

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.505 of 2017

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

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Matuk Nath Choudhary, Son of Late Jugal Kishore Choudhary, Professor, B.N. College, Ashok Raj Path, P.S. Pirbahore, District Patna. Presently resident of Flat No.502, Madhuban Complex, Shastri Nagar, P.S. Shastri Nagar, District and Town Patna-23.

.... Petitioner/s

Versus

1. The State of Bihar
2. Smt. Abha Choudhary, Wife of Sri Matuk Nath Choudhary, Resident of Village/Mohalla M.I.G. 21, Hanuman Nagar, Kankarbagh Colony, P.S. Kankarbagh, District Patna

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Krishna Chandra, Advocate
For the State	:	Mr. Mukeshwar Dayal, APP
For O.P. No.2	:	Ms. Shruti Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 21-09-2017

Heard learned counsel for the petitioner, learned Additional Public Prosecutor for the State as well as learned counsel appearing on behalf of opposite party no.2.

2. The petitioner has preferred this revision application against order dated 09.09.2015, passed by learned Additional District Judge-XI, Patna in Criminal Appeal No.1860 of 2014 whereby the order dated 08.01.2014 granting interim maintenance of Rs.15,000/- per month to opposite party no.2 in Domestic Violence Case No.11 of 2007 is upheld.

3. Learned counsel for the petitioner submits that opposite party no.2 though she is the wife of the petitioner but not in domestic



relationship for quite a long period, so she is not entitled for the interim maintenance and the court without being satisfied of existence of that domestic relationship has passed the impugned order. Further submission is that opposite party no.2 is already getting Rs.10,000/- per month as maintenance amount in a proceeding under Section 125 Cr.P.C. and also getting rent from the house, so she does not require further maintenance.

4. Per contra, the learned counsel appearing on behalf of opposite party no.2 submits that the law is well settled that even in addition to the maintenance order passed under Section 125 Cr.P.C., the court being *prima facie* satisfied can pass order of interim maintenance under the Domestic Violence Act and further contends that she is not getting rent from the house rather the house was purchased by her father for her residence and petitioner, a Professor in the Patna University is getting salary of Rs.1,80,000/- per month approximately.

5. Having considered rival submissions and on perusal of the record, this Court finds that it is an admitted position that petitioner is the husband of opposite party no.2. Whether the opposite party no.2, wife of petitioner, is presently residing with the petitioner or not, it is not a matter of consideration for the Court rather the only question for consideration before this Court is that whether both sides



were in domestic relationship or not. The domestic relationship is defined under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005, which expressly defines that a domestic relationship is a relationship between two persons who live or have, at any point of time, lived together, so it is immaterial whether the wife is living presently with the husband or not. It is not necessary that she must be living presently with the husband in order to file a case under Domestic Violence Act. It is not in dispute that they have not lived together. The petitioner has preferred this revision against the interim order of maintenance passed under Section 23 of the Act. The Magistrate is to be only satisfied while passing order for interim maintenance whether the application filed by the aggrieved party *prima facie* discloses the fact that respondent is committing or has committed an act of domestic violence or not, even it goes to the probability of committing domestic violence, if there is likelihood of committing domestic violence by the respondent even in that case the order under Section 23 of the Act may be passed. Section 20(d) of the Act categorically includes the provision of maintenance for the aggrieved person and order of maintenance may be passed under this Act even in addition to an order of maintenance passed under Section 125 Cr.P.C. Altogether the petitioner is to give to his wife Rs.25,000/- per month as interim maintenance; Rs.10,000/- under the provision of



Section 125 Cr.P.C. and Rs.15,000/- in view of the impugned order passed under the Domestic Violence Act. It is also evident that financial position of the petitioner is sound being a Professor of the University, his salary is approximately Rs.1,80,000/-, so the maintenance amount comprising Rs.10,000/- as well as Rs.15,000/- is not exorbitant, so finding no merit for the aforesaid reasons, the criminal revision application stands dismissed.

The trial court is directed to expedite the proceeding in the court below and both parties will cooperate in the matter.

(Arun Kumar, J.)

S.Kumar/-

AFR/	NAFR
CAV DATE	NA
Uploading Date	04.10.2017
Transmission Date	04.10.2017

