marriage, Rupees Five Lacs was given in cash and besides this, gifts worth Rupees Ten Lacs were also given to the in-laws. Subsequently, torture was inflicted by the petitioners for non-fulfillment of dowry demand of a Car. The O.P. No. 2, subsequently got pregnant and was brought to her parent's house where she gave birth to a female child but none of the in-laws family members, came to see the new born baby. Assurance was given by the family of O.P. No. 2 to give a Car, when she was taken to the matrimonial house but again torture was inflicted and she was compelled to leave the matrimonial house when the jewellery and other belongings were retained by the petitioners. Subsequently, a criminal case was lodged vide Hajipur Mahila P.S. Case No. 32 of 2013, with accusation under Sections 498A and 406/34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act, thereafter the issue got temporarily resolved on assurance of petitioner no. 1 that he will not inflict torture again but subsequently the O.P. No. 2 was driven out from the matrimonial house. Consequently, the Complaint no. 3971 of 2013 was filed under Section 12 of The Protection of Women

from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act') for following reliefs (i) to allow the O. P. No. 2 and her minor daughter to reside in matrimonial house, (ii) the petitioners be restrained from inflicting physical or mental torture upon O.P. No. 2 and her daughter, (iii) O.P. No. 2 be provided Twenty Thousand Rupees per month for maintenance, education of the child and miscellaneous expenses, (iv) the parents/relatives of O.P. No. 2 be allowed to visit the O.P. No. 2 and her child and O.P. No. 2 be allowed to appear at forthcoming examination or for any other relief which the court may deem fit and proper.

It appears that the learned Chief Judicial Magistrate, Vaishali at Hajipur, after taking cognizance in the matter, transferred the Complaint under Section 192 Cr.P.C., for enquiry and disposal to the court of the learned S.D.J.M., Vaishali at Hajipur. The learned S.D.J.M. on 28.11.2013, recorded the S.A. of the complainant and the Protection Officer, Vaishali at Hajipur was directed to submit a report. The learned S.D.J.M. vide order dated 20.12.2013 directed for issuance of notice through the Protection Officer to the petitioners fixing the date as 03.01.2014 but the petitioners did not appear either before the Mahila Help Line or in the court of the learned S.D.J.M. The

office of Project Manager-cum-District Woman Rights Protection Officer transmitted letter No.873 dated 23.12.2013 through Speed Post directing both sides to appear for joint meeting on 31.12.2013. On 31.12.2013, the O.P. No. 2 appeared and placed her case but the petitioner no. 1 chose not to appear nor gave any intimation to the office of Mahila Help Line or the office of the Project Manager-cum-District Woman Rights Protection Officer. On the same day, the petitioner no. 1 was contacted by the Mahila Help Line on his Mobile Number 9934900126 for appearing at 3.30 P.M. to make his submission in the matter when the petitioner no. 1 assured to make himself present but again he did not appear till 3.45 P.M. and when again attempts were made to contact him on the said mobile number, it was found to be switched off. The office of the Project Manager issued letter no. 929 dated 31.12.2013, which was transmitted through Speed Post for appearance of petitioners on 03.01.2014, when, only O.P. No. 2 appeared and placed her case but the petitioners chose not to appear. Thereafter, next date was fixed on 09.01.2014 for a joint meeting and Dasti notice was transmitted to the petitioners but they refused to receive the Dasti. Besides this, notice was also transmitted to the petitioner no. 1 through Trackon Courier on 04.01.2014 but he refused to

receive the same. The O.P. No. 2 appeared on 09.01.2014 and placed her case but the petitioners neither appeared nor transmitted any intimation to the office of the Project Manager-cum -District Woman Rights Protection Officer. Thereafter, when, despite all efforts, petitioner no. 1 did not appear, the Project Manager-cum-District Woman Rights Protection Officer recommended for registering the case under Domestic Violence Act, 2005.

