

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.58698 of 2017

Arising Out of PS.Case No. -12 Year- 2013 Thana -DOMESTIC VIOLENACE District- PATNA

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Gyanendra Kumar Tripathi, Son of Late Bala Kant Tripathi, Assistant Commissioner of Customs & GST presently posted as Assistant Commissioner (AR) at O/o The Commissioner (AR) CESTAT (Customs Excise & Service Tax Appellate Tribunal) 38 M.G. Marg, Allahabad, U.P., permanent resident of Village- Paharganj, P.S.- Gauriganj, District- Amethi (U.P.)

.... Petitioner

Versus

1. The State of Bihar.
2. Aparna Tripathi, Wife of Gyanendra Kumar Tripathi, Daughter of Shri Ganga Sharan Mishra, Resident of Bajrangpuri, Gaighat, Behind Pataligram, P.O.- Gulzarbagh, P.S.- Alamganj, District- Patna, permanent resident of Village- Koyel Bagh Colony, Hardoi, P.S.- Sahar Kotwali, District- Hardoi (U.P.)

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mrs. Soni Srivastava, Advocate

Mr. Kamlesh Kumar Singh, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

For the Opposite party No.2: Mrs. Aparna Tripathi, In person.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-04-2018

Heard learned counsel for the petitioner and learned counsel for the State. Also, heard opposite party No. 2 who has appeared in person.



2. This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of the order dated 05.09.2014 passed by the learned Judicial Magistrate First Class, Patna City in Domestic Violence Case No. 12 of 2013 as well as order dated 23.08.2017 passed by the learned Additional District and Sessions Judge-4th, Patna City in Domestic Violence Appeal No. 2298 of 2014 affirming the order of the learned Magistrate-1st Class, Patna City dated 05.09.2014 to the effect directing the Drawing and Disbursing Officer of the petitioner to deduct half of the amount of gross salary of the petitioner and transfer the same into the account of the opposite party no. 2.

3. It is submitted by Smt. Soni Srivastava, learned counsel for the petitioner that being aggrieved with the false allegations levelled by opposite party no. 2, the petitioner filed an application before the learned Magistrate on 22.08.2014 stating therein that he is ready to contest his case on merit, but the learned court below without appreciating any of the submissions made by the petitioner passed the impugned order dated 05.09.2014 whereby he has directed the D.D.O. under whom the petitioner is working to deduct the half amount of gross salary of the petitioner and transfer the same into the bank account of opposite party no.2. She submitted



that even the Appellate Court also failed to appreciate the contention of the petitioner that the application dated 22.08.2014 filed by the petitioner was in the nature of an application filed under sub-section (2) of Section 25 of the Protection of Women from the Domestic Violence Act 2005 (for short 'the Act'), which stipulates that on receipt of an application from the aggrieved person, if the Magistrate is satisfied that there is change in the circumstances requiring alteration, modification and revocation of any order made under the Act, he may for reasons to be recorded in writing pass such order as he may deem appropriate.

4. On the other hand, learned counsel appearing for the State submitted that the impugned order dated 05.09.2014 was passed by the learned Magistrate on the basis of settlement arrived at between the parties. Hence, no illegality can be found with the order passed by the learned Magistrate.

5. The opposite party no. 2 has also contended that the impugned order by the learned Magistrate is in the nature of a compromise decree and, thus, the petitioner cannot raise any objection in this regard.

6. On query, both learned counsel for the petitioner and the opposite party no. 2 submitted that the Domestic Violence



case is still pending before court of Magistrate and the same has not been finally disposed of.

7. It would appear from the pleading of the parties that Domestic Violence Case No.12 of 2013 was filed on 12.11.2013 by the opposite party no.2 in the court of A.C.J.M, Patna City. The same has not yet been disposed of.

8. Sub-section (5) of Section 12 of the Act, requires a Magistrate to dispose of every application made under sub-section (1) of Section 12 within 60 days from the date of its first hearing.

9. It has been brought to my notice that in the Domestic Violence case the first hearing was made on 13.11.2013. It is surprising that till date, the matter is pending before the court of Magistrate.

10. It would be relevant to note here that sub-section (2) of Section 25 of the Act provides that in case there is a change in the circumstances of a case, the Magistrate may, on an application by aggrieved person or the respondent pass an order altering, modifying or revoking any order made under the Act.

11. Having considered the rival submissions made by the parties, I deem it fit and proper to dispose of the present



application with a direction to the learned Judicial Magistrate, 1st Class, Patnacity to finally dispose of the case after hearing the parties positively within 45 days from the date of receipt/production of a copy of the order. It is needless to say that the parties would be at liberty to raise all the points available to them before the jurisdictional Magistrate.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2018
Transmission Date	03.05.2018

