

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.27 of 2020

Arising Out of PS. Case No.-65 Year-2018 Thana- DOMESTIC VIOLENCE District- Buxar

Babban Chaudhary @ Baban Choudhary, (Male), aged about 32 years,
Son of Kailash Chaudhary Resident of Village - Bara (Bhawani
Choura), Post Office- Gahmar, P.S.- Gahmar, District - Gazipur (U.P.).

... .. Petitioner

Versus

1. The State of Bihar
2. Soni Devi, Wife of Baban Choudhary and D/o Baban Choudhary, at
present resident of Mohalla - Someshwar Asthan, Jail Road, Buxar,
P.S.- Buxar (T), District - Buxar.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate Mr. Rahul Nath, Advocate
For the Respondent/s	:	Mr. Choubey Jawahar, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 03-02-2020 Heard learned counsel for the petitioner and

learned A.P.P. for the State.

Petitioner in the present case is aggrieved by and

dissatisfied with the order dated 17.12.2019 passed by

learned District & Session's Judge, Buxar in Cr. Appeal No.

43 of 2019 by which the learned District & Sessions Judge,

Buxar has been pleased to modify the order dated

20.05.2019 passed by learned Judicial Magistrate, 1st Class,

Buxar in Domestic Violence Case No. 65(C)/2018 whereby



the learned Magistrate had awarded the maintenance of Rs. 5000/- per month to the complainant and her children coupled with the lump-sum of Rs. 50,000/- as a compensation to be paid in the five installments in between May, 2019 to September, 2019 on or before 15th date of every month.

This petitioner who is the husband – opposite party before the learned Magistrate went in appeal and the Appellate Court partly allowed the appeal. He is still aggrieved by the order of the appellate court, as according to him the learned appellate court was unable to appreciate that the complaint itself was not fit to be entertained under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the “Act of 2005”).

The appellate court has reduced the maintenance amount to Rs. 3000/- per month and held that the grant of compensation of Rs. 50,000/- by the learned Magistrate was not justified, hence that part of the order has been totally set-aside.



Learned counsel for the petitioner has submitted before this Court that the complainant had left the matrimonial home about three years back prior to filing of the complaint petition before the learned Magistrate. According to him, the complainant was not in domestic relationship at the time of filing of the complaint which is a sine-qua-non for maintaining a complaint petition under the D.V. Act. In this regard, he has relied upon a learned coordinate Bench Judgment of this Court in the Case of Santosh Kumar Vs. State of Bihar & Anr. Reported in 2019(3) PLJR 567. Reliance has been placed on paragraph 10 & 11 of the judgment in the case of Santosh Kumar (Supra). In course of argument, learned counsel has taken this court through paragraph 10 & 11 which read as under:

"10. Referring to Section 2(a) of the D.V. Act, the Court observed: "the use of the word is any woman 'who is' or 'has been'. Both the expressions are in the present tense. The legislature has not used the word 'who was' or 'had been'. This means the domestic relationship has to be in the present and not in the past. The definition requires that on the date Act come into force, the woman should be in domestic relationship".

11. Referring to Section 2(f) of the D.V. Act, which defines the domestic relationship, the Court observed: "the definition clearly speaks of a domestic relationship



between two persons who live or have at any point of time lived together in a shared household and are related by marriage or through a relationship in the nature of marriage. This definition also speaks about the existence of a relationship by marriage or a relationship in the nature of marriage at the time. The expression used is 'are related' by marriage. The expression by the legislature is not 'were related'. From the bare reading of these two provisions it is apparent that the intention of the legislature is to protect those women who are living in a domestic relationship".

Apparently to this court it appears that the facts of the case in Santosh Kumar (supra) were quite different and distinct from the facts of the present case. In the said case the husband and wife had got a decree of divorce and after getting the decree of divorce the complaint under D.V. Act was filed. The learned coordinate Bench therefore framed one of the issues as to whether an ex-wife can file a complaint under the D.V. Act, 2005 when the relationship has come to an end with a decree of divorce.

While answering the aforesaid issue, the learned coordinate Bench noticed the definition of Section 2(a) and 2(f) of the D.V. Act and ultimately held that on a bare reading of these two provisions it may be found that the



intention of the legislatures is to protect those women who are living in a domestic relationship.

In the present case, it is not in dispute that the petitioner as well as the opposite party no. 2 are related to each other by marriage and that they have lived together at certain point of time. The marriage has yet not come to an end. The "domestic relationship" as defined under Section 2(f) of the D.V. Act, thus exists.

In the facts situation of the present case therefore this court has no iota of doubt that the ratio of the judgment of the learned coordinate Bench in case of Santosh Kumar (supra) does not support the contention of learned counsel for the petitioner. This court also finds from perusal of the impugned order that the learned appellate court has awarded a sum of Rs. 3000/- per month only as maintenance in favour of opposite party no. 2 after taking note of the fact that this petitioner is also responsible not only to maintain the opposite party no. 2 but the minor child. A sum of Rs. 3000/- per months on account of maintenance, therefore cannot be said to be inflated amount from the maintenance



point of view taking into consideration the present price index of the country.

This court therefore, declines to interfere with the impugned order. This application has, thus, no merit. It is dismissed, accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

U		T	
---	--	---	--