Subsequently, O.P. No. 1 filed an application on 18.01.2014 for passing ad-interim ex- parte order. The said application was filed along with an affidavit which is available in the Lower Court records. The Project Manager-cum-District Woman Rights Protection Officer was noticed to give evidence. Consequently, Miss. Priyanka Kumari, Project Manager-cum-District Woman Rights Protection Officer, Vaishali appeared on 22.1.2014 and deposed as C.W. No. 1 to the effect that in spite of several notices petitioners failed to appear, hence recommended for registering a case under the Protection of Women from Domestic Violence Act. On the prayer of O.P. No. 2, evidence was closed by learned Magistrate vide order dated 22.1.2014. Since the learned S.D.J.M. found that the petitioners deliberately refused to receive the Notice, he passed ex-parte



order on 24.1.2014, whereby petitioner No. 1 Manish Kumar Soni was directed to provide a room in his house for residence purposes, to the opposite party no. 2 and to her minor daughter, facilitated with electricity, water, bathroom, latrine and other facilities and to get the room repaired and cleaned at his own cost, from time to time. The petitioner no. 1 was further directed to make a payment of Rs. 12,000/- per month to opposite party no. 2 by 15th day of every succeeding month for maintenance of O.P. No. 2 and her daughter and for education and other miscellaneous expenses. The petitioners were also directed not to torture O.P. No. 2 and her children physically or mentally, nor to restrain the O.P. No. 2 and her minor child to meet their relatives.

The order of the learned Magistrate was challenged before the District & Sessions Judge, Vaishali at Hajipur by the petitioners through Cr. Appeal No. 04 of 2014, on the ground that the application under Section 12 of the Act, was filed without proper affidavit. No service of notice was made nor any effort was made for substituted service of notice. No report was called for from the Project Manager-cum-District Woman Rights Protection Officer, in derogation to the procedure prescribed under Section 12 of the Act. Hence, ex- parte order dated

24.01.2014 has been passed in sheer violation of the principles of natural justice.

The appeal was heard by the learned District and Sessions Judge, Vaishali at Hajipur and dismissed on the ground that the Appellate Jurisdiction can only be exercised when it is found that the Magistrate has exercised the jurisdiction arbitrarily, capriciously or perversely or if it is found that the learned Magistrate has ignored the settled principles of law regulating grant of or refusal of interim relief. Hence, the appellate judgment as well as the order passed by the learned S.D.J.M. are under challenge in the present Criminal Revision application.

Learned counsel for the petitioners submits that as per Rule 7 of the Rule 2006 of Protection of Women from Domestic Violence Rules, 2006 (hereinafter called as 'the Rules'), an affidavit has to be filed for an ex-parte order under Sub-Section (2) of Section 23 in Form III but no such affidavit was filed and the notice was not actually served upon the petitioners. The evidence was recorded behind the back of the petitioners, hence, the impugned order and judgment passed by both the learned Courts below are bad in law and facts as well.

It is submitted by the learned counsel for the O.P. No.





2 that the application dated 18.01.2014 was filed with a prayer for ex parte ad interim order, along with affidavit of O.P. No. 2 and the order of the learned S.D.J.M. reflects that efforts were made by the Project Manager-cum-District Woman Rights Protection Officer for service of notice but the petitioners refused to accept the notice, hence, the impugned order cannot be treated to be vitiated, merely because the affidavit was not filed under Rule 7 in Form III. More over, Section 28(2) of the Act provides that nothing in Sub-Section (1) shall prevent the Court from laying down its own procedure for disposal of an application under Section 12 or under Sub-Section (2) of Section 23 of the Act.

Considering the rival submissions of the parties, for the reasons of clarity, it would be necessary to appreciate the Statement of Objects and Reasons of the Protection of Women from Domestic Violence Act, 2005. The first three paragraphs of the Statement of Objects and Reasons under which the Bill No. 116 of 2005 was placed before the Parliament for passing the Act are extracted, (Published in the Gazette of India Extra Ordinary Part-II Seriatim 2 page 22 dated 22nd August, 2005), are as under:-

“Domestic violence is undoubtedly a human rights issue and serious deterrent to development.

The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII(1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.
3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.”

Keeping these objects and reasons in mind and to provide for more effective protection to the rights of women guaranteed under the Constitution who are victims of violence of any kind, occurring within the family and for matters connected therewith or incidental thereto, the Bill was presented before the Parliament which has become the Act after passing the same by the Parliament. Thus, one cannot lose sight of the fact that the Act has been passed keeping in view the rights guaranteed under



Articles 14,15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Thus, basically the Act has been passed to provide the civil remedy against domestic violence to women.

