

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.60 of 2016

Arising Out of PS. Case No.-212 Year-2012 Thana- BUXAR COMPLAINT CASE District-
Buxar

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Rashmi Kumari daughter of Madan Choubey, Resident of village- Khirauli,
P.S.- Dumraon, District- Buxar at present Add C/o Dhanpat Choybey,
Resident of village- Dalsagar, P.s.- Buxar (Ind), Distt. Buxar

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shashank Kumar son of Rajeshwari Prasad Mandal, Resident of village-
Chaman Bigha, P.S. Karauna, District- Jehanabad

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dr. Kamal Deo Sharma, Advocate
For the Respondent/s	:	Mr. Ajit Kumar, APP
For O. P. No. 2	:	Mr. Siddhartha Prasad, Advocate
		Mr. Ranvijay Kumar, Advocate
		Mr. Om Prakash Kumar, Advocate
		Mr. Kaustubh, Advocate
		Mr. Sunit Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

5 30-08-2018 Heard the learned counsel for the parties.

The petitioner has challenged the order passed by the learned Judicial Magistrate, 1st Class, Buxar as also the order passed by the Appellate Court dated 23.09.2015, whereby the prayer made on behalf of the petitioner for providing residence, monetary relief and protection has been refused.

Adverting to the factual matrix of this case would not be necessary but for recounting of few facts. The petitioner got in touch with O. P. No. 2 initially on telephone and the aforesaid contact concretized into an



intimate relationship. It has been alleged by the petitioner that for quite sometime the petitioner started living with Opposite Party No. 2 as man and wife.

Obviously, it has been argued, the petitioner consented to live as wife of O. P. No. 2 on the assurance of O. P. No. 2 of marrying her at a later date. This never happened and the petitioner came to learn about her being cheated only when she was made to understand that O. P. No. 2 was on the way of getting married to another woman by the name of Gudiya. The petitioner has thereafter introduced the stories of demand of money, the father of the O. P. No. 2 agreeing to pay some money, but on the condition that the petitioner would not insist for her marriage with O. P. No. 2 and ultimately the refusal of the petitioner to accept money and abandon the relationship. The petitioner also filed an F.I.R. against O. P. No. 2 alleging offences under Sections 376 and 312 of the I.P.C.

However, since no cognizance was taken under Section 376 or 312 of the I.P.C. and the Magistrate proceeded against the O. P. No. 2 only under Sections 417 and 418 of the I.P.C., the petitioner came before this Court. But, her challenge could not be sustained as the High Court did not find that any offence under Section 376 or 312 of the I.P.C. was made out. It was



held that the relationship was consensual between two consenting adults; hence no offence under Section 376 could have been made out.

However, the Court permitted the prosecution of O. P. No. 2 under Sections 417 and 418 of the I.P.C.

Simultaneously, the O. P. No. 2 had also approached this Court, seeking quashing of the order of cognizance under under Sections 417 and 418 of the I.P.C.

A Bench of this Court however set aside the order of cognizance but the order was couched in such terms that it reflected that the Court was looking into the allegations under Sections 376 and 312 of the I.P.C.

Against the aforesaid order of quashing of the entire order of cognizance and the criminal prosecution against O. P. No. 2, the petitioner approached the Supreme Court of India in Criminal Appeal No. 880 of 2016.

The Supreme Court, taking into account that there was definitely an oversight about the offences under Sections 417 and 418 of the I.P.C. by the High Court, set aside the aforesaid order and remanded the case for a fresh consideration over the issue whether offences under Sections 417 and 418 could be saddled on the O. P. No. 2. After the remand, the matter



however is still pending adjudication.

In the meantime, the petitioner preferred an application under the Protection of Women from Domestic Violence Act, 2005, seeking monetary reliefs and residential orders. The same was rejected by the Trial Court and the aforesaid order was affirmed by the Appellate Court, as referred to above.

From perusal of the orders impugned, it appears that the court below has taken note of the fact that the definition of domestic relationship in Section 2 (f) of the Protection of Women from Domestic Violence Act, 2005 is expansive and transcends beyond the confines of a marital relationship and refused to direct for any monetary relief.

The ground of rejecting the prayer of the petitioner by both the Courts was that for holding that a person was in domestic relationship with one another, it was necessary to demonstrate that such relationship was akin to marriage. This obviously mean that the relationship must have been perceived by the society as something like marriage and that the parties lived under the same roof like a man and wife. Because of the lack of evidence furnished on behalf of the petitioner about such domestic relationship, both the Courts did not agree to provide the petitioner with any ameliorative orders.



Learned counsel for the petitioner has submitted that both the Courts were made known the fact that it was on the assurance of the O. P. No. 2 that he shall marry the petitioner, she continued to maintain a relationship with him as if she were his wife.

In support of the aforesaid contention, the petitioner had offered documents in the nature of statements made by the petitioner before Itarhi Police Station; certificate of a doctor indicating that the petitioner had undergone MTP intervention for abortion and certain bank transactions indicating that money was transferred in the account of the petitioner through the account maintained by the O. P. No. 2.

Both the Courts below held that none of the evidence offered could be taken into account for holding that there was a domestic relationship between the parties.

From the perusal of the records, this Court is of the view that any bank transaction indicating transfer of money from one account to another would only mean that money has been transferred by one in favour of the other. This does not necessarily reflect a shared household or a domestic relationship. Without any reason, such transfer of money could be towards accommodation loan or help rendered on the asking of a



party.

The certificate of the doctor that the petitioner was aborted would not be of any relevance, unless it is accompanied by relevant records of the hospital where the petitioner had been admitted. Unless the details of the surgical intervention, namely, the date on which she was subjected to abortion, the hospital post records of the post-operative period are brought in evidence. Only the certificate of the doctor and that also without indicating the date of abortion would not be an evidence towards establishing the domestic relationship.

On the contrary, learned counsel appearing for Opposite Party No. 2 has brought on record the statements of the parents of the petitioner indicating that she had gone truant and was deliberately trying to fix the O. P. No. 2 into a relationship of marriage, which was not agreeable either to her parents or to the Opposite Party No. 2.

Considering the aforesaid facts, both the Courts below have refused to yield to the request / prayer of the petitioner.

The learned counsel for the petitioner lastly submitted that the case against the O. P. No. 2 so far as offences under Sections 417 and 418 of the I.P.C. are concerned is still alive and in case, it is found that



the O. P. No. 2 had cheated the petitioner, it would be a definite proof of the fact that there was a promise of marriage which led the petitioner enter into a kind of relationship with the O. P. No. 2 so as to bring the relationship within the definition of domestic relationship as defined under Section 2 (f) of the Act.

Even if the charge under Sections 417 and 418 is ultimately proved against the Opposite Party No. 2, it would not be an evidence of domestic relationship. With the finality to the finding that no rape had been committed on the petitioner, even if the Opposite Party No. 2 is prosecuted and convicted for the offence under Sections 417 and 418 of the I.P.C., it will not make out a case for the petitioner to seek monetary relief or residential orders under the Protection of Women from Domestic Violence Act, 2005.

No interference is required with the orders impugned.

The revision petition is dismissed.

(Ashutosh Kumar, J)

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