

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.700 of 2015

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Md. Seraj Ahmad son of Md. Gulzar, resident of Mohalla-Damaria Anisabad, P.S. Gardanibagh, District-Patna at present C/o Md. Shoaib (father-in-law), Mohalla-Damaria, P.O. Anisabad, P.S. Gardanibagh, District-Patna

.... Petitioner/s

Versus

1. State of Bihar
2. Gayatri Shekhar @ Anupam Shekhar, daughter of Chandra Shekhar Singh, resident of village-Darihat, P.S. Shashtri Nagar, Road No. 4/5, Tara Chand Apartment, District-Patna now in Mohalla-Keshav Nagar Katihar, P.S.+P.O.-Ratu, District-Jharkhand

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Jagjit Roshan, Advocate

For the State Opposite Party/s : Mr. J.N. Thakur (APP)

For the Opposite Party No. 2: Mr. Prem Kumar Verma, &
Mr. Sunil Shrivastava, Advocates

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 08-07-2015

Heard the parties.

This application has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Cr.P.C.') seeking modification in the order dated 16.5.2014 passed in Criminal Revision No. 909 of 2012 whereby this Court while upholding the claim of the opposite party no. 2 under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Domestic Violence Act') had modified the amount awarded by the courts below to a sum of Rs. 5,000/- payable by the petitioner to the opposite party no. 2 each month with effect from the



date of filing of the application i.e. 19.6.2010. Relying upon a certificate issued by the Marriage Registrar, Ranchi that the present application has been filed and with reference thereto Mr. Jagjit Roshan, learned counsel for the petitioner has submitted that the opposite party no. 2 is not entitled to any relief under the 'Domestic Violence Act' as she had got married to one Arbind Kumar Pathak on 18.12.2009 during the pendency of the Domestic Violence Case No. 29 of 2008 and prior to the final order passed by the Judicial Magistrate, 1st class-Patna on 29.1.2011. It is thus contended by Mr. Roshan that where the relief so granted to the opposite party no. 2 rests on suppression of material fact as well as misrepresentation of fact hence the order passed by the Magistrate as affirmed by the appellate court as well as this Court resulting only in modification of the quantum, would require a modification.

Pursuant to the notice issued, the respondent no. 2 has appeared through counsel Mr. Sunil Shrivastava. This Court while issuing notice had stayed the operation of the order passed by this Court in Criminal Revision No. 909 of 2012.

There is absolutely no confusion on the issue that while making a prayer for modification what in fact the petitioner wants, is the revocation of the order granting relief to the opposite party no. 2 under the provisions of the 'Domestic Violence Act' and the ground is, that it had been obtained by suppression of material fact and

misrepresentation of fact. It is also argued that the opposite party no. 2 was happily married to one Arbind Kumar Pathak even before final orders was passed in the case by the Magistrate.

The arguments of Mr. Roshan has been contested by Mr. Prem Kumar Verma, learned counsel representing the opposite party no. 2 who submits that even the certificate on its own would not be sufficient for modification of the relief and that the case of the petitioner is covered under the provisions of the Domestic Violence Act.

I have heard learned counsel for the parties and I have perused the records. It is apparent from the pleadings of the present application and the arguments advanced in support thereof that the petitioner does not seek any modification of the order passed by this Court in the Criminal Revision No. 909 of 2012 to rectify any clerical or arithmetical error rather he seeks to question the very eligibility of the opposite party no. 2 to grant of relief under the 'Domestic Violence Act'.

In view of the provision underlying Section 362 of the 'Cr.P.C.' and considering that this Court vide final order passed in the criminal revision application had while upholding the claim of the opposite party no. 2, merely modified the quantum of relief, in my opinion, in view of the statutory bar provided under Section 362 of the Cr.P.C., the modification application would not be maintainable as it

would amount to review of the matter on its merit which is impermissible in law. But then the petitioner is not remediless. Section 25 of the 'Domestic Violence Act' provides a remedy for the petitioner who was a respondent before the Magistrate and which runs as follows:

“25. Duration and alteration of orders:- (1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.”

The provision is explicit and vests the Magistrate with complete jurisdiction to revoke his order granting relief to the aggrieved party in case he is satisfied that there is a change in the circumstances or that the order was obtained by the aggrieved upon suppression of fact or misrepresentation of fact, that is to say, by practicing fraud upon the Court.

Whether the marriage certificate so relied upon by the petitioner to question the entitlement of the opposite party no. 2 to the relief under the Domestic Violence Act, is genuine and whether it would have any bearing on the merits of the case, are issues, that

needs to be adjudicated upon by the Magistrate with the aid of evidence and after due opportunity of hearing to the parties. The forum is available to the petitioner under Section 25(2) of the 'Domestic Violence Act' for seeking revocation of the judgment and order passed by the Magistrate and if so advised, he can avail of the same but in the accompanying circumstances and legal position discussed above, the present application seeking modification, is not maintainable for in the garb of modification, the petitioner seeks re-hearing of the matter on merits.

As I have already held, the petitioner is not remediless and has his forum available under Section 25(2) of the Domestic Violence Act and it goes without saying that any such application filed by the petitioner would be considered by the Magistrate concerned and be disposed of in accordance with law and after hearing the contesting parties expeditiously.

With the observations / directions aforementioned this modification application is disposed of. The interim order passed on 21.01.2015 stands vacated.

(Jyoti Saran, J)

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