Chapter IV of the Act provides the procedure for obtaining orders of reliefs under the Act under Chapter IV, while Section 12 of the Act stipulates the procedure for filing application to the Magistrate for seeking one or more reliefs under the Act. Section 12 reads as follows:

12. Application to Magistrate.-(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any Court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act

shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.”

Section 23 under Chapter IV of the Act provides the power to grant interim and ex parte orders which reads as follows:

“23. Power to grant interim and ex parte orders.-

- (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
- (2) If the Magistrate is satisfied that an application *prima facie* discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent”.

Under Section 12 of the Act, an aggrieved person or a



Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act. The Magistrate, before passing any order on such application, shall take any domestic incident report from the Protection Officer or the service provider. Section 12(3) of the Act stipulates that every application under Sub-Section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

Section 13 of the Act which is under Chapter IV of the Act provides the mode of service of notice, which stipulates that notice will be given by the Magistrate to the Protection Officer who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

Sub-section (2) of Section 13 stipulates that any declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved. Hence, Section 13 provides that notice of the date of hearing

fixed under Section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed, on the respondent and on any other person, within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate.

It appears from the record that the application under Section 12 of the Act was filed by O.P. No. 2 on 25.11.2013 in the court of the learned Chief Judicial Magistrate, Vaishali at Hajipur, when the matter was transferred under Section 192 Cr.P.C., to the Court of the learned S.D.J.M. On 28.11.2013 the applicant was examined on S.A. by the learned S.D.J.M. and report was called for, from the District Protection Office, Vaishali, as to whether any complaint alleging torture has been filed earlier or not. On 12.12.2013 the enquiry witness was examined. The learned S.D.J.M. vide order dated 20.12.2013 directed for issuance of notice to the petitioners through the Project Manager-cum-District Woman Rights Protection Officer. The order dated 03.01.2014 reflects that reminders were directed to be issued for service of notice since the opposite parties did not appear after service of notice and the matter was adjourned for 10.01.2014 when the report was submitted by the Project Manager-cum-District Woman Rights Protection Officer to the



effect that in spite of valid service of notice, the Opposite parties failed to appear. Thereafter, the matter was adjourned for 13.01.2014 and vide order dated 18.01.2014 it was recorded to the effect that in spite of service of notice, the opposite parties are not appearing. On 22.01.2014 only one witness C.W.No.1 Priyanka Kumari, Project Manager-cum-District Woman Rights Protection Officer was examined and on request of O.P. No. 2 evidence was closed and the matter was posted for ex-parte hearing.

Though Rule 12 of the Rules provides the means of service of notice. Sub-rule (1) of Rule 12 of the Rules does not specifically prescribe that notice is to be issued to the person concerned in Form VII, but when Section 13(1) is read along with Form VII, it can only be construed that the notice provided under Rule 12(1) should be in Form VII. If so, the Magistrates, before whom application under Section 12 of the Act are filed, are required to issue notices to the person alleged to have committed domestic violence, in Form VII as prescribed under the Rules. It is pertinent to note that the Form VII notice directs the person concerned to appear either personally or through a duly authorized counsel to show cause why the reliefs claimed against him shall not be granted and on the failure to appear that

court shall ultimately proceed ex-parte against him. Clause (c) of Sub-rule (2) of Rule 12, makes it clear that for serving notices under Section 13 or any other provision of the Act, the provisions of Order V of the Code of Civil Procedure or the provisions under Chapter VI of the Code of Criminal Procedure, as far as practicable may be adopted.

As is clear from the Statement of Objects and Reasons, the Protection of Women from Domestic Violence Act is enacted to provide for a remedy under the civil law, which is intended to protect the women from being the victims of domestic violence and to prevent the occurrence of domestic violence in the society. Therefore, essentially the reliefs provided under the Act are civil remedies. The penal provisions are only Sections 31 and 33. Therefore, service of notice on an application filed under Section 12 or interim relief under Section 23, must be in the manner provided under the Code of Civil Procedure.

