

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.906 of 2016

Arising out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

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Nasima Khatoon, Wife of Late Abul Halaat, Resident of Village Chabilapur, P.S. Mansoorchak, District Begusarai

.... Petitioner

Versus

1. The State of Bihar
2. Abul Umar
3. Abul Kalam
4. Md. Salamat
5. Md. Samim

All son of Late Mosim Ali, Resident of Village Chabilapur, P.S. Mansoorchak, District Begusarai

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Nikhil Kumar Agrawal, Advocate Ms. Aditi Hansaria, Advocate
For the State	:	Mr. Tarun Prasad Mandal, APP
For Res Nos.2 to 5	:	Mr. Suraj Narayan Pd. Sinha, Sr. Advocate Mr. Sandip Kumar Gautam, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 04-01-2018

Considering the grounds taken in I.A. No.1820 of 2016,
the delay in filing Criminal Revision Application is condoned.

2. I.A. No.1820 of 2016 is allowed.

3. Heard learned counsel for the petitioner, learned APP
for the State as well as learned counsel appearing on behalf of
opposite party nos.2 to 5.

4. The petitioner has preferred this revision application
against order dated 29.02.2016, passed by Mr. Bhanu Pratap Singh,
learned Additional Sessions Judge-II, Begusarai in Criminal Appeal
No.61 of 2012 whereby he has dismissed the appeal filed by the
petitioner and affirmed the order dated 16.04.2012, passed by Judicial



Magistrate, 1st Class, Begusarai holding therein that the application filed by the petitioner under Section 12 of the Domestic Violence Act is not maintainable.

5. The short facts giving rise to the case is that the petitioner filed Case No.1P/10 under Section 12 of the Domestic Violence Act. At the very initial stage, the issue of maintainability was raised by the respondents. The trial court by order dated 20.01.2011 affirmed that the petition is maintainable under the Domestic Violence Act filed by the petitioner. The respondents preferred Criminal Appeal No.14 of 2011 and the same was dismissed by affirming the order passed by the trial court affirming maintainability of the application. When the witnesses were examined in the matter then again a petition was filed reagitating the issue of maintainability and by order dated 16.04.2012, Judicial Magistrate, 1st Class, Begusarai held that the application filed under Domestic Violence Act is not maintainable. Against the said order, the petitioner preferred Criminal Appeal No.61 of 2012. However, the order dated 16.04.2012 was affirmed.

6. Learned counsel for the petitioner assails the impugned orders on the ground that at the very initial stage the issue of maintainability was raised by the respondents, opposite party nos.2 to 5 before the trial court but the same was rejected holding the application being maintainable. They preferred criminal appeal



against that order but the appeal was dismissed, never filed any revision before any superior court, so it attained finality.

7. Having considered the rival submissions and on perusal of the records, the Court finds that once the order affirming maintainability of the application filed under Section 12 of the Domestic Violence Act was passed by the trial court and affirmed by the appellate court thereafter it was never challenged to any superior court, so it attained finality. The criminal courts have not been given any jurisdiction under the Code of Criminal Procedure to review the earlier order; in other words there is no provision of revising the earlier order, so both the orders are contrary to the provisions contained in Criminal Procedure Code, so both the orders dated 16.04.2012 as well as appellate court's order dated 29.02.2016, passed in Criminal Appeal No.61 of 2012 are set aside and the trial court is directed to proceed further and to conclude the proceeding of Case No.1P/10 and pass final order in accordance with law.

8. The criminal revision application stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.01.2018
Transmission Date	11.01.2018

