

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1021 of 2014

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Pradeep Kumar Choudhary, son of Rajendra Prasad Choudhary, resident of village chakia, Ward No. 7, Police Station Banmankhi, District Purnea

.... Petitioner

Versus

1. The State of Bihar
2. Nitu Kumari, daughter of Awadhesh Choudhary, resident of village Sakraili, Semapur, P.O. Semapur, District Katihar

.... Respondent/s

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with

Criminal Revision No.12 of 2016

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

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Pradeep Kumar Choudhary, son of Rajendra Prasad Choudhary, resident of village Banmankhi, Ward No. 7, Post Office & Police Station Banmankhi, District Purnea

.... Petitioner

Versus

1. Nitu Kumari, daughter of Awadhesh Choudhary, wife of Pradeep Kumar Choudhary
2. Aryan Kumar Choudhary, minor son of Pradeep Kumar Choudhary, under the guardianship of his mother and natural guardian Opposite Party No. 1

Both resident of village Sakraili (Semapur), P.O. Semapur Factory, Police Station Barari (Semapur O.P.), District Katihar

.... Respondent/s

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Appearance :

(In both cases)

For the Petitioner/s : Mr. Suraj Narayan Yadav
Mr. Radha Mohan Singh
Mr. Anil Kumar Anal

For the State : Mr. Kumar Ranjit Ranjan

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 27-02-2017

Heard learned Counsel for the petitioner and



learned Additional Public Prosecutor representing the State.

The petitioner is the husband of Opposite Party No. 2 of Criminal Revision No. 1021 of 2014. The Opposite Party No. 2 has filed a complaint case, making allegation of commission of offence punishable under Section 498A and other sections of the Indian Penal Code. It appears from the records that the petitioner was directed to pay a sum of Rs. 1,200/- per month as one of the conditions for his release on bail in connection with the said complaint case.

The Opposite Party No. 2 has also filed a case under the provisions of the Protection of Women from Domestic Violence Act, 2005. The learned Sub Divisional Judicial Magistrate, Katihar, by an order, dated 31.07.2014, passed in the said Complaint Application No. 3008 of 2013, filed under the provisions of the Protection of Women from Domestic Violence Act, 2005, has allowed compensation at the rate of Rs. 5,000/- per month by way of interim financial assistance.

Against the said order, the petitioner had preferred appeal before the learned Sessions Judge, Katihar, which came to be dismissed by order, dated 09.10.2014, passed in Criminal Appeal No. 56 of 2014. The said orders, dated 31.07.2014 and 09.10.2014, have been put to challenge in Criminal Revision No. 1021 of 2014.



The Opposite Party No. 2 had also made an application seeking maintenance under Section 125 of the Code of Criminal Procedure, 1973 (in short, "the Code") before the Family Court, Katihar, which has been finally decided by order, dated 25.06.2015, passed by learned Additional Principal Judge, Family Court, Katihar, in Maintenance Case No. 216 of 2011, whereby he has allowed maintenance allowance at the rate of Rs. 1500/- per month to the Opposite Party No. 2 and Rs. 1500/- to the minor son, who is Opposite Party No. 3 in Criminal Revision No. 12 of 2016.

The said order, dated 25.06.2015, has been put to challenge, under Section 19 (4) of the Family Courts Act, 1984, in Criminal Revision No. 12 of 2016.

The Opposite Party No. 2 in Criminal Revision No. 1021 of 2014 is Opposite Party No. 1 in Criminal Revision No. 12 of 2016.

The two applications have been taken up together in view of the facts, as narrated above.

Learned Counsel appearing on behalf of the petitioner has submitted that the Courts below have not taken into account the actual income of the petitioner for the purpose of determination of the amount payable to the private opposite parties for their maintenance. He has also



submitted that the learned Additional Principal Judge, Family Court, Katihar, failed to take into account the compensation awarded by the Court in the proceeding under the provisions of the Protection of Women from Domestic Violence Act, 2005, whereby the petitioner had been made to pay a sum of Rs. 5,000/- per month.

On a query made by this Court, learned Counsel for the petitioner has submitted that Opposite Party No. 2 has not informed the Court below in the proceeding under the provisions of the Protection of Women from Domestic Violence Act, 2005, that the Family Court has adjudicated upon the claim of the Opposite Party No. 2 on the question of her maintenance, as required under Section 26 (3) of the Protection of Women from Domestic Violence Act, 2005. He has submitted that the Court below ought to have taken into account the fact that the petitioner had already been directed to pay compensation at the rate of Rs. 5,000/- per month under the provisions of the Protection of Women from Domestic Violence Act, 2005, and, therefore, there was no need to compel the petitioner to pay Rs. 3,000/- per month as maintenance allowance, under Section 125 of the Code.

It is not clear, however, that the fact that the compensation, at the rate of Rs. 5,000/-, allowed in a



proceeding under the provisions of the Protection of Women from Domestic Violence Act, 2005 was brought to the notice of the learned Additional Principal Judge, Family Court, Katihar, in the proceeding under Section 125 of the Code.

Since the fact, that in exercise of power under the provisions of the Protection of Women from Domestic Violence Act, 2005, the Magistrate had allowed compensation at the rate of Rs. 5,000/- per month, was not brought to the notice of the learned Additional Principal Judge, Family Court, Katihar, I do not find any illegality in the order. The petitioner will be at liberty to file an application before the Court below by invoking provisions of Section 127 of the Code.

Criminal Revision No. 12 of 2016 is disposed of with the aforesaid observations.

As regards the plea of non-compliance of Section 26 of the Protection of Women from Domestic Violence Act, 2005 is concerned, as, according to learned Counsel for the petitioner, the Opposite Party No. 2 was required to inform the Court that relief, under Section 125 of the Code, had been obtained by her, which she did not do, the petitioner shall be at liberty to inform the Court in this regard.

If the Court finds that the plea is correct and Opposite Party No. 2 did not inform the Court regarding relief



granted under Section 125 of the Code, the Court below shall be required to proceed accordingly.

Both the applications stand disposed of with the observations, as above.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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