

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.1089 of 2017

Arising Out of PS. Case No.-93 Year-2015 Thana- DOMESTIC VIOLENACE District- Patna

Abhay Kumar Singh, Son of Late Baleshwar Nath Singh, resident of A 400,
A.G. Colony, P.O. Ashiana Nagar, P.S. Shastri Nagar, District- Patna- 25.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Smt. Arpana Kumari, Wife of Late Atul Kumar, D/o Sri Lallan Prasad Singh,
Resident of A- 400, A.G. Colony, P.S. Shastri Nagar, District- Patna- 25.
Presently residing at C/o Sri Lallan Prasad Singh, Mohalla- R.K. Colony,
Shahganj, P.O.- Mahendru, P.S.- Bahadurpur, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner : Mr. Ajay Kumar Thakur, Advocate
Mr. Shashank Shekhar, Advocate.
For the Respondents : Mr. Satyavarat Verma, APP.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT

Date : 12-10-2018

Heard the learned counsel for the petitioner and the
State.

2. The petitioner, who is the father-in-law of opposite party no. 2 has challenged the order dated 20.09.2017 passed by the learned Additional Sessions Judge-X, Patna in Cr. Appeal No. 87 of 2017 whereby the order passed by the learned Additional Chief Judicial Magistrate-X, Patna dated 28.04.2017 in Domestic Violence Case No. 93 of 2015, directing the petitioner to provide a separate room to the opposite party no. 2 along with her minor son in the same household situated at MIG, A.G. Colony, Sheikhpura, Ashiana Nagar, Patna and to pay her an amount of Rs. 5000/- per month towards maintenance from the month of April, 2017, has been affirmed and upheld.



3. The opposite party no. 2 was married to one of the sons of the petitioner on 28.11.2005, whereafter she went to her matrimonial household at Shastri Nagar, Patna and lived there for few days. She then went to New Delhi along with her husband, who at the relevant time, was working as an Engineer in a private company. The opposite party no. 2 thereafter became pregnant in the year 2009 and had to come back to her matrimonial home for sometime and thereafter went to her father's house for the purposes of delivering her child. In the meantime, the husband of the opposite party no. 2 became ill and had to be taken to Vellore. He was diagnosed of being HIV positive and he ultimately died on 29.06.2010 at P.M.C.H., Patna. The opposite party no. 2 thereafter delivered a male child on 16.07.2010. It is the case of opposite party no. 2 that ever since the death of her husband, she was neglected and in fact the petitioner (father-in-law) obtained the keys of her Delhi house and took away all her and her husband's belongings including passbooks and passports. The opposite party no. 2 also, while cohabiting with her husband, got infected with HIV and had to undergo prolonged medical treatment. Over the period of years, the son of opposite party no. 2 has grown up and is presently going to school. The request of the opposite party no. 2 to allow her to stay in the same household was refused and she was ousted from the house.

4. The opposite party no. 2 has therefore alleged that since the petitioner has constructed a three storied building



after selling off the ancestral property and is getting a monthly rental of Rs. 60,000/- by letting out portions of the aforesaid building, the opposite party no. 2 also has a right to be maintained and of residing in the said household. A complaint was lodged by her under Section 12 of the Domestic Violence Act which was numbered as Domestic Violence Case No. 93 of 2015.

5. The stand of the petitioner before the court below was that the complaint was filed because of evil motive and no domestic violence had been perpetrated upon opposite party no. 2. After the death of the husband of opposite party no. 2, she was being paid Rs. 3000/- by the petitioner till April, 2011. Prior to the death of the husband of opposite party no. 2, the ancestral property in the village was sold and the proceeds was distributed amongst the two sons of the petitioner. An amount of Rs. 10,57,200/- was deposited in the joint account of opposite party no. 2 and her husband. The petitioner denied that any personal belonging of the opposite party no. 2 was taken away from her Delhi residence and the rented accommodation had to be vacated because of the insistence of the landlord. The petitioner in the capacity of father-in-law of opposite party no. 2 had to go to Delhi to bring back the Car and the Motorcycle which was lying in the rented house at Delhi. The petitioner has specifically denied that any personal belonging of opposite party no. 2 in the shape of ornaments, passbooks and passports etc. were ever taken away by him.



Lastly, it was submitted that the petitioner is aged about 70 years and has to look after his old wife who is fighting Cancer. Since the entire share of the ancestral property has already been apportioned between his two sons and the share of the pre-deceased son has been deposited in the joint bank account of opposite party no. 2 and her husband, the opposite party no. 2 is not entitled to any further maintenance or accommodation in the house which has been constructed by him of his own income and which he has gifted to the other son who is temporarily working abroad and is likely to come back any time.