Order V of Code of Civil Procedure provides for issue of service of summons. Sub rule (1) provides that when a suit has been duly instituted, summons may be issued to the defendant, to appear and answer the claim and to file the written statement of his defence, within thirty days from the date of



service of summons on the defendant. Sub rule (2) provides that every summons shall be accompanied by a copy of the plaint. Under clause (c) of sub rule (2) of Rule 12 of the Protection of Women from Domestic Violence Rules, for serving notice under Section 13 of the Act, the provisions of Order V of Code of Civil Procedure is made applicable. Necessarily, it has to be construed that as provided under Rule 2 of Order V of Code of Civil Procedure, copy of the application filed under Section 12 is also to be served on the respondent, alongwith the Notice. Similarly if an ex-parte order is passed under Section 23(2) or a Notice is issued to the respondent on a petition filed under Section 23(1), a copy of the application shall also be served on the respondent, alongwith the Notice, to enable the respondent to defend the claim so raised against him.

The orders contemplated under the Act can be broadly divided into three categories. The first category is of the final order passed on an application under Sub-section (1) of Section 12; the second category is of the ex-parte ad-interim order under Sub-section (2) of Section 23 of the Act and the third category will be interim order under Sub-section (1) of Section 23 of the Act. In the present case the learned S.D.J.M. passed final ex parte order under Section 12(1) of the Act, since the petitioners



failed to appear in spite of valid service of notice. More over, on perusal of the provision under Section 12(1) of the Act it appears that before passing any order on the application, it is obligatory on a Magistrate to take into consideration any report received by him from the Project Manager-cum-District Woman Rights Protection Officer or the Service Provider. The words “before passing any order” provide that any final order on the application and not merely issuance of notice to the respondents. The words “any report” mention that a report, if any, received by the Magistrate shall be considered.

Section 28 of the Act provides the procedure to be followed by the Magistrate under the Act. Under sub Section (1), all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31, shall be governed by the provisions of Code of Criminal Procedure but Sub section (2) provides that nothing in Sub-Section (1) shall prevent the court from laying down its own procedure for disposal of an application under Section 12 or under Sub-Section (2) of Section 23 of the Act.

Though the order which can be passed under Sections 17 to 22 of the Act, are more civil in nature, that is why under Sub-section (2) of Section 28 of the Act, it is provided that the court may adopt its own procedure for disposal of an application



under Section 12 or under Sub section 2 of Section 23 of the Act. It can, thus, be inferred that the Legislature has introduced an element of flexibility in the procedure to be adopted while dealing with application under Section 12 of the Act as the same is a summary proceeding like proceeding under Section 125 of the Cr.P.C. which gets reflected from Rule 6(5) of the Rules which reads as under:-

“6. Applications to the Magistrate-(5) The applications under Section 12 shall be dealt with and the orders enforced in the same manner laid down under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

Hence, for proceeding under Section 12 of the Act the Magistrate is not supposed to proceed like a regular complaint, as the petition under Section 12 of the Act is an application and not a ‘complaint’. The word ‘complaint’ is not defined in the Act but the word ‘complaint’ as defined in Section 2(d) of the Cr. P.C. means any allegations made orally or in writing to a Magistrate with a view to his taking action under the Code since some person known or unknown has committed an offence. But the Magistrate on an application under Section 12 of the Act read with Rule 12 **and Form-II** can grant one or more relief under Sections 17 to 22 which are:

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- (i) Right to reside in shared house hold under Section 17.
 - (ii) Protection Order under Section 18.
 - (iii) Residence Order under Section 19.
 - (iv) Order granting Monetary relief under Section 20.
 - (v) Interim Custody Order under Section 21.
 - (vi) Compensation Order under Section 22.

All the above remedies envisaged in Sections 17 to 22 are basically civil reliefs. There are only two penal provisions in the Act i.e., Section 31 which stipulates penalty for breach of protection order by respondent and Section 33 which stipulates penalty for not discharging duty by Protection Officer.

Hence, a Magistrate is not required to proceed when an application is filed under Section 12 of the Act like a regular complaint under Section 200 or 202 of the Cr. P.C. Though in the present case, the Magistrate has proceeded on the application under Section 12 of the Act like a regular complaint but the same has in no way, prejudiced the petitioners.

