

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.51 of 2017

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1. Upendra Nath Sharma, S/o Late Rajdeo Narayan Sharma,
2. Renu Kumari, W/o Upendra Nath Sharma, Both Resident of Village-
Purshottampur, P.S.- Maniari, District- Muzaffarpur.
3. Subhash Kumar Mishra, S/o Awadhesh Kumar Mishra,
4. Rupam Kumari, W/o Subhash Kumar Mishra, Both resident of Mohalla- Naya
Tola, P.S.- Kazi Mohammadpur, District- Muzaffarpur. Petitioners
- Versus
1. The State of Bihar through Director, Department of Social Welfare, Government
of Bihar, Patna.
2. Director, Department of Social Welfare, Government of Bihar, Patna.
3. Senior Superintendent of Police, Muzaffarpur.
4. Station House Officer (S.H.O.), Maniari Police Station, Muzaffarpur.
5. Ram Babu Tiwari, S/o Late Hari Shankar Tiwari,
6. Apporva Gautam, D/o Ram Babu Tiwari, W/o Shailesh Raushan, Resident of
Mohalla- Gahara, P.S.- Sadar, District- Muzaffarpur.
7. Shailesh Roushan, S/o Upendra Nath Sharma, C/o Prashant Gaurav, H/o Raj
Singh, 215/A 4th Floor, Room No.117, Munrika village New Delhi-110067.
.... Respondents
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Appearance :

- For the Petitioner/s : Mr. Pramod Kumar Singh, Adv.
For the State : Mr. Sunil Kumar Mandal, Adv.
: Mr. Arjun Prasad, A.C. to S.C.3.
: Smt.Alaka Singh, A.C. to S.C.3.
For the Respondent Nos. 5 & 6: Mr. Ajay Kumar Thakur, Adv.
: Mr. Ravi Ranjan, Adv.
For the Respondent No.7 : Mr.Paramanand Prasad Shahi, Adv.
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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 14-11-2017

Heard learned counsel for the parties.

2. Respondent No.5 Ram Babu Tiwari, the father of the respondent No.6 Apporva Gautam filed Case No. C 847 of 2015 against Shailesh Roshan, the husband of Apporva Gautam and others including the petitioners under Section 12 of the Protection of Women from the Domestic Violence Act, 2005, stating therein that Apporva Gautam was married on 20.05.2013 with respondent No.1 Shailesh Roshan. Thereafter, there was demand of more dowry by the inlaws and torture,



for non-fulfillment of the same, to Apporva Gautam. There is allegation of commission of physical assault also on 18.05.2014 to Apporva Gautam by her husband. Further statement is that resultant to the dispute for non-payment of more dowry, Apporva Gautam was expelled/compelled to leave her matrimonial house in village-Purushottampur, P.S.-Maniari, District-Muzaffarpur. The application was filed for grant of right of residence, maintenance and protection etc.

3. By the impugned order dated 28.04.2016, the learned Sub Judge XI-cum-A.C.J.M., Muzaffarpur vide Annexure-4 , allowed the prayer of the petitioners. Paragraph-10 of the order is being reproduced below:-

“Respondent Nos.1 and 3 (the husband and father-in-law of Apporva Gautam) shall secure the proper and safe accommodation for Apporva Gautam in their house or in separate house if Apporva Gautam wants so. They shall keep Apporva Gautam with full respect and dignity and shall pay Rs.5,000/- per month for her maintenance. Payment of money shall be paid by or on 15th day of every month by depositing it in bank account of Apporva Gautam. Apporva Gautam is directed to furnish her bank account number to respondent Nos.1



and 3.”

4. The husband has not challenged the impugned order and the impugned order has not been passed against petitioner Nos.2 to 4 herein, hence they are not aggrieved persons.

5. Contention of petitioner No.1 is that no such direction can be ordered against father-in-law when the husband is already alive and he is an earning person. Moreover, there is no evidence that the house in question is a shared house or Apporva Gautam ever shared the said house. Therefore, right to residence cannot be allowed in favour of Apporva Gautam.

6. Objection of the respondents is that against the impugned order, appeal is maintainable before the District Judge concerned in view of the provisions under Section 29 of the Protection of Women from Domestic Violence Act, 2005. Hence, this Court in exercise of extraordinary jurisdiction should not interfere with the impugned order.

7. Learned counsel for the petitioners has relied on the judgment of the Hon'ble Apex Court in ***Vijay and Another V. State of Maharashtra and another*** reported in ***AIR 2017 SC 397*** for his contention that only because a revision petition is maintainable the same by itself, would not constitute a bar for



entertaining an application under Section 482 Cr.P.C. (which the High Court had refused to entertain). In the present case, since statutory remedy of appeal is there and the appellate court is well clothed with all the powers to look into the pleadings and evidence brought on the record, to look into the sustainability of the impugned order or otherwise. This Court exercising extraordinary jurisdiction cannot go into the disputed question of fact.

8. Therefore, in my view, this writ application is not maintainable in view of the statutory remedy of appeal to the petitioners.

9. So far contention of the petitioner No.1 that the impugned order should not have been passed against the petitioner No.1 in the facts and circumstances of this case is concerned the petitioner No.1 Upendra Nath Sharma though was a party in Domestic Violence Case did not raise the aforesaid issue before the learned Magistrate deciding the domestic violence case. However, is at liberty to challenge the same before the appellate court, if so advised.

10. Learned counsel for the petitioners has relied on the judgment of the Hon'ble Apex Court in *Manmohan Attavar V. Neelam Manmohan Attavar* reported in *AIR 2017 SC 3345* for his contention that the Hon'ble Apex Court has



considered the term “shared household” as defined in Section 2 (s) of the Act and the present case is completely covered by the said judgment. I have examined the averment of the respondent No.2 in the Domestic Violence Case vide Annexure-3.

11. However without disclosing mind on the statement and evidence as to whether a case of shared household is made out or not because the matter is to be examined by the appellate court this writ application stands dismissed with liberty to the petitioner No.1 Upendra Nath Sharma to challenge the impugned order in appeal under Section 29 of the Act within 30 days from today and while considering the admission of the appeal, the court below would consider the question of limitation taking into consideration that the petitioner No.1 was prosecuting the same matter bonafidely before this forum.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.11.2017
Transmission Date	17.11.2017

