

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.558 of 2016

Arising Out of PS. Case No.-28 Year-2010 Thana- DOMESTIC VIOLENACE District- Patna

Ashendra Kumar Prasad S/o Late Ram Bihari Prasad, Resident of Native village- Chand Barwan, Tola- Chakla, P.S.- Mashrak, District- Saran, At present residing at Jamshedpur (Tata Nagar) in connection of Railway Service as Mechanic of Air Condition, Electrical Department.

... .. Petitioner

Versus

1. State Of Bihar
2. Vineeta Kumari D/o Chandra Prabhash Singh, R/o Vill.- Dev Bahuara, under P.S.- Marhowrah, District- Saran

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Nawal Kishore Singh
For the Respondent/s : Mr.Renu Kumariapp

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

10 16-07-2019 This revision application has been filed against the judgment date 16.3.2016 passed by learned Addl. Sessions Judge-X, Patna in Cr. Appeal No.155 of 2013 preferred by the present petitioner by which he has dismissed the appeal filed by the appellant- petitioner against the order dated 29.7.2013 passed by Sri Prabal Datta, J.M. Ist Class, Patna in D.V.Case No.28 of 2010 affirming the order of the learned Magistrate directing the petitioner to arrange separate residence for the O.P.no.2 as per her choice either at his native village or at place where he is presently posted and further directed that if the petitioner fails to arrange separate residence within a period of one month, the petitioner has to pay Rs.2,500/- per month to



O.P.no.2 as rent of the separate residence from 1st of September, 2013.

2. Facts in short giving rise to this application is that O.P.no.2 has filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter to be referred as 'The D.V.Act') for grant of maintenance and residential rights. It appears that the above case was treated as D.V.Case No.28 of 2010 and the learned Magistrate vide order dated 29.7.2013 i.e. impugned order directed the petitioner to provide separate residence as per her choice and in failure pay of Rs.2500/- per month as stated above.

3. Being aggrieved by the aforesaid order, petitioner preferred an appeal before the Sessions Judge, which was also dismissed, vide judgment dated 16.3.2016 passed in Cr. Appeal No.155 of 2013 by the learned Addl. Sessions Judge-Xth, Patna and the present revision application has been filed.

4. Grounds for assailing the appellate order as well as the order passed by the Magistrate is that the learned Magistrate has failed to consider that the O.P.no.2 is getting the maintenance as per order passed in the Maintenance Case and also as per order in the Divorce case and as such granting separate amount for the residence is against the provisions as



contained in Section 26 of the D.V. Act.

5. Further grounds is that both the courts have failed to consider that Patna Court has no jurisdiction to consider the application under the D.V.Act as whatever occurrence has taken place that is at Chapra in the district of Saran and on that ground also the impugned order passed by the learned appellate court as well as the trial court is not sustainable in the eye of law.

6. On the other hand the learned counsel for the O.P.no.2 has countered the argument of the learned counsel for the petitioner on the ground that the D.V.Act provides for residential right apart from other rights and as per the provisions contained in D.V. Act even though maintenance has been granted by some other court that will not debar the O.P.no.2 for claiming residential right.

7. So far jurisdictional point is concerned, it has been submitted that petitioner has not raised this point either before the learned Magistrate or even in before appellate court and as such it is not open for him to raise this point in the revisional jurisdiction.

8. Further submission is that as O.P.no.2 is residing at Patna separately after her ouster from the house of the petitioner-husband and as such Patna court has jurisdiction in



this matter.

9. In the background of submissions of rival parties, I think it imperative to examine the aims and objects behind enactment of the D.V. Act and its provisions.

10. On going through the D.V. Act that as domestic violent is widely prevalent and Civil Laws does not address it in its entirety. It is therefore legislature proposed to enact law keeping in view the right guaranteed under Article 14, 15 and 21 of the Constitution of India and to provide for a remedy under Civil Law to protect the women from being victim of domestic violence and to prevent the occurrence of domestic violence.

11. It covers those women who are or have been in a relationship with the abuser where both parties lived together in a shared household. It also includes family members living together as a joint family.

12. It defines domestic violence. It provides for right of women to secure housing and also right to reside in her matrimonial house or shared household irrespective of fact she has any right title in such house or household. The above right is secured by residence order.

13. Now let me examine the relevant provisions of D.V. Act.

14. Section 19 of the D.V. Act provides as follows :



“19. Residence orders.-(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the



aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.”

15. Section 20 of the D.V. Act provides as follows :

“20. Monetary reliefs.- [\(1\)](#) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to—

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.



(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

16. Section 26 of the D.V.Act provides as follows :

26. Relief in other suits and legal proceedings.—

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit



or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

17. On going through the above provisions, it appears that the court has power to order appropriate monthly payment of maintenance as the circumstances of the case may require and Section 20 (d) of the D.V.Act provides for maintenance in addition to the maintenance being received by the aggrieved person either under Section 125 of the Cr.P.C. or under any law in force. No doubt Section 26(3) of D.V. Act provides that the aggrieved person shall be bound to inform the Magistrate of any relief obtained in a proceeding other than a proceeding under this Act. However, on conjoint reading Section 20 and 26 of the D.V. Act it is clear that aggrieved persons may get maintenance in addition to reliefs she got in other proceedings.

18. However, so far present case is concerned, order under challenge is not for grant of maintenance rather for the residence rights, which have been provided under Sections 19 of the D.V. Act and Section 19(1) (f) of the Domestic Violence Act, provides for a protection to the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the share house-hold or to pay rent for the



same, if circumstances so required.

19. In above view of the order, impugned order passed by the learned Magistrate as well as the appellate court directing the petitioner to arrange the residence for O.P.no.2 as per her choice either at his native village or at his place where he is presently posted and not failure to arrange the residence, to pay Rs.2500/- per month to O.P.no.2 is in accordance with the provisions contained in Section 19(1) (f) of the D.V.Act.

20. So far question of jurisdiction raised by the petitioner is concerned, he has not raised the same either before the Magistrate or before the appellate court, who were in better position to examine the same. Moreover, Section 12(1) of D.V. Act provides that an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act.

21. Further the word “Magistrate” has been defined under Section 2(1) of D.V. Act which is as follows :

“Magistrate” means the Judicial Magistrate of the First Class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2) of 1974 in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence as alleged to have taken place.”



22. As such aggrieved person has an option to file application under Section 12 of the D.V. Act even at the place where she resides temporarily. No fact has been brought on record to lead this Court to come to a finding that at that time, she was not residing at Patna temporarily. As such in absence of any foundation facts this Court restrains itself to enter into the point of jurisdiction.

23. As such I find no illegality or impropriety in the impugned order of the appellate court and order passed by by the learned Magistrate.

24. Accordingly, this application stands dismissed.

(Vinod Kumar Sinha, J)

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