6. In support of the respective contentions of the parties, documents were furnished by them before the court below.

7. The learned Magistrate, on perusal of the materials on record came to the finding that opposite party no. 2 was economically abused and therefore held her to be a victim of domestic violence. After having found that there was economic abuse of opposite party no. 2, the learned Magistrate also held that the transfer of the house at Patna by way of gift to the surviving son of the petitioner was infected with *mala fides*. After considering the Domestic Incident Report and other materials on record, the learned Magistrate directed the petitioner to provide one room in the household at Patna to opposite party no. 2 and to pay her maintenance from the month of April, 2017.



8. The aforesaid order of the learned Magistrate has been sustained by the appellate court as stated above as no illegality or irregularity was found in the findings of the learned Magistrate.

9. During the course of hearing of the present revision petition, this Court vide order dated 13.02.2018 directed the parties to explore the possibilities of a settlement so that the opposite party no. 2 may become agreeable for taking equivalent amount of money in lieu of a room in the same household. The aforesaid direction was given, sensing that the parties were willing to sit across the table and deliberate over the issue. However, this Court was informed that the talks of settlement had failed and therefore this Court heard the learned counsel for the parties at length on merits of the case.

10. While addressing the arguments on behalf of the petitioner, Mr. Ajay Thakur, learned advocate informed this Court that the petitioner had deposited Rs. 50,000/- through demand draft in the court below in order to show his *bona fides* as also towards obeying the orders of this Court. It was further argued by him that both the orders impugned do not reflect any evidence on record to demonstrate that opposite party no. 2 was subjected to domestic violence even economically. In support of the aforesaid contention, it was urged that till April, 2011, without any direction from any court, the petitioner paid Rs. 3000/- per month to the opposite party no. 2 towards her maintenance and the aforesaid payment was stopped only when



a case was filed by opposite party no. 2 in Shastri Nagar Police Station vide Shastri Nagar P.S. Case No. 119 of 2011. The main plank of attack on the correctness of the orders impugned is that the opposite party no. 2 never stayed in the house at Patna and therefore she was not entitled to get an accommodation in that house. The house of the petitioner at Patna did not come in the category of "shared household" so as to saddle the petitioner with the responsibility of providing accommodation to opposite party no. 2 in that house. In support of the aforesaid contention, the petitioner has referred to judgments delivered in ***S.R. Batra Vs. Taruna Batra 2007 (3) SCC 169; Manmohan Attavar Vs. Nilam Manmohan Attavar 2017 (8) SCC 550 and a judgment of Delhi High Court delivered in Kanhaiyalal and Anr. Vs. Nathilal in R.S.A. No. 27 of 2017.***

11. The learned counsel appearing for the opposite party no. 2 however has countered the aforesaid arguments by referring to some of the important facets of the complaint especially with regard to the definite averment by opposite party no. 2 in her complaint that immediately after her marriage with the son of the petitioner, she had stayed in the Patna house and she also stayed for sometime in the year 2009 when she had become pregnant and had returned from Delhi. It was therefore argued on her behalf that the house at Patna was the "shared household" and she could not have been ousted from that house.



12. In order to appreciate the contentions raised on behalf of the parties, it would first be necessary to examine the relevant provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter called as the 'Act').

13. The preamble of the Act indicates that the aforesaid legislation was enacted for providing more effective protection of the rights of women guaranteed under the Constitution who are victim of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

14. "Domestic relationship" has been defined under Section 2(f) of the Act which means a relationship between two persons who live or have, at any point of time lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Similarly shared household has been defined under Section 2(s) of the Act which reads as hereunder:

"shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in



respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

15. Economic abuse of a woman is one of the incidences of domestic violence which is sought to be guarded against by the Act. Section 3(iv) lists the categories and nature of economic abuse. For the sake of ready reference, the same is being reproduced below:

"3. (iv) "economic abuse" includes -

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of



rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II. - For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.



16. Section 17 of the Act provides that notwithstanding anything contained in any other law for the time being enforce, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficiary interest in the same. The Section further elucidates that the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

17. It would per force be necessary to know as to who is an aggrieved person and who is a respondent under the Act. An aggrieved person has been defined in Section 2(a) which means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The "respondent" has been defined under 2(q) which means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the Act. The proviso to 2 (q) further states that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner.

18. Apart from the other reliefs, a hapless wife who is subjected to domestic violence is entitled to residence orders under Section 19 and monetary reliefs under Section 20 of the Act.



