

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.377 of 2016

Arising Out of PS. Case No.-887 Year-2008 Thana- KATIHAR COMPLAINT CASE
District- Katihar

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Geeta Bhattacharjee @ Gita Bhattacharjee wife of Pranav Bhattacharjee
resident of Super Complex, Allahabad Bank, M.G. Road, Katihar P.O., P.S.
and District - Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sweta Bhattacharjee wife of late Dilip Bhattacharjee
3. Johavendu Bhattacharjee @ Roy son of Dilip Bhattacharjee Opposite party
no. 2 and 3 are residents of Super Complex, Allahabad Bank, M.G. Road,
Katihar, P.O., P.S. and District Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bhola Prasad, Adv. Mr. Mukesh Kumar Jha, Adv.
For the Respondent/s	:	Mr. Parmeshwar Mehta, APP
For O.P. No. 2 and 3	:	Mr. Awadhesh Kumar Mishra, Adv. Mr. Ajoy Kumar, Adv. Mr. J. Bhattacharjee, Adv.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 04-07-2019 This revision application is directed against the order

dated 16.02.2016 passed by the learned Sessions Judge, Katihar

in Criminal Appeal No. 2 of 2016, by which, the appeal filed by

opposite party nos. 2 and 3 under Section 29 of the Protection of

Women from Domestic Violence Act, has been dismissed and

the order dated 21.07.2015 passed by the learned Sub Divisional

Judicial Magistrate, Katihar in Complaint Case No. 887/2008

filed under Section 12 of Protection of Women from Domestic

Violence Act, filed by the petitioner was set aside.



The brief facts giving rise to the present revision application is that the petitioner filed a complaint before the learned Chief Judicial Magistrate, Katihar bearing Complaint Case No. 887/2008 against Dilip Bhattacharjee under Section 12 of the Domestic Violence Act, stating therein, that she is the wife of Pranav Bhattacharjee, who happens to be the younger brother of Naresh Bhattacharjee and the said Naresh Bhattacharjee was the head of joint family and managing the entire joint family property worth Rs. 20 crore, who died on 10.11.2005 but during his life time, he had managed Rs. 6,000/- per month for the maintenance of the petitioner and had also awarded 20% share in the property income, which has been denied by Dilip Bhattacharjee, Son of Naresh Bhattacharjee, who used to tortured the petitioner so that she could leave the residential premises and due to the said reason, she took the recourse of domestic violence Act.

During pendency of the above stated case, the petitioner filed a petition for grant of interim relief under Section 3 of the Domestic Violence Act and after hearing the parties, interim relief was allowed by learned Sub Divisional Judicial Magistrate, Katihar by his order dated 31.05.2008 but the said amount was reduced to Rs. 6,000/- by this High Court



and the petitioner has been receiving the same. It also appears that during pendency of the complaint case, Dilip Bhattacharjee died on 31.03.2015, which necessitated the petitioner to file a petition dated 28.04.2015 before the learned Sub Divisional Judicial Magistrate, Katihar in Complaint Case No. 887 of 2008 to implead opposite party nos. 2 and 3 as party in that complaint case and they be directed to comply the order of High Court to pay Rs. 6,000/- per month to the petitioner.

It further appears that the learned Sub Divisional Judicial Magistrate, Katihar, allowed the petition dated 28.04.2005 by his order dated 21.07.2015, in the light of order of the High Court dated 01.10.2008 passed in Cr. W.J.C. No. 664 of 2008 along with Cr. W.J.C. No. 713 of 2008 and also considering the provisions of Domestic Violence Act. Opposite party nos. 2 and 3 assailed the order of learned Sub Divisional Judicial Magistrate, Katihar dated 21.07.2015 before the learned Sessions Judge, Katihar in Cr. Appeal No. 2 of 2016 and the learned Sessions Judge, Katihar vide his order dated 16.02.2016 allowed the appeal filed by opposite party nos. 2 and 3 and set aside the order dated 21.07.2015 holding that criminal liability cannot be shifted on the legal heirs of the parties..

Being aggrieved and dissatisfied with the order dated



16.02.2016 passed by the learned Sessions Judge, Katihar, this revision application has been preferred.

Grounds for assailing the order of learned Sessions Judge, Katihar is that learned Sessions Judge has failed to consider that the petitioner can also claim the maintenance on the basis of the economic abuse under Domestic Violence Act from opposite party nos. 2 and 3 being the heirs of Dilip Bhattacharjee and furthermore, opposite party nos. 2 and 3 have inherited the property from Dilip Bhattacharjee, against, whom there was an order for payment of Rs. 6,000/- per month as per the observation made by this High Court in Cr. W.J.C. No. 664 of 2008, in which, Dilip Bhattacharjee was the petitioner and present petitioner was the opposite party no. 2 and as such, the order passed by the learned Sessions Judge, Katihar, is not sustainable in the eye of law.

