

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.457 of 2018

IN

C.Misc. 135 of 2018

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Pramod Kumar Yadav, Son of Tarkeshwar Yadav, resident of Gali No. 5,
Chandmari Road, Ajad Path, P.S. Kankarbagh, District Patna- 20.

.... Appellant/s

Versus

1. The State of Bihar, through Principal Secretary, Social Welfare Department,
Govt. of Bihar, Patna.

2. Protection Officer, Ara, District Bhojpur.

3. Lakshmi Devi, Wife of Promod Kumar Yadav resident of Gali No. 5,
Chandmari Road, Ajad Path, P.S. Kankarbagh, District Patna-20. At present
residing at Jitendra Prasad Singh Railway West Gate District Bhojpur.

4. Registrar, List and Computer, Patna High Court.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. R. K. Rajan, Advocate.

For the Respondent/s : Mr. Gyan Prakash Ojha, GA 7.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 18-04-2018

Challenge in the present Letters Patent Appeal is to the
order dated 26.03.2018 passed in Civil Miscellaneous Jurisdiction No.
135 of 2018 by which the learned Single Judge has been pleased to
hold and declare that in case the petitioner is aggrieved by order dated
13.12.2017 passed in Cr. Appeal No. 22 of 2017 by the learned 2nd
Additional Sessions Judge, Bhojpur, Ara he may have a remedy to file
an application under Section 482 of the Code of Criminal Procedure
or Cr. Writ under Article 227 of the Constitution of India. The learned



Single Judge has dismissed the Interlocutory Application No. 2238 of 2018 with a direction to the petitioner to remove the defects pointed out by the Stamp Reporter within ten days failing which the petition shall stand dismissed.

2. It appears that by filing the Interlocutory Application the petitioner wanted modification of the order dated 30.01.2018 passed by the learned Single Judge whereunder it was recorded that “the learned counsel for the petitioner submits that the petitioner had converted C.W.J.C. into Civil Misc. Petition.” The Interlocutory Application was filed stating that the order recording that the petitioner had ‘converted’ be modified as petitioner had ‘not converted’.

3. We have perused the impugned order. The learned Single Judge has taken note of the submissions of the petitioner and then also went through to the judgment of the Hon’ble Supreme Court in the case of **Kunapareddy @ Nookala Shanka Balaji v. Kunapareddy Swarna Kumari & Anr.**, reported in AIR 2016 SC 2519. The submission of the petitioner before the learned Single Judge was that in view of the said judgment of the Hon’ble Apex Court the proceeding under the Protection of Women from Domestic Violence Act has to be taken as a civil proceeding and, therefore, even if there is a provision of criminal appeal against the order of a Judicial



Magistrate, there was a civil remedy in this High Court. This contention of the petitioner was rejected by the learned Single Judge holding that there is a full fledged procedure prescribed under the Protection of Women from Domestic Violence Act and against the order of the Magistrate there is a provision of appeal before the learned Session Judge and nomenclature of the same is Criminal Appeal.

3. In course of hearing of the present Letters Patent Appeal we pointed out to the learned counsel for the appellant that no Letters Patent Appeal would lie against an interlocutory order of the nature in the present case, moreover, the view taken by the learned Single Judge is correct and thorough study of the judgment of the Hon'ble Supreme Court in the case of **Kunapareddy @ Nookala Shanka Balaji** (Supra) would show that the appellant in the said case had filed a petition under Section 482 of Code of Criminal Procedure in the High Court of Judicature at Hyderabad. In the said case the complainant who was his wife sought to amend the prayer portion of the complaint which was opposed by the appellant but the learned trial court had allowed the amendment. A contention was raised before the trial court that there is no power with the court to allow amendment of the petition under Section 482 Cr.P.C. which was rejected by the learned trial court holding that for purpose of granting any relief



which is available to the complainant under Sections 18, 19, 20, 21 & 22 of the said Act provisions of the Civil Procedure Code squarely apply and court has power to allow amendment of the petition/complaint. The order of the trial court was set aside in appeal by learned District & Sessions Judge but the High Court set aside the judgment of the learned District & Sessions Judge thereby restoring the order of learned trial court. In that context when the matter went to the Hon'ble Apex Court, the Hon'ble Apex Court held that the scheme of the Domestic Violence Act was to provide for a remedy which has an amalgamation of civil rights of the complainant *i.e.* the aggrieved person. The Hon'ble Apex Court observed that under the scheme of the Act the order that would be passed by the Magistrate, on a complaint by the aggrieved person, would be of civil nature and if the said order is violated, it assumes the character of criminality. The Hon'ble Apex Court held that in the backdrop of the discussions the court dealing with the application under Domestic Violence Act will have power to permit such amendment which becomes necessary in view of subsequent events or to avoid multiplicity of litigation. The Hon'ble Apex Court observed **"...It is not that there is a complete ban/bar of amendment in the complaints in criminal Courts which are governed by the Code, though undoubtedly such power to allow the amendment has to be exercised sparingly and with**



caution under limited circumstances.”

4. Apparently the Court dealing with a complaint is a Criminal Court, therefore, the question in the present case would be as to whether a Civil Miscellaneous case may be maintained against the order of a Criminal Court.

5. Relying upon the judgment of the Hon’ble Supreme Court in the case of **S.R. Sukumar v. S. Sunaad Raghuram**, reported in (2015) 9 SCC 609, the Hon’ble Apex Court reiterated that the courts have held that the petitions sitting such amendment to correct curable infirmities can be allowed even in respect of complaints.

6. Learned counsel representing the submits that the learned Single Judge has committed error by not appreciating that the remedy under the Domestic Violence Act is in the nature of civil remedy and therefore a civil writ would be maintainable. We are unable to agree with the contention of the learned counsel representing the appellant. We are afraid the petitioner is missing an important aspect of the matter. For purpose of considering a question as to whether or not an amendment of complaint may be allowed under the provisions of the Domestic Violence Act the Hon’ble Supreme Court examined the matter and held that the remedy applied under the particular provisions were of civil nature but at the same



time Hon'ble Court took note of the fact that it is the 'Criminal Courts' where such complaints are being filed. The learned Single Judge has rightly held that in the nature of jurisdiction created under the Act where a Criminal Appeal is provided before the court of learned Sessions Judge a party aggrieved by an order passed in the said Criminal Appeal may seek his remedy either under Section 482 Cr.P.C. or in Criminal Writ under Article 227 of the Constitution of India. Petitioner was granted 10 days time to remove the defects.

7. The appellant has also placed the judgment of Hon'ble Supreme Court in the case of **Ram Kishan Fauji v. State of Haryana & Ors.**, reported in AIR 2017 SC 1535. In our opinion, a bare reading of Paragraph 49 of the said judgment would show that the view taken by learned Single Judge is correct. Paragraph 49 reads as under :-

“49. The aforesaid argument suffers from a fundamental fallacy. It is because the submission is founded on the plinth of whether the writ jurisdiction has been exercised under [Article 226](#) or 227 of the Constitution. It does not take note of the nature of jurisdiction and the relief sought. If the proceeding, nature and relief sought pertain to anything connected with criminal jurisdiction, intra-court appeal would not lie as the same is not provided in Clause 10 of the Letters Patent. Needless to emphasise, if an appeal in certain jurisdictions is not provided for, it cannot be conceived of. Therefore, the reliance placed upon the larger Bench authority in *Hari Vishnu Kamath* (AIR 1955 SC 233) (supra) does not render any assistance to the argument advanced by the learned counsel for the respondent-State.”



8. For the reason mentioned about we find no merit in Letters Patent Appeal. It is accordingly dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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