Hence, though the provision under Section 28(1) of

the Act stipulates that the proceeding under Section 12 of the Act shall be governed by the provisions of the Code of Criminal Procedure, but the same is directory in nature and any departure from the provisions of Code of Criminal Procedure will not vitiate the proceeding initiated under Section 12 of the Act.

It has been held in the case of Naorem Shamungou Singh Vs. Moirangthem Guni Devi, reported in AIR 2014 Manipur 25, that in view of Sub-Section 2 of Section 23 of the Act, the Court can devise its own procedure for disposal of an application in proceedings under Section 12 of the Act and that it is not incumbent upon the Magistrate or the Court concerned to strictly adhere to the provisions of Cr. P.C. and a departure could accordingly be made from the provisions of Cr. P.C., if need arises and a method, which is just and fair, could be adopted. So far as Rule 6(5) of the Rules is concerned, which provides that applications under Section 12 of the Act shall be dealt and orders enforced in the manner laid down in Section 125 of the Cr. P.C. 1973, it has been held that Section 126 of the Cr. P.C. which governs the proceeding under Section 125 of the Cr. P.C. provides for ex-parte proceedings if the Magistrate is satisfied that the person concerned is avoiding attendance of the Court and thus the same also applies to a proceeding under the Act,

2006, when the petitioners, in spite of proper service of notice and being fully aware of the proceedings before the Magistrate chose not to appear before the Court.

The Objects and Reasons under the Act intend to provide remedy under the Civil Law, keeping in view that though there is a specific offence under Section 498(A) of the I.P.C. to deal with cruelty to a woman by the husband and his relatives, but there is no Civil law to address the phenomenon of domestic violence in its entirety and accordingly, it was proposed to enact a law for providing remedy and to protect the women, under the Civil law, from being victims of domestic violence and to prevent the occurrence of domestic violence in the Society. It was under the said circumstances and with such intent that many of the reliefs contemplated under the Act, are of civil nature which cannot normally be granted by a Criminal Court, but only by a Civil Court, which was the reason why the Legislature incorporated Sub Section-2 in Section 28, permitting the Court to lay down its own procedure for disposal of an application under Section 12 of the Act.

The Magistrate has the power to grant interim ex-parte order whenever he feels just and proper under Section 23(2) of the Act, when the application prima facie discloses that

the respondent is committing or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, on the basis of an affidavit in such form, as may be prescribed, of the aggrieved person under Sections 18, 19, 20 or 21, or as the case may be under Section 22 against the respondent.

Rule 7 of the Rules provides for Affidavit for obtaining ex parte order of the Magistrate which reads as follows:

“ 7. Affidavit for obtaining *ex parte* orders of Magistrate.- Every affidavit for obtaining *ex parte* order under sub-Section (2) of Section 23 shall be filed in Form III.”

Rule 7 stipulates that affidavit under sub-Section (2) of Section 23 of the Rules shall be filed in Form III.

In the present proceeding, the affidavit was not filed under Form III but that has not prejudiced the petitioners in any manner. The marriage between the petitioner no. 1 and O.P. No. 2 is not in dispute and the fact that they have been in domestic relationship, cannot be denied. Moreover, the claim of domestic violence as alleged by the O.P. No. 2 has also not been controverted by the petitioner in the present proceeding. The petitioners, particularly petitioner no. 1 has not denied the fact

that he was contacted on telephone for appearing before the Project Manager-cum- District Woman Rights Protection Officer. Immediately after passing of the impugned order by the learned S.D.J.M., the appeal appears to have been filed within time which suggests that the petitioners, particularly petitioner no. 1 was watching the proceeding.

In view of the above discussion, since there is concurrent finding of fact by the learned S.D.J.M. and Appellate Court, moreover there is no apparent perversity in the impugned judgments, hence, in exercise of revisional jurisdiction, this court is not inclined to interfere. Accordingly, this application is dismissed. However, the petitioner will be at liberty to file an appropriate application for passing appropriate order by the learned Magistrate under Section 25(2) of the Act in case of change in circumstances.

(Dinesh Kumar Singh, J)

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