Learned counsel appearing on behalf of opposite party nos. 2 and 3 have opposed the application on the ground that the impugned order passed by appellate court does not suffer from any illegality rather the filing of the case under Domestic Violence Act by the petitioner is itself an abuse of process of the Court, as decided by this Court vide order dated 13.10.2009 passed in Cr. W.J.C. No. 664 of 2008 along with Cr. W.J.C. No.



713 of 2008. Moreover, they are still paying Rs. 6,000/- to the petitioner, which she has admitted in her petition under Section 12 of Domestic Violence Act, and, therefore, there was no occasion for the petitioner to file a case under Domestic Violence Act.

Having heard the parties. From perusal of the record, it appears that the petitioner and others had filed two cases under Section 12 of Protection of Women from Domestic Violence Act, 2005, which was registered as Complaint Case No. 886 and 887 of 2008 learned Sub Divisional Judicial Magistrate, Katihar has ordered for payment of Rs. 10,000/- per month to the petitioner by Dilip Bhattacharjee and opposite party nos. 2 and 3 are now the heirs of Dilip Bhattacharjee. It further appears that Dilip Bhattacharjee has preferred Cr. W.J.C. No. 664 of 2008 and Cr. W.J.C. No. 713 of 2008 and this High Court vide order dated 13.10.2009 has observed the following:-

“In my view, prima facie there are great doubts whether such a complaint, which is nothing but virtually a Partition Suit, would at all constitute domestic violence within the meaning of Act. Further, on reading of Section 23 of the Act, it is clear that the interim power has been given for an interim



protection from domestic violence. It is not an order for interim maintenance that is contemplated therein. All appears to be an ingenuous drafting and jugglery of words virtually resulting in a Partition Suit being decided in a domestic violation case which, on the face of it, would be arbitrary and on strength thereof conferring power to decide maintenance aspects in this jurisdiction would clearly be beyond jurisdiction. It is simpliciter a money claim being settled and interim order being passed in that regard. That surely cannot be permitted. That would be clearly an abuse of process of Court.

In such a situation, I am left with no option but to set aside the impugned orders passed by the learned Sub divisional Judicial Magistrate and affirmed in appeal by the Sessions Judge by which maintenance, as an interim measure, has been directed to be paid moreso as learned counsel for the petitioner undertakes that to the extent beneficial interest is carved out in the testament (will) in favour of the husband of respondent No 2 in the first writ application and in favour of respondent No 2 in the second writ application which he would continue to honour as per the terms of the will and subject to any order that may be passed in Testamentary Case/Suit as between the



parties. The orders impugned of the Subdivisional Judicial Magistrate and the Sessions Judge are set aside.

It would be open to the petitioner to move the learned Subdivisional Judicial Magistrate, if he is so advised, for discharging the case as such which would be considered on its own merit and in accordance with law.

The writ applications are, accordingly, allowed”.

From the above order passed by a Bench of this Court, it clearly appears that earlier order passed by the learned Sub Divisional Judicial Magistrate, Katihar allowing the interim maintenance and affirmed by the Sessions Judge in appeal, has been set aside by a Bench of this High Court considering the same as an abuse of process of court with observation that the petitioner shall continue to honour the terms of will and subject to any order that may be passed in Testamentary Case/Suit as between the parties and petitioner in that case i.e. father of opposite party nos. 2 and 3 was given liberty to move before the SDJM for discharging him. However, it appears that he has not moved for discharging himself and after his death another petition has been filed by petitioner of this case.

It further appears that a Testamentary Case/Suit is



pending between the parties with respect to probate of will and and so far the claim of Rs. 6,000/- is concerned, the opposite parties have submitted that they are paying the same regularly to the petitioner and the petitioner has also admitted the same, which is evident from annexure -1 of the petition.

Hence, considering the fact that as this Court had observed earlier that filing of petition under Domestic Violence Act is an abuse of process the court and earlier order passed by the learned Sub Divisional Judicial Magistrate allowing the petition filed under Section 12 of Domestic Violence Act by the petitioner and confirmed by the Appellate Court, has been set aside and also considering the fact that petitioner has himself admitted that she is getting the amount of Rs. 6,000/-, as per observation made by this Court in Cr. W.J.C. No. 664 of 2008 and Cr. W.J.C. No. 713 of 2008, thus this Court refrain itself from interfering with the order passed by the appellate Court.

With the above observation, this application is disposed of.

(Vinod Kumar Sinha, J)

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