

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.536 of 2016

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1. Rajiv Kumar, Son of Rajendra Rai, Resident of Village- Jamin Mathiya,
Police Station Minapur, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
 2. Bina Devi @ Manoj Devi, Wife of Rajiv Kumar, D/o Fulbabu Rai,
presently resides at Village Tedha Khararoo, Post Office Turki, Police
Station Minapur, District Muzaffarpur.

.... Opposite Party/s

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with

Criminal Miscellaneous No.618 of 2016

Arising Out of P. S. Case No. -1178 Year- 2015 Thana -MUZFFARPUR COMPLAINT CASE
District- MUZAFFARPUR

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1. Rajiv Kumar, Son of Rajendra Rai, Resident of Village- Jamin Mathiya,
Police Station Minapur, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
 2. Veena Devi @ Manoj Devi, Wife of Rajiv Kumar, D/o Fulbabu Rai, A/p
resides at Village- Tedha Khararoo, Post Office- Turki, Police Station
Minapur, District- Muzaffarpur.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.536 of 2016)

For the Petitioner/s : Mr. Kameshwar Kumar-Advocate

For the Opposite Party/s : Mr. Navin Kr. Panday-A.P.P.

For the O.P. No.2 : Smt. Punam Shrivastava-Advocate
Mr. Pradeep Kumar Sinha-Advocate

(In Cr.Misc. No.618 of 2016)

For the Petitioner/s : Mr. Kameshwar Kumar-Advocate

For the Opposite Party/s : Mr. Navin Kr. Panday-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

03 27-09-2018

Heard learned counsel for the petitioner as well as

learned Additional Public Prosecutor along with learned counsel
for the O.P. No.2.

Petitioner and O.P. No.2 are spouse. On account of



marital discord as well as petitioner having re-married led institution of so many cases under different provisions of the I.P.C. as is evident from the different Annexures. Side by side, O.P. No.2, for her maintenance as well as maintenance of her minor son filed maintenance case under Section 125 of the Cr.P.C. and the same is pending before the Principal Judge, Family Court, Muzaffarpur bearing Maintenance Case No.99 of 2015. The order dated 09.09.2015 passed therein granting ad interim maintenance to the O.P. No.2, is the subject matter of challenge under Cr. Misc. No.536 of 2016.

It is also evident that by the conduct of the petitioner/ husband, she has been subjected to domestic violence and that being so, a proceeding under the Protection of Women from Domestic Violence Act has also been drawn up by the O.P. No.2 and vide order dated 03.11.2015, the final order has been passed by Court No.8 of Judicial Magistrate, 1st Class, Muzaffarpur in Case No. C1178 of 2015 directing the petitioner/ husband to provide a place to O.P. No.2 and her son a residence in her matrimonial home, Respondent/ petitioner was restraint to commit in the nature of domestic violence, Respondent No.1/ petitioner was directed to maintain his wife and children reasonably suited to his status of living and in case, he fails, then in that circumstance, he was directed to pay Rs.8,000/- in lieu of



maintenance to meet her expenses as well as education to her minor son, the same happens to be subject matter of Cr. Misc. No.618 of 2016.

Learned counsel for the petitioner has submitted that cumulative effect of both the orders, if taken together, tantamount to causing double jeopardy to the petitioner. Further, elaborating the submission, it has been submitted that petitioner cannot be directed simultaneously, independently to pay maintenance under two different proceedings. Either of the proceeding would survive and in the aforesaid background, either of the two the order impugned would survive and that being so, one of the orders is fit to be set aside. In an alternative, it has also been submitted that both the orders have been passed overlooking each other and further, without meeting the requirements as laid down under both the Sections and so, both the orders are fit to be set aside. That being so, both the petitions be allowed.

On the other side, learned Additional Public Prosecutor opposed the same and submitted that both the proceedings have got independent identity and are permissible in the eye of law. That being so, both the order would survive. The order has been passed on account of miseries having faced at the end of the O.P. No.2 on account of dubious character of the petitioner.



The learned counsel for the O.P. No.2 controverted the submission made on behalf of learned counsel for the petitioner and submitted that from the Annexures having attached with the counter-affidavit, it is apparent that in spite of order of both the Courts independently, petitioner failed to clear the dues irrespective of the fact that an undertaking has been given at his end before the Principal Judge, Family Court that he will clear dues by paying Rs.10,000/-, monthly. It has also been submitted that intentionally, malafidely, petitioner has filed petition for dissolution of marriage, which is yet to be decided and before that, petitioner has re-married. He has got siblings from second marriage and in the aforesaid background, O.P. No.2 along with her minor children has been kicked out from her matrimonial home irrespective of order of the learned Magistrate dated 03.11.2015 passed under the Protection of Women from Domestic Violence Act, 2005. Furthermore, O.P. No.2/ applicant has also launched a criminal case under Section 494 along with other allied Sections of the I.P.C. on account of re-marriage by the petitioner/ husband.

Section 125 of the Cr.P.C. is yet to be finally concluded. Only ad interim order has been passed. There happens to be a provision under Section 127 of the Cr.P.C., which governs the issue and that being so, instead of rushing to this Court under



the banner of Section 482 of the Cr.P.C., the petitioner has got his legal right, if any, so entertainable, in pursuance of Section 127 of the Cr.P.C., which takes care not only the final order rather ad interim order itself.

Apart from this, Section 20 of the Protection of Women from Domestic Violence Act also takes care of status of present petition/ order, if any, passed under Section 125 of the Cr.P.C. and for better appreciation, ***Section 20(d) of the Protection of Women from Domestic Violence Act*** is incorporated below:-

“20. Monetary reliefs.—

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.”

Again the petitioner is found not excluded from raising his grievance under Section 127 Cr.P.C.

Accordingly, both the petitions are disposed of in terms thereof.

(Aditya Kumar Trivedi, J)

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