

# IN THE HIGH COURT OF JUDICATURE AT PATNA

## Criminal Miscellaneous No.7569 of 2012

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

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1. Md. Afsar Hussain Parvez, son of late Akhtar Hussain, resident of village-Pura Nau Diha, Post-Kabariya via Lakshimi Sagar, District-Darbhangha, at present Co-coordinator Imdad Equipment Leasing Company inside Mubrad Transport Company, Mina Abdullah Kuwait, C/o Imdad Equipment Leasing Company, Post Box No.42205, Suwaik, Kuwait-70653,
  2. Md. Manjar Hussain @ Manzar Hussain Manzar, s/o late Akhtar Hussain, Head of Department of Psychology, D. K. College, Dumraon, Mohalla- Makiya (Takiya), Ward No.10, Post-Dumraon, District- Buxar,
  3. Ajfar Hussain Firoz, son of late Akhtar Hussain, Third Floor, Flat No.304, Ambar Apartment, New Patliputra, P.S.-Patliputra, District- Patna,
  4. Md. U. H. Afroz @ Umar Hussain Afroz, son of late Akhtar Hussain,
  5. Shahin @ Nuzhat Shaheed, w/o Md. U. H.Afroz, both are resident of Akhtar Manzil, Near Subash Chowk, Lal Bagh, Darbhanga,
  6. Aisha, w/o Azfar Hussain Firoz, Third Floor, Flat No.304, Ambar Apartment, New Patliputra, P.S.-Patliputra, District- Patna,
  7. Zafar Hussain Sanjar @ Md. Sanjar, son of late Akhtar Hussain, resident of village-Puranavdiha, Post-Kabaria, via Lakshmi Sagar, District-Darbhangha,
- .... .... Petitioner/s

Versus

1. The State of Bihar &
  2. Nikhat Fatima, wife Afshar Hussain Parvez, d/o Saiyad Khurshid Ahmad Hadi, resident of village-Puranavdiha, Post-Kabaria, via Lakshmi Sagar, District-Darbhangha, at present Mohalla- B-7/408 PRDA Flat, P.S.-Sri Krishna Puri, District- Patna.
- .... .... Opposite Party/s

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### Appearance :

|                              |   |                                                                                                                                             |
|------------------------------|---|---------------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s         | : | Mr. S. N. P. Sinha, Sr. Advocate with<br>Mr. Jitendra Narain Sinha, Advocate<br>Ms. Kanchan Kumari, Advocate<br>Ms. Rashmi Bharti, Advocate |
| For the Opposite Party No.1: |   | Mr. Nirmal Kumar Sinha, APP                                                                                                                 |
| For the Opposite Party No.2: |   | Mr. B. K. Sinha, Sr. Advocate<br>Mr. Ranjan Kumar Sinha, Advocate<br>Ms. Seema, Advocate                                                    |

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

CAV JUDGMENT

**Date: 18-10-2017**

1. This quashing application was heard along with

Cr. Misc. No.25271 of 2012 as the parties i.e. Petitioners and



Opposite Party No.2 are same. However, keeping in view different nature of allegations made in the case and for brevity, judgment has been passed separately in both the cases.

**2.** This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 21.08.2010 passed by the Chief Judicial Magistrate, Patna, in Domestic Violence Case No.50 of 2010 by which the learned Magistrate has taken cognizance against the petitioners for the offence under Section 12 of The Protection of Women from Domestic Violence Act, 2005, hereinafter to be referred as “DV Act”.

**3.** In the instant case, Opposite Party No.2- Complainant has filed a petition under Section 12 of the DV Act that she was married to Afsar Hussain Parwez (Petitioner No.1) on 22.05.1998 according to Muslim Rites and Customs. Petitioner No.1 was working in Saudi Arabia and after marriage Complainant was taken to sister's house of Ayesha Khatoon. The Complainant was also taken to the ancestral house of the husband in Darbhanga and she stayed there for sometime and again came to her father's house. She gave birth to a male child on 13.02.2000. During this period, she was variously tortured by her husband and petitioner Nos.2 to 7. The husband used to make illegal demand of dowry etc. Husband of the Complainant (Petitioner No.1) left job at Saudi Arabia and came to



India and thereafter he went to Kuwait with the help of brother of the Complainant. Petitioner No.1 is at present working in Kuwait and earning handsome amount. Petitioner No.1 paid only Rs.1,45,000/- while working in abroad between 01.02.2009 to January, 2010. The Complainant has filed Maintenance Case No.210 (M) of 2008 on 23.12.2008, which is pending before the Additional Family Court, Patna. Husband of the Complainant came to India in June, 2009. She went to meet him but she was not allowed to meet her husband by Petitioner Nos.2 to 7. Thereafter, she filed Complaint Case No.760-C of 2010 under Section 498-A Indian Penal Code against her husband and other accused persons. The husband (Petitioner No.1) has illicit relation with Petitioner No.6. Husband of the Complainant has made Petitioner No.6 as nominee in his bank account.

**4.** The Court below on the basis of aforesaid allegation took cognizance against the husband of the Complainant (Petitioner No.1) and other family members of the husband (Petitioner Nos.2 to 7) under Section 12 of the DV Act.