19. The aforesaid definitions in the dictionary of the Act clearly spell out that the intended beneficiary of the Act is not only a woman who is in domestic relationship with the respondent but a woman who has been in the domestic relationship with the respondent. The term domestic relationship extends to the family members living together or having lived together in a shared household as a joint family. Thus a wide definition has been given under Section 2(f) to include any relationship between two persons who either are living in *presenti* or have lived at any point of time in the past in the "shared household". Similarly, the reach of the expression "shared household" is also too broad to include any house where the woman has lived in any domestic relationship. This being the scheme of the Act, it must be given an interpretation which is purposive and aims at achieving the purpose for which the legislation has been enacted.

20. It is not in dispute that the opposite party no. 2 was married to the late son of the petitioner and that for sometime, opposite party no. 2 stayed along with her husband in the house at Patna which is stated to have been constructed by the petitioner after selling off his ancestral property and obtaining loan for constructing the aforesaid house. In the present case, the opposite party no. 2 is required to be maintained as no evidence has been brought on record to demonstrate that she has any means of livelihood. In that view of the matter, keeping the broadest possible spectrum provided



in the Act, it is difficult to hold that the impugned orders are unjust, beyond the provisions of law or do not reflect application of mind over the set of facts brought before the court.

21. Before advertng to the case law referred by the parties, it is necessary to cull out one paragraph from the judgment delivered in case of ***Krishna Bhattacharjee vs. Sarathi Chaudhary and Anr. 2016 1 PLJR 158 (SC)***

"4. Regard being had to the nature of the legislation, a more sensitive approach is expected from the courts where under the 2005 Act no relief can be granted, it should never be conceived of but, before throwing a petition at the threshold on the ground of maintainability, there has to be an apposite discussion and thorough deliberation on the issues raised. It should be borne in mind that helpless and hapless "aggrieved person" under the 2005 Act approaches the court under the compelling circumstances. It is the duty of the court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct. The principle "justice to the cause is equivalent to the salt of ocean" should be



kept in mind. The court of law is bound to uphold the truth which sparkles when justice is done. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realisation of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence."

22. In S.R. Batra (supra) the victim of domestic violence was married to the son of the appellants. After the marriage, the victim stayed along with her husband in the house of her mother-in-law which was not a joint family property. After a petition of divorce was filed by the husband, the victim had shifted to her parents residence but was denied entry in her matrimonial home later. It was alleged by the appellants that the victim forced her entry in the house and terrorized them. The claim of the victim was allowed by the learned Magistrate who granted temporary injunction against the appellants (in laws) in interfering with the possession of the house in question to the victim. In appeal by the "in laws" before the Senior Civil Judge, Delhi, the order of the learned Magistrate was set aside



revoking the temporary injunction. The victim thereafter approached the Delhi High Court under Article 227 of the Constitution of India wherein it was held that the victim was entitled to continue to reside in her matrimonial home.

23. The Supreme Court however did not agree with the contention of the victim that any house in which a woman had lived in domestic relationship shall be called a "shared household" and held that the definition of shared household is limited to the house owned by the husband. In the aforesaid case, the house in question was the exclusive property of the mother-in-law of the victim woman which had not fallen in the pool of joint family property. The Supreme Court therefore was of the view that a woman along with her husband can stay in a dozen of places but that would not entitle her to have residence in all or anyone of such houses.

24. The facts of this case are absolutely different. The petitioner has constructed a house in Patna in which opposite party no. 2 lived along with her husband for sometime and thereafter again after some interval.

25. In Manmohan Attavar (supra) the victim woman had never lived in the concerned household and therefore no residence order was given to her. Here again the facts were absolutely different.

26. Mr. Thakur, learned advocate while arguing the case submitted that any fleeting visit to any house, even if it is the matrimonial home, will not make such house fall in the



category of “shared household” for the purposes of obtaining residence orders.

27. No doubt, the opposite party no. 2 lived in the house in question for a brief while; nonetheless she, in the opinion of this Court, is entitled to at least one room in the aforesaid house.

28. In the absence of any unanimity of opinion about opposite party no. 2 accepting money in lieu of her right to reside in the aforesaid house in one room, she cannot be forced to accept the offer of the petitioner in that regard. Apart from her non-acceptance of the offer upfront, this Court is also of the view that since the opposite party no. 2 is a widow who has to look after a young school going child, it would only be safe for her to stay in the same household; especially when it is a three storied house and there are many tenants in that house. The courts below have not subscribed to any unreasonable view. As far as the monetary relief is concerned, an amount of Rs. 5000/- appears to be absolutely reasonable.

29. Thus, not finding any fault with the orders impugned, they are sustained and upheld.

30. The petition is dismissed.

(Ashutosh Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.10.2018
Transmission Date	12.10.2018

