

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31873 of 2014

Arising Out of PS.Case No. -124 Year- 2011 Thana -GOVERNMENT OFFICIAL COMP. District- JEHANABAD

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Pyare Sao S/o Late Kailash Sao Resident of Village Saidabad, P.S. Pali,
District Jehanabad.

.... Petitioner

Versus

1. The State of Bihar.

2. Kanti Devi W/o Sri Pyare Sao Resident of Village Saidabad, P.S. Pali,
District Jehanabad.

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Bhola Kumar, Advocate
For the OP No.2 : Mr. Paras Nath, Advocate
For the State : Mr. Amitesh Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 30-08-2017

Heard learned counsel for the petitioner and
learned counsel representing the Opposite Party no. 2.

The petitioner is aggrieved by order dated
27.06.2014 passed by learned Judicial Magistrate, 1st Class,
Jehanabad in G.O. Case No. 124/2011, Tr. No. 38/2014 (*Kanti
Devi Vs. Pyare Sao*), whereby the learned court has taken
cognizance of the offences under Section 32 of the Protection
of Women from Domestic Violence Act(hereinafter referred to
“D.V. Act”), 2005.



A perusal of the impugned order would show that earlier the learned Magistrate had passed an order dated 23.05.2013 with certain direction to the District Treasury Officer to remit 50% of the pension amount of this petitioner to the Opposite Party no. 2. Since, the said order was not complied with despite several directions issued subsequently as well by the learned Magistrate; he found that there was no option but to proceed under the provision of Section 31 of the D.V. Act, 2005. Accordingly, by the impugned order, learned Magistrate took cognizance under the provision of Section 32 of the D.V. Act, 2005. A miscellaneous case was ordered to be registered, accordingly.

Learned Senior counsel representing the petitioner would submit that a perusal of the order dated 23.05.2013 would show that the said order was to be complied with by the District Treasury Officer and there was no role of this petitioner if the order remained without compliance for sometime.

Learned Senior counsel submits that, in any view of the matter, admittedly, the said order has been complied with and the Opposite Party no. 2 is getting 50% of the



pension amount of the petitioner.

Learned counsel for the Opposite Party no. 2 has appeared and this fact has been admitted by her.

This court has perused the order dated 23.05.2013, which is annexed as Annexure-2 to the present application, and is of the considered opinion that the said order was to be complied with by the District Treasury Officer and nothing is stated in the said order to show that this petitioner was creating any impediment in compliance of the order.

Be that as it may, in the facts and circumstances of the case, since Opposite Party No. 2 is already getting 50% of the pension amount of the petitioner, in the opinion of this court, the continuance of the proceeding under Section 32 of the D.V. Act, would be an abuse of the process of the court, and, in fact, is a sheer harassment to the petitioner. The court has been informed that the Opposite Party No. 2 is, in fact, residing in the same house in the given portion and having sufficient means in view of the apportionment of the pensionary benefit of the petitioner.

Thus, in the facts and circumstances of this case,



this Court is inclined to set aside the order dated 27.06.2014 passed by learned Judicial Magistrate, 1st Class, Jehanabad as stated above.

This application is, accordingly, allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.09.2017
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