**5.** Heard learned counsel for the Petitioners, learned APP as well as counsel for the Opposite Party No.2.

**6.** Counsel for the petitioners has submitted that the entire allegations made in the petition under the provision of DV Act are false and fabricated. Opposite Party No.2 has been divorced by Petitioner No.1 on 18.05.2010. Entire proceeding is vitiated as no



application in terms of Section 12 (3) of the DV Act has been filed. The provision contained in Section 2(q) of the DV Act defines 'respondents' as any adult male person, who has been in domestic relationship with the aggrieved persons and, thus, no woman can be made a party respondent in the case. Section 2(f) defines 'domestic relationship' meaning thereby a relationship between two persons who live or have, at any point of time, lived together in a shared household. In this case, none of the petitioners has been living in a shared house soon before the marriage of the Petitioner No.1 with Opposite Party No.2, which is clear from her own showing that Petitioner No.1 has been living in Arab country since before marriage and other Petitioners are living at Patna, Buxar, Siwan. The Chief Judicial Magistrate, Patna, without obtaining report from the Protection Officer, as required under the DV Act, took cognizance of the offence.

7. Learned counsel for the Opposite Party No.2 has submitted that show cause filed by petitioner Nos.2 to 7 in the Domestic Violence Case on 15.11.2010 and the rejoinder filed by the Petitioner Nos.2 to 7 to the petition dated 28.01.2011 for grant of interim relief, on behalf of petitioner No.1-Afsar Hussain Perwez, on 03.03.2011, clearly shows that all the Petitioners are not separate from each other. Petitioners are living jointly and they have shared house at village-Pura, District-Darbhangha. They in conspiracy



tortured Opposite Party No.2. Xerox copies of the show cause as well as rejoinder and interim petition filed in the Domestic Violence Case have been annexed as Annexure-D series to the Counter Affidavit filed on behalf of the Opposite Party No.2.

**8.** It has further been submitted by Opposite Party No.2 that the Magistrate is not bound to call for a report from the Protection Officer as per Section 12 of the DV Act. It is clearly prescribed in Section 28 of the DV Act that all proceedings under sections 12, 18, 19, 20, 21, 22, and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973.

**9.** Section 28(2) of the Act speaks that a Magistrate has power to lay down its own procedure for disposal of an application under section 12 or under sub-Section (2) of Section 23.

**10.** Section 23 of the Act empowers a Magistrate to pass such an interim order as he deems just and proper.

**11.** From the averments made, by the Opposite Party No.2, in Domestic Violence Case, it is apparent that she is legally wedded wife of Petitioner No.1. Her marriage was solemnized on 22.5.1998 according to Muslims Rites and Customs. After marriage, Opposite Party No.2 was physically and mentally tortured due to which she filed Complaint Case No.760-C of 2010 against her husband and other accused as named in the Complaint Petition.



Petitioner Nos.2 to 7 have admitted in the aforesaid case that they have been granted bail. Petitioner No.1-Husband intentionally did not appear in the Court below. Non-bailable Warrant of Arrest was issued against him by the Court below through Ministry of Home, Govt. of India, but till date Petitioner No.1 has neither applied for bail nor appeared before the Court below. No Divorce has taken place between the parties. There is no order of divorce passed by any competent Court. The Petitioners have not filed a chit of paper to show that divorce has taken place between the parties. The Petitioner No.1 is working in Kuwait for last five years and his job was arranged by brother of the Opposite Party No.2 in Kuwait.

**12.** The Protection of Women From Domestic Violence Act, 2005, provide for more effective protection of 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.

**13.** Section 28(1) of the Act clearly speaks that “Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973”.

**14.** Section 28(2) of the Act speaks “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”.

**15.** Section 29 prescribes that “There shall lie an appeal to the Court of Sessions within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later”.

**16.** In the instant case, it is admitted position that husband (Petitioner No.1) has not appeared in the proceeding in the Court below. From Annexure-D series filed on behalf of the Opposite Party No.2 with Counter Affidavit, it appears that the same has been filed by Petitioner Nos.2 to 7 on behalf of petitioner No.1, who never appeared in the proceeding in the Court below. Petitioner Nos.2 to 7 are family members of Petitioner No.1. Petitioner No.1 is totally neglecting Opposite Party No.2 and her child and not making any payment for their maintenance. As per petition filed by the Opposite Party No.2, Petitioner No.1 is working in Arab country and when he comes to India, he does not stay with Opposite Party No.2, rather, stays with his relations (Petitioner Nos.2 to 7).

**17.** The Court below by the impugned order on the basis of the allegation made in the petition has taken cognizance against the husband and other family members of the husband (Petitioner Nos.2 to 7) for the offence under Section 12 of the DV Act.



**18.** The show cause filed by Petitioner Nos.2 to 7 in the Domestic Violence Case on 15.11.2010, and the rejoinder filed by Petitioner Nos.2 to 7 to the petition dated 28.01.2011, for grant of interim relief on behalf of Petitioner No.1, Afsar Hussain Parvez (Husband) on 03.03.2011 (Annexure-D series to the Counter Affidavit) clearly shows that all the Petitioners are not separate from each other. Petitioners are living jointly and they have shared house at village-Pura, District-Darbhanga.

**19.** This Court, in the facts and circumstances of the case, does not find any illegality in the impugned order dated 21.08.2010 passed by the Chief Judicial Magistrate, Patna, in Domestic Violence Case No.50 of 2010 by which the learned Magistrate has taken cognizance against the petitioners for the offence under Section 12 of the DV Act.

**20.** The application is, accordingly, dismissed.

**(Sanjay Priya, J)**

***J.Alam/-***

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