

**IN THE HIGH COURT OF JUDICATURE AT PATNA****Criminal Miscellaneous No.38538 of 2016**

Arising Out of PS.Case No. -1100 Year- 2013 Thana -PATNA COMPLAINT CASE District-  
PATNA

- =====
1. Dr. Amit Kumar Sahu S/o Sri Arun Kumar Sahu
  2. Anshul Kumar Sahu, S/o Sri Arun Kumar Sahu
  3. Arun Kumar Sahu S/o Late Ambika Prasad Sahu
  4. Shila Sahu W/o Sri Arun Kumar Sahu

.... .... Petitioner/s

Versus

1. The State of Bihar &
2. Smt. Simmi Mala W/o Dr. Amit Kumar Sahu

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. N. K. Agrawal, Sr. Advocate  
Mr. Sanjeet Kumar, Advocate

For the Opposite Party/s : Mr. Shashank Shekhar Singh  
Mr. Amitesh Ranjan, APP

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**

ORAL JUDGMENT

**Date: 20-03-2017**

Heard both sides.

2. The petitioners filed this petition under Section 482 of the Code of Criminal Procedure for quashing the order dated 08.03.2016 passed by learned Sub-divisional Judicial Magistrate, Danapur, Patna in Complaint case No. 1100-C/ 2013 as well as for quashing the order dated 30.07.2016 passed in Cr. Appeal No. 41 of 2016 by the learned 7<sup>th</sup> Additional Sessions Judge, Danapur, Patna confirming the order of learned Sub-divisional Judicial Magistrate by which the petitioners were directed to allow the opposite party No.2/wife to live in the house of her husband situated in S.T.D. booth, Gautam Nagar, New Delhi, 110049 and, at the same time, the Deputy Commissioner, South Delhi was directed to give protection to the wife.



3. The opposite party No.2/wife filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Act) to live in the house of her husband as her husband ousted her from that house and compelled to live her with her parents at Danapur. The husband/petitioner No.1 did not appear. The learned Sub-divisional Judicial Magistrate, Danapur vide order dated 08.03.2016 allowed the wife to live in the house where petitioner No.1 is residing at New Delhi.

4. Being aggrieved by the aforesaid order, the husband preferred Cr. Appeal No. 41 of 2016 and the learned 7<sup>th</sup> Additional Sessions Judge, Danapur dismissed the appeal on the ground that there is no illegality in the order and, at the same time, observed that if the appellant/husband has got any grievance, he may file a petition under Section 25 of the Act before the learned Sub-divisional Judicial Magistrate.

5. Sri N. K. Agrawal, the learned senior counsel for the petitioners, submits that the order of learned Sub-divisional Judicial Magistrate is illegal as the same has not been made in accordance with sub-section 1(f) of Section 19 of the Act.

6. From perusal of Section 19 of the Act, it would appear that Section 19 empowers the Magistrate, if any aggrieved persons file any petition under Section 12 (1) of the Act, to pass such and such order enumerated therein.



7. I do not find any force in the submission of learned senior counsel for the petitioners on the simple ground that there was no such material before the learned Sub-divisional Judicial Magistrate at the time of passing of the order. The order was only to allow the wife to live in the house where her husband is living at New Delhi. The order does not direct the husband to live together with wife in a same room. The order simply says that wife shall also live in the same house. If the petitioner is aggrieved by the aforesaid order that there is no such accommodation or sufficient space so that wife may also live with her husband in the same house, the petitioner may file a petition under Section 25 of the Act.

Considering the facts aforesaid, in do not fine any merit in the quashing petition. The same is, accordingly, dismissed.

**(Prabhat Kumar Jha, J)**

BKS/-

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