

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41716 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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1. Navin Kumar Mishra, S/o Surendra Nath Mishra.
2. Surendra Nath Mishra S/o Late Nand Gopal Mishra
3. Lal Mani Devi @ Lalita Mishra W/o Surendra Nath Mishra
All are resident of M/5, Nivedita Place, Benachiti, P.O.- Durgapur, P.S.- Faridpur,
Durgapur, District- Burdwan in the state of West Bengal.

.... Petitioners

Versus

1. The State of Bihar
2. Mamta Mishra @ Mamta Chaturvedi D/o Dharamdeo Chaturvedi, W/o Navin
Kumar Mishra presently residing at Flat No.- 203, Vaishnavi Dayanand Apartment,
East Boring Canal Road, Near Panchmukhi Hanuman Mandir, District- Patna

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan Prasad, Advocate
Mr. Nilanjan Chatterjee, Advocate
Mr. Rakesh Kumar, Advocate

For the Opposite Party No.2 : Ms. Kumari Jyoti, Advocate

For the State : Mr. G.S. Gupta, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-06-2015

Heard learned counsel for the petitioners, learned counsel
for the State and learned counsel appearing on behalf of the opposite
party no. 2.

2. In the present application filed under Section 482 of
the Code of Criminal Procedure (hereinafter referred to as “the
Code), the petitioner has prayed for quashing the Domestic

Violence Case No. 27 of 2011 pending in the court of the learned Judicial Magistrate-1st Class, Patna.

3. Learned counsel for the petitioners has submitted that the petitioners are permanent resident of Durgapur in the West Bengal. The petitioner no. 1 Navin Kumar Mishra was married to the complainant/opposite party no. 2 Mamta Mishra @ Mamtra Chaturvedi in accordance with Hindu Rites and Customs in Durgapur at 13.04.2004. After marriage between the petitioner no. 1 and the opposite party no. 2 a baby was born on 8.4.2005. After the birth of the daughter while the opposite party no. 2 again conceived in the month of September 2006, a request came from the parents of opposite party no. 2 to sent her for delivery of the second issue at Jamshedpur (in the State of Jharkhand) where the parents of the opposite party no. 2 was residing at the relevant time. The petitioners agreed and happily sent opposite party no. 2 to her father's place at Jamshedpur where she gave birth to a male child on 17.02.2007. After birth of the second child, the petitioners wanted that opposite party no. 2 should return to her matrimonial home at Durgapur but several attempts made to get her back went in vain. The differences between the two families developed further over the adamant approach of the opposite party no. 2 and her parents who were interested in fetching money from the petitioners. Since

opposite party no. 2 refused to return her matrimonial home at Durgapur, the petitioner no. 1 filed a Matrimonial Suit No. 205 of 2008 under Section 9 of the Hindu Marriage Act, 1956 for restitution of conjugal rights.

4. Learned counsel for the petitioners has further contended that while opposite party no. 2 residing at Jamshedpur with her parents, filed a case under Section 125 of the Code giving rise to Misc. Case No. 127 of 2008 in the court of Principal Judge, Family Court at Jamshedpur. In her application, she has alleged that she was not allowed to talk to the family members and when she conceived after three months, she was beaten and to call her father. She has claimed for maintenance of Rs. 20,000/- per month for herself and two children. On 10.01.2011 an interim order of maintenance has been passed by the learned Principal Judge, Family Court, Jamshedpur. The operative part of the order passed by the learned Principal Judge reads as under:-

“Accordingly the interim maintenance petition filed by the applicants is allowed. The opposite party is directed to pay a sum of Rs. 2000/- per month to the applicant no. 1/wife and Rs. 2000/- to the applicant no. 2/son/ (minor), and also Rs. 1500/- per month the applicant no. 3/daughter (minor) in total Rs. 5500/- per month from the date of this order by the 15th of each successive month till disposal of this Misc. case

failing which the applicants will be at liberty to realize the same from the opposite party through due process of law.”

5. It has further been contended that in the aforementioned backgrounds, the Domestic Violence Case No. 27 of 2011 filed by the opposite party no. 2 in the court of Chief Judicial Magistrate, Patna is bad in law. He has submitted that opposite party no. 2 has filed an application under Section 125 of the Code and she is getting a total ad interim maintenance of Rs. 5,500/- per month from the petitioner. In case, the opposite party no. 2 finds the maintenance awarded to her has not sufficient, the proper course for her is to approach the family court for enhancement of maintenance amount. According to him, the protection of Women from Domestic Violence Act, 2005 (For short “the Act of 2005”) does not create any additional right to claim maintenance on the part of the aggrieved person. He has further submitted that it would be evident from a bare reading of Section 26 of the Act of 2005 that the statutory policy is to avoid any duplication of litigation.

6. In support of his contention, learned counsel for the petitioners has placed reliance on the following unreported decisions of different High Courts:- (i) Hemlataben Maheshbhai Chauhan v. State of Gujarat [Decided by the High Court of Gujarat at Ahmedabad on 21.10.2010]; (ii) Mathi Venkata Raju v. State of

A.P. and Others [Decided on 16.07.2009 by the High Court of A.P. at Hyderabad]; and (iii) Rachna Kathuria v. Ramesh Kathuria [Decided on 30.08.2010 by the High Court Delhi at New Delhi].

7. *Per contra*, learned counsel for the opposite party no. 2 has submitted that the instant application has got no substance. According to him, the Act of 2005 is very exhaustive and covers so may instances of domestic violence which are not in purview of the other proceedings such as 125 of the Code. He has further submitted that it would be evident from Sections 20(d) and 26(3) of the Act of 2005, that an application under the D.V. Act, 2005 would be maintainable in addition to an order of maintenance under Section 125 of the Code.

8. I have heard respective counsel for the parties and gone through the record of the case.

9. There is nothing under Section 12 of the Act of 2005 which prevents the Judicial Magistrate to consider for the reliefs in favour of a lady who has already been granted maintenance under the Code or under any other law prevailing at the relevant time. According to Section 20(d) of the Act of 2005, the maintenance for aggrieved persons as well as for her children, if any, includes an order or in addition to an order of maintenance under Section 125 of the Code or any other law for the time being in force.



10. It would further be evident from Section 20(d) of the Act of 2005 that while disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay the monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to the maintenance for the aggrieved person under Section 125 of the Code or any other law for the time being in force.

11. Section 26 of the Act of 2005 casts a duty upon the complainant to disclose the fact whether any other proceedings is pending between the wife and husband or not. The requirement of law under Section 26 (3) of the Act of 2005 is with a purpose. It would act as a cheque and balance because at the time of granting relief the court will keep in mind the fact that the aggrieved lady has approached other forums for redressal of her grievances.

12. The decisions on which the petitioners have placed reliance have been passed by the different High Courts. An identical issue had arisen before the Supreme Court in **Juveria Abdul Majid Patni V. Atif Iqbal Mansoori and Another** reported in (2014) 10 SCC 736. In the said judgment in para 23 the apex court has observed as under:-

“23.The monetary relief as stipulated under Section 20 is different from maintenance, which can be in addition to an order of maintenance under Section 125 CrPC or any other law. Such monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person and child of the aggrieved person as a result of the domestic violence, which is not dependent on the question whether the aggrieved person, on the date of filing of the application under Section 12 is in a domestic relationship with the respondent.”

13. Having regard to the statutory provisions prescribed under the Act of 2005 and the law laid down by the Supreme Court in Juveria Abdul Majid Patni (supra), I am of the considered opinion that an application under Section 12 of the Act of 2005 would be maintainable in addition to an order passed in a proceeding under Section 125 of the Code.

14. In that view of the matter, I find no merit in